

High Court for the State of Telangana

The Hon'ble The Chief Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice A. Abhishek Reddy

Crl.A.Nos. 1032 & 1087 of 2012

Date: 22-10-2019

Crl.A.No. 1032/2012

Between:

Syed Ahmed

...Appellant/accused No.1

And

The State of A.P.,
Rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad

...Respondent/accused No.2

Crl.A.No. 1087/2012

Between:

Smt. Noorjahan

...Appellant

And

The State of A.P.,
Rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad

...Respondent

Counsel for the appellants: Mr. Narendar Jalli

Counsel for the respondent: Mrs. Juvvadi Sridevi, APP

The Court made the following:

Common Judgment: (per Hon'ble The Chief Justice Raghvendra Singh Chauhan)

The appellants (accused Nos. 1 and 2) in both these Criminal Appeals, *namely* Crl. A. Nos. 1087, and 1032 of 2012 respectively, have challenged the impugned judgment dated 23-07-2012, passed by the Special Judge for Trial of Cases under SCs/STs (PoA) Act –cum- VIII Additional District Judge at Nizamabad, whereby the learned trial Court has convicted Smt. Noorjahan (accused No. 1) and Syed Ahmed (accused No. 2), while acquitting Syed Baba (accused No. 3) and Smt. Begum Bee (accused No. 4). By the impugned judgment, while Smt. Noorjahan (accused No. 1) has been convicted for the offence under Section 302 IPC, sentenced to undergo Life Imprisonment, and imposed with a fine of Rs.1,000/- with default clause of six months of Simple Imprisonment, Syed Ahmed (accused No. 2) has been convicted for the offence under Section 304-B IPC, sentenced to seven years of Rigorous Imprisonment, and imposed with a fine of Rs.1,000/- with default clause of six months of Simple Imprisonment.

Since both these appeals arise out of the same impugned judgment, since the arguments have been

advanced by the same counsel, and since the issues involved are same, both these appeals are being decided by this common judgment. For convenience, the appellants shall be referred as accused Nos. 1 and 2.

Briefly, the facts of the case are that on 18-11-2008 at 1:00 p.m., on intimation from the Government Hospital, Nizamabad, Mr. B. Balram, the Sub-Inspector of Police, Town-V, Nizamabad (P. W. 13), rushed to the hospital; he recorded the statement of Meherunnisa Begum (the deceased in this case). On the basis of the statement given by her, a formal First Information Report (FIR), *namely* FIR. No. 137 of 2008 was registered by him at the Police Station, Town-V, Nizamabad, for the offences under Sections 498-A, 307 r/w 109 IPC. However, with the death of the deceased at 3:15 p.m., on the same day, the offence was altered from Section 307 IPC to one under Section 302 IPC. During the course of investigation, accused Nos. 1 to 4 were arrested by the police, and put up for trial.

In order to support its case, the prosecution examined fourteen witnesses, and submitted fourteen fourteen documents. However, the defence neither examined any

witness, nor submitted any documents. After completion of the trial, by the impugned judgment, the learned trial Court had convicted accused Nos. 1 and 2 as aforementioned, while acquitting accused Nos. 3 and 4. Hence, this appeal before this Court.

Mr. Narendar Jalli, the learned counsel for accused Nos. 1 and 2, has raised the following contentions before this Court:-

Firstly, that the deceased Meherunnisa Begum has given two contradictory statements prior to her death, *namely* the statement recorded by the Sub-Inspector of Police, Town-V, Nizamabad (P. W. 13), marked as Ex. P.12, and the statement recorded by Mr. C. Rajender Reddy (P. W. 10), the Special Judicial First Class Magistrate (Excise), Nizamabad, marked as Ex. P.10. In Ex. P.12, the deceased claimed that her husband's maternal uncle, *namely* Syed Baba (accused No. 3), lit the fire with a match stick and burnt her. Yet, in Ex. P.10, she claimed that her mother-in-law, *namely* Smt. Begum Bee (accused No. 1) had burnt her. Thus, there are two contradictory dying declarations. Since, the benefit of doubt has already been given to Syed Baba (accused No.

3), the benefit of doubt should equally be given to Smt. Noor Jahan (accused No. 1).

Secondly, the learned trial Court is unjustified in convicting accused No. 2 for the offence under Section 304-B IPC. For, the three essential ingredients for convicting an accused for the offence under Section 304-B IPC, *namely* the death of a woman within seven years of her marriage, the raising of the dowry demands coupled with cruelty soon before the death, and the occurrence of death under suspicious circumstances, are conspicuously missing. According to the learned counsel, the testimonies of Smt. Ahmedi Begum (P. W. 1) and Syed Imran (P. W. 2), the mother and the brother of the deceased, are rather vague with regard to the dowry demands. Moreover, if there were, indeed, dowry demands raised by accused Nos. 1 and 2, Smt. Ahmedi Begum (P. W. 1) and Syed Imran (P. W. 2), would have filed a complaint against them, or at least tried to resolve the dispute, either within the family members, or before the elders of the community. Thus, the element of dowry demand does not even exist in the present case.

Thirdly, there is no evidence to show that soon before the death there was any demand or cruelty committed by accused Nos. 1 and 2 on the deceased.

Lastly, according to the independent witness- Smt. Fatheema Begum (P. W. 5), when she rushed to the rescue of the deceased, she did not find Syed Ahmed (accused No. 2) at the scene of the crime. Thus, merely because the deceased had died a homicidal death, the case would not fall within the ambit of Section 304-B IPC. Therefore, the conviction of Smt. Noor Jahan (accused No. 1) for the offence under Section 302 IPC, and of Syed Ahmed (accused No. 2) for the offence under Section 304-B IPC, is highly misplaced. Hence, both accused Nos. 1 and 2 deserve to be acquitted by this Court.

On the other hand, Smt. Juvvadi Sridevi, the learned Additional Public Prosecutor, has raised the following counter-contentions:-

Firstly, the learned trial Court has erred in convicting Smt. Noor Jahan (accused No. 1) for the offence under Section 302 IPC. In fact, the case falls well within the ambit of Section 304-B IPC.

Secondly, both according to Smt. Ahmed Begum (P. W. 1) and Syed Imran (P. W. 2), the deceased and the accused No. 2 were cousin brother and sister. There was a constant dowry demand of Rs.10,000/- being raised by accused Nos. 1 and 2. Due to the harassment meted out by accused Nos. 1 and 2, the deceased was brought back to her parental place. Subsequently, when she rejoined the company of Syed Ahmed (accused No. 2), she died in suspicious circumstances. Since the prosecution has proven the fact that the deceased died a homicidal death, under suspicious circumstances, since there is ample evidence of dowry demand and cruelty inflicted upon the deceased soon before her death, the learned trial Court, in fact, should have convicted both the accused Nos. 1 and 2 for the offence under Section 304-B IPC.

Thirdly, while relying on the case of **Raju Diwade vs. State of Maharashtra**¹, the learned Additional Public Prosecutor has pleaded that even if there were two dying declarations, each dying declaration has to be read separately. One dying declaration cannot be rejected on the ground of the contents of the other dying declaration.

¹ 2016 (11) SCC P. 673

Fourthly, Smt. Fatheema Begum (P. W. 5) is silent about the presence of the accused at the scene of the crime. However, in both the dying declarations, the deceased had clearly stated that accused Nos. 1 and 2 were very much present at the scene of the crime when she was burnt. Therefore, there is no reason for doubting the dying declarations on the point of the presence of accused Nos. 1 and 2 at the scene of the crime when the deceased was burnt.

Lastly, all the three ingredients for the offence under Section 304-B IPC have been well established by the prosecution. Therefore, even if accused No. 1 could not be convicted for the offence under Section 302 IPC, she could have been convicted for the offence under Section 304-B IPC as she was equally charged for the said offence by the learned trial Court.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

Smt. Ahmedi Begum (P. W. 1) states in her examination-in-chief that accused No. 2 is the son of her own brother. About ten months prior to the occurrence, she got the deceased Meherunnisa Begum married to him. At

the time of marriage, she had given accused Nos. 1 and 2, an amount of Rs. 15,000/- in cash, half tula of gold, and the household articles. She further states that for the first three months of the married life, the accused persons looked after her daughter well. But thereafter, they started demanding an additional dowry of Rs.10,000/-. Since the demand could not be met, they would assault her daughter. Her daughter used to inform her about the harassment being meted out by the accused. She further stated that, *“Then I came to know that my daughter was beaten by the accused. I brought my daughter to my house. After two days, the accused came to my house and took (sic) my daughter to their house with the assurance that they would not beat her. On 17th at about 7:00 p.m., the accused beat my daughter and poured kerosene on her and set fire to her with intention to kill her.”* Thus, according to her, soon before the death of the deceased there was a dowry demand. There were acts of cruelties meted out to the deceased, and she died under suspicious circumstances.

A similar deposition has been given by Syed Imran (P. W. 2), the brother of the deceased.

According to Dr. Deshai Murari (P. W. 11), he has performed the autopsy on the body of the deceased. He found that the deceased had suffered 90% of burns. The cause of death was the burns sustained by the deceased. He has proven the Post-Mortem Report (Ex. P.11). Thus, the prosecution has succeeded in establishing the fact that the deceased had died a homicidal death. Hence, all the three ingredients required for convicting the accused Nos. 1 and 2 for the offence under Section 304-B clearly exist in the present case.

Once the three ingredients have been established by the prosecution, the learned trial Court was required to invoke the presumption under Section 113-B of the Indian Evidence Act, 1872. Therefore, the learned trial Court should have invoked the said presumption even against accused No. 1. Most importantly, both the statements of the deceased, *namely* Ex. P.12 recorded by the Sub-Inspector of Police (P. W. 13), and Ex. P.10 recorded by the Special Judicial First Class Magistrate (P. W. 10), are consistent as far as the presence of accused Nos. 1 and 2 is concerned at the scene of the crime when the crime was committed. In fact,

accused No.1 should have been convicted for the offence under Section 304-B IPC instead of Section 302 IPC.

A bare perusal of the testimony of Fatheema Begum (P. W. 5) clearly reveals that she is absolutely silent about the presence of accused No. 2 at the scene of the crime when the crime was committed. Therefore, the learned counsel for accused Nos. 1 and 2 is unjustified in claiming that according to Fatheema Begum (P. W. 5), she did not see accused No. 2 at the scene of the crime when she rushed to the rescue of the deceased. Hence, the defence cannot take any benefit from the testimony of Fatheema Begum (P. W. 5).

For the reasons stated above, Criminal Appeal No. 1087 of 2012 filed by the appellant (accused No.1), *namely* Smt. Noor Jahan, w/o. Syed Shabuddin, is partly allowed. The conviction and sentence recorded against her for the offence punishable under Section 302 IPC in the impugned Judgment, is altered to Section 304-B IPC. She is sentenced to seven years of Rigorous Imprisonment. The fine amount and the default sentence as recorded by the learned trial Court are sustained.

Criminal Appeal No. 1032 of 2012 filed by the appellant (accused No. 2), *namely* Syed Ahmed, s/o. Syed Shabuddin, is dismissed. The conviction and sentence recorded against him for the offence punishable under Section 304-B IPC in the impugned Judgment are hereby confirmed.

As both the appellants (accused Nos. 1 and 2) are on bail, their bail bonds shall stand cancelled.

The appellant in Crl.A.No. 1032 of 2012 (accused No. 2), *namely* Syed Ahmed, s/o. Syed Shabuddin, is directed to surrender immediately before the Superintendent of District Jail, Nizamabad, to undergo the remaining period of his sentence.

The appellant in Crl.A.No. 1087 of 2012 (accused No. 1), *namely* Smt. Noor Jahan, w/o. Syed Shabuddin, is directed to surrender immediately before the Superintendent, Special Prison for Women, Chanchalguda, Hyderabad, to undergo the remaining period of her sentence.

As a sequel, miscellaneous petitions, pending if any,
stand dismissed as infructuous.

(Raghvendra Singh Chauhan, CJ)

(A. Abhishek Reddy, J)

Dt: 22-10-2019
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