

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T. VINOD KUMAR

Criminal Appeal No.1296 of 2012

JUDGMENT (per Hon'ble Sri Justice T. Vinod Kumar):

The appellants in the present appeal are accused Nos.1 to 5 (A.1 to A.5) in Sessions Case No.234 of 2012 on the file of V Additional Sessions Judge (II-FTC), Warangal. The appellants have challenged the judgment dated 12.12.2012, passed by the learned Trial Court, whereby A.1 to A.5 were convicted for the offences punishable under Sections 304-B and 498-A of the Indian Penal Code, and Section 4 of the Dowry Prohibition Act. All the accused were sentenced to undergo rigorous imprisonment for life for the offence punishable under Section 304-B IPC, and rigorous imprisonment for three years for the offence punishable under Section 498-A IPC, and two years rigorous imprisonment and to pay a fine of Rs.5,000/- each and in default thereof to suffer simple imprisonment for three months for the offence punishable under Section 4 of Dowry Prohibition Act. All the said sentences imposed were directed to run concurrently.

2. Heard Sri P. Prabhakar Reddy, learned counsel appearing for the appellants/A.1 to A.5 and Smt. J. Sridevi, Assistant Public Prosecutor appearing for the respondent/ State of Telangana.

3. The brief facts of the present case are as follows:

a) A.1 to A.5 were charged with the above alleged offences on account of the death of Smt. Venatha, who consumed gramoxone, an insecticide poison, at the house of her in-laws and committed suicide on 17.08.2011.

b) The deceased is the daughter of PW.1- M.Janardhan (father) and PW.2- M.Sujatha (mother) and sister of PW.3- M.Raju. On 10.06.2006 the deceased was given in marriage to A.1 and has become his wife upon performing the marriage as per the customs prevailing. A.2 and A.3 are mother-in-law and father-in-law of the deceased, while A.4 and A.5 are sister-in-law and her husband. A.1 to A.3 are residents of Chinta Nekkonda Village, while A.4 and A.5 were residing at Kantaipalem village of Thorrur Mandal, which is stated to be 60 k.m. away from the place where the deceased was living with her husband.

c) At the time of marriage of the deceased with A.1, PWs.1 to 3 claimed to have paid a dowry of Rs.2 lakhs, and presented 50 tulas of silver, 3 tulas of gold, apart from household articles, worth Rs.25,000/- in the presence of PW.7. It is stated that after performing the marriage in June 2006, the deceased and A.1 led a happy marital life for two years. During this period, they were blessed with a female child, by name Sreeja, who is five-year old on the date of death of the deceased. It is claimed that after the birth of female child, A.1 started demanding the deceased to get an

additional dowry of Rs.1 lakh from her parents. She was sent to her parents' house to meet the demand of additional dowry.

d) Upon the accused making such demand for additional dowry, the parents of the deceased approached village elders who were examined as PWs.4, 5, 7, 8 and 13, who convened a panchayat, whereat A.1 to A.5 were admonished and were called upon not to harass the deceased. Though, at the panchayat held, the accused are stated to have agreed and promised before the village elders not to harass the deceased, it is claimed that the accused continued to harass the deceased for not meeting the demand of additional dowry of Rs.1 lakh. Since, the accused continued to harass the deceased for additional dowry, the deceased gave a complaint in police station, Mamnoor. At the counseling conducted by P.S. Mamnoor, the deceased and A.1 were directed to live separately. Even after conducting of counseling by the Mamnoor Counseling Centre, the accused continued to harass the deceased by subjecting her to beating for not meeting the demand of additional dowry.

e) It is claimed that on 16.08.2011, on the return of the deceased to the house of accused after visiting her paternal home on account of "Rakhi Pournami" (festival to celebrate sanctity of the brother-sister, relationship), to tie a "rakhi" (sacred thread) on her brother's arm (Rakhi Festival), all the accused harassed the deceased for additional dowry, and beat

her indiscriminately. It is due to such continued harassment and having been vexed, the deceased decided to end her life. Thus, on 17.08.2011 at 10:30 a.m. she consumed insecticide poison at the house of her in-laws. The deceased, before resorting to the extreme step of ending her life by consuming poison, had made a telephonic call to her father PW.1, and informed him about the harassment meted out to her on the previous night. She also called her brother M. Raju - PW.3, and informed him of the happenings of the previous day and told him that she is consuming poison, unable to bear the harassment at the hands of the accused and requested to come to see her body. It is upon receiving the said call, PW.3, is stated to have rushed to the place of the deceased i.e., Chinta Nekkonda village and shifted the deceased to a private hospital. PW.9 who is a doctor provided the initial treatment to the deceased. As the health condition deteriorated and needed better treatment the deceased was shifted to Hanumakonda. However, even before the deceased could be admitted in to the hospital at Hanumakonda, she died on 18.08.2011 at about 11:30 p.m.

f) Upon the death of his daughter, on 19.08.2011 PW.1 lodged a complaint with the Parvathagiri Police Station, with the Sub-Inspector of Police (PW.16). Upon receipt of the complaint, the PW.16 duly registered the case as Crime No.88 of 2011 and took up investigation. In the complaint given by PW.1, it is stated that the deceased, who is the daughter of

the complainant PW.1, has committed suicide due to the continuous harassment meted out to her at the hands of A.1 to A.5, for not meeting the demand for additional dowry of Rs.1 lakh. Based on the said complaint of PW.1, the accused A.1 to A.3 were arrested and accused A.4 and A.5 were arrested on surrender before the investigating officer (PW.17). After completing the investigation, the charge-sheet was laid before the V Addl. Sessions Judge, (II-FC), Warangal. Charges were framed for offences under Sections 498-A, 304-B IPC and for offence under Section 4 of Dowry Prohibition Act. During the course of trial, 17 witnesses were examined by the prosecution, 16 documents and MO.1, which is the Poison Tin, were marked by the prosecution.

4. The crux of the evidence on the part of prosecution witnesses and in particular PWs.1 to 3, is that all the accused harassed the deceased, after she gave birth to a female child by making demand for additional dowry of Rs.1 lakh; on various occasions the accused have beaten the deceased and also subjected her to electric shock. All the efforts of village elders, to bring about harmony between the deceased and the accused did not yield any result. Even when all the accused were called to P.S. Mamnoor Counseling Centre, where the accused were told not to harass the deceased, the harassment continued. Further, when the deceased came back to the house of the accused on 16.08.2011 after visiting her parents for the "rakhi" festival,

the accused once again harassed the deceased by beating her severely by tying her hands. Being unable to bear the harassment and cruelty at the hands of the accused the deceased was forced to take the extreme step of ending her life. Thus, the accused are liable to be punished.

5. In the entire evidence of PWs.1 to 3 and also in the evidence of PWs.4, 5, 7, 8 and 13, who acted as village elders to mediate between the accused and the deceased for leading cordial marriage life, there is no specific allegation against the harassment meted out to the deceased at the hands of A.2 and A.3. Further, PW.2, who is the mother of the deceased, in whom normally a daughter would confide her grievance, has not stated the involvement of A.2 and A.3 for the harassment being meted out to the deceased. On the contrary PW.2 in her chief-examination has categorically stated that it was A.1 who used to beat the deceased after taking alcohol. Further, PW.2 in her cross-examination has also stated that even while A.1 and deceased stayed separately in a rented house for a period of two months after the counseling at P.S. Mamnoor, the A.1 has harassed the deceased, as a result of which, the deceased returned to her paternal house. In so far as involvement of A.4 and A.5 is concerned, the PW.2 in her cross-examination stated that A.4 and A.5 reside in a different place and the distance between

the place of stay of the deceased and the place of A.4 and A.5 is about 60 km away.

6. PW.3, in his evidence has stated that all the accused harassed the deceased to bring additional dowry and as such they are all responsible for her death. However, in the cross-examination, PW.3 has totally denied his version in chief examination and stated that the same was made at the instance of the police. The other witnesses PW.4 and PW.5 i.e., village elders who conducted panchayat trying to resolve the marital dispute between the deceased and the accused, who have been examined by the prosecution, did not support the case of prosecution and controverted with the version given by them in the chief-examination.

7. As can be seen from the material on record, it is clear that the deceased has taken the extreme step to end her life by committing suicide, as she was unable to bear the harassment meted out to her on account of the demand for additional dowry. However, in order to involve the accused for the charge under Section 304-B IPC, it is necessary that the deceased should have been subjected to cruelty or harassment soon before her death by her husband or any other relative of her husband for or in connection with any demand for dowry, liable to be punished with imprisonment for a term as specified in sub-section (2) of Section 304-B IPC.

8. In order to prove the charge under Section 304-B IPC, the prosecution is required to establish the two essential ingredients of Section 304-B IPC, apart from others, viz., (i) death of woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, and (ii) woman is subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for "dowry", as observed by the Hon'ble Supreme Court in ***Appasaheb Vs State of Maharashtra***¹. In the facts of the present case, the prosecution based on the complaint given by PW.1-father of deceased has proceeded against the parents of A.1 and also the sister and her husband in a routine manner without bringing on record any specific incident to show that when such relative of the husband of the deceased was involved in causing cruelty or harassment in connection with the demand for additional dowry.

9. The evidence on record, particularly the admission of PW.2 in her cross-examination with regard to place of stay of A.4 and A.5 is taken note of, it can safely be concluded that A.4 and A.5 could not have subjected the deceased to cruelty or harassment making them liable to be charged under Section 304-B IPC. Similarly, in the evidence before the Trial Court, nothing has been brought on record against A.2 and A.3 to show their involvement in the demand for additional

¹ (2007) 9 SCC 721.

dowry along with A.1, which can be said to be aiding the cruelty or harassment by the husband of the deceased, soon before her death.

10. In the cross-examination of PW.1 it has been elicited that A1 and deceased lived separately in a rented house at Chinta Nekkonda, and PW.1 does not know as to whether the other accused visited the house of A.1 and deceased, while, PW.1 and his family used to visit the house of deceased.

11. The Hon'ble Supreme Court in ***Rajeev Kumar Vs. State of Haryana***², propounded that one of the essential ingredients of dowry death under Section 304B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Evidence Act.

12. It is also to be seen that though the case of prosecution is that of demand of additional dowry by the accused is on account of the deceased giving birth to a female child, who admittedly is five year old, when the deceased took the decision to end her life, no evidence has been brought on record to substantiate that the demand for additional dowry on account of deceased giving birth to a female child persisted

² (2013) 16 SCC 640

all through the period of five years, so as to attract the occurrence to be “soon before” as held in ***State of Karnataka Vs Dattaraj and Others***³.

13. Thus, the entire approach of prosecution in naming all the accused is general in nature. While, in order to sustain a charge under Section 304-B IPC, one needs to cross the long distance between ‘may be true’ and ‘must be true’ to convict a person, as laid down by the Hon’ble Supreme Court in ***Bodhraj v. State of J&K***⁴.

14. Having regard to the facts and circumstances of the case and the evidence on record, the prosecution has failed to establish the culpability of A.2 to A.5, of subjecting the deceased to cruelty or harassment, forcing her to end her life, making them liable to be charged and punished for the offence punishable under Section 304-B IPC. Thus, the judgment of the Trial Court convicting A.2 to A.5 on the charges of Section 304-B read with Section 498-A IPC cannot be sustained.

15. Insofar as the involvement of A.1, in subjecting the deceased to harassment and cruelty is concerned, the same cannot be ruled out, for the reason that though initially for a period of two years, both the A.1 and deceased led a happy marital life, after the deceased gave birth to a female child,

³ (2016) 12 SCC 331

⁴ (2002) 8 SCC 45

A.1 started subjecting the deceased to harassment and cruelty by resorting to beating regularly and making demand for additional dowry. If there was no such harassment or cruelty being meted out to the deceased at the hands of the accused, the deceased would not have taken the extreme decision to end her life particularly looking at the age of child who is five-year old at that point of time, but for the harassment she had suffered at the hands of A.1. Thus, the involvement of the husband in the alleged offences cannot be ruled out totally. However, having regard to the facts and circumstances of the case, the sentence of life imprisonment imposed by the Trial Court on A.1 appears to be excessive and the same is liable to be reduced to the minimum period of seven years.

16. In view of the above said conclusions arrived by this Court, the judgment of the Trial Court dated 12.12.2012 in S.C.No.234 of 2012 insofar as convicting and sentencing A.2 to A.5 for life imprisonment for the offence punishable under Section 304-B IPC and for three years rigorous imprisonment for the offence punishable under Section 498-A IPC, is hereby set aside and A.2 to A.5 are set at liberty accordingly.

17. It is stated that by virtue of the orders of this Court dated 04.08.2014, A.2 to A.5 were granted bail, upon executing a personal bond for a sum of Rs.25,000/- each with two sureties for a like sum. In view of the sentence against

A2 to A5 being set aside as above, the bail bonds executed by A2 to A5 shall stand cancelled and the amounts deposited, if any, shall be refunded to them.

18. Insofar the sentence of life imprisonment imposed under Section 304-B IPC on A.1 is concerned, the same is hereby modified from life imprisonment to the rigorous imprisonment for a term of seven years. The other convictions and sentences imposed on A.1 for the offences punishable under Section 498-A IPC and Section 4 of Dowry Prohibition Act shall remain unaltered.

19. It is stated that A.1 was released on bail by virtue of the order of this Court on 12.02.2018. In view of the conclusions arrived at as above by this Court and the modified term of sentence, A.1 is directed to be surrendered forthwith before the Trial Court to undergo the balance sentence of imprisonment subject to remissions, if any.

20. The Criminal Appeal is, accordingly, partly allowed.

21. Miscellaneous petitions, if any, pending in this Criminal Appeal shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, CJ)

(T. VINOD KUMAR, J)

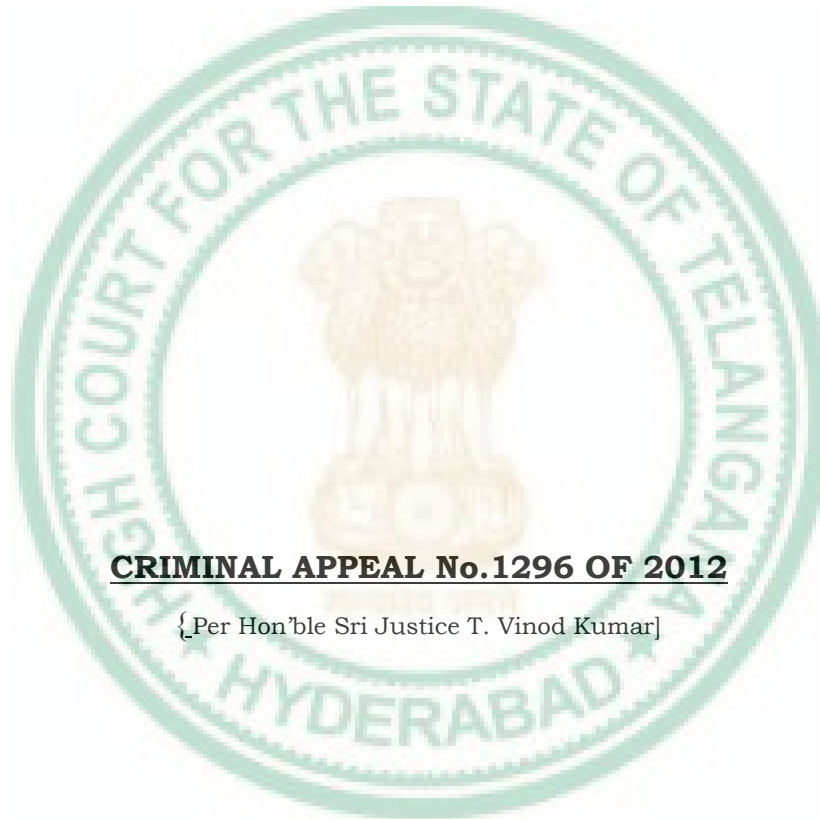
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