

HON'BLE SMT. JUSTICE M.G. PRIYADARSINI

CRIMINAL APPEAL No. 547 OF 2011

JUDGMENT

Accused Nos. 1 & 2 in S.C.No.474 of 2009 preferred this appeal challenging the judgment of the IV Additional District Judge (II Fast Track Court) at Nalgonda, dated 30.04.2011. Both the accused were charged for the offences under Sections 498-A, 304-B of IPC and Sections 3 & 4 of Dowry Prohibition Act, 1961 for allegedly subjecting the deceased-Parvathi to cruelty demanding additional dowry and causing her death within seven years of her marriage with A.1. Through the said judgment, both the accused were convicted for the offence under Section 498-A IPC and were sentenced to undergo rigorous imprisonment for three years each and to pay a fine of Rs.1,000/- each, in default, to undergo simple imprisonment for one month. However, both the accused were found not guilty for the offences under Section 304-B IPC and under Sections 3 & 4 of Dowry Prohibition Act and were acquitted of the said charges.

2. The gist of the prosecution case leading to the conviction of the appellants-accused, in brief, is as follows:

P.W.2 is the elder sister; P.W.3 is the mother; P.Ws. 5 & 9 are the elder brothers of the deceased. A.1 is the husband and A.2 is the mother-in-law of the deceased. Marriage of the deceased with A.1 took place on 11-05-2007. At the time of marriage, the mother and brothers of the deceased paid the dowry worth of Rs.2.00 lakhs. The couple led their conjugal life happily for a period of one year and during their wedlock, they were blessed with a baby girl. Ever since the birth of the child, the accused started to harass the deceased, physically and mentally, on the demand of additional dowry of Rs.50,000/-. After some time, due to differences, on the demand of the deceased, the couple divided from A.2 and resided in a rented house of one Sugreeva Chary in the same village. Still, both the accused continued to harass the deceased and ten days prior to the incident, the family members of the deceased, gave a Television to A.1. On 21.03.2009, on the occasion of birthday celebrations of daughter of the deceased, Manasa, A.2 presented silver anklets and in connection with the quality of chains, two months thereafter, there took place a quarrel between A.2 and the deceased and A.1 beat the deceased and demanded her to bring additional dowry of Rs.50,000/- from her mother. On 31.05.2009, while A.1 went to bazaar, the daughter, Manasa went to the house of

K. Shankaraiah for playing. The deceased, vexed with the continuous harassment meted out to her by the accused for additional dowry of Rs.50,000/-, went to kitchen room, doused her body with kerosene and set herself ablaze in order to commit suicide. Meantime, A.1 returned home and tried to extinguish the flames and in the process, he too received burn injuries to both his hands. The deceased rushed out of the house with the flames and collapsed. Immediately, P.W.6, neighbour, rushed to the deceased and while A.1 extinguished the flames, P.W.6 covered the body of the deceased with bed sheet. Immediately, she was shifted to Government Area Hospital for treatment and from there, she was shifted to Gandhi Hospital, Secunderabad. Mother, sister and the brother-in-law of the deceased (complainant) rushed to the hospital whom she informed that she set herself ablaze due to the harassment meted out to her by the accused. On the same day, at 2:00 p.m., P.W.1, brother-in-law of the deceased, rushed to the police station and lodged Ex.P. 1 complaint with the Police, on the basis of which, FIR was registered for the offence under Section 498-A IPC in Crime No.88 of 2009 and issued Ex.P.16, FIR, to all concerned. On receipt of information from the duty doctor, P.W.17, the Magistrate, recorded the dying declaration of the deceased, Ex.P.

15, in the presence of the duty doctor. On 05.06.2009, the deceased succumbed to the injuries while undergoing treatment. Upon the death of the deceased, Section of law was altered to that of one under Sections 498-A, 304-B IPC and Sections 3 & 4 of Dowry Prohibition Act. The investigating officer, P.W.18, Assistant Sub-Inspector of Police, rushed to the scene of offence and posted a guard in order to safeguard the scene of offence. Subsequent investigation was taken over by P.W.19, the then Sub Divisional Officer, Bhongir. P.W.18 sent a requisition to the M.R.O. to conduct inquest over the dead body of the deceased and after completion of inquest, the dead body was sent for post mortem examination and he recorded the statement of P.W.1, prepared the scene of offence observation report and drafted a rough sketch under Exs.P.17 and P.10 respectively, and P.W.19 recorded the statements of P.Ws.2 to 6 and 9. The accused were on 19.06.2009 and were produced before the concerned Magistrate. After receipt of necessary reports and on completion of investigation, charge sheet was laid. The accused denied the charges and claimed for trial.

3. The Additional Judicial First Class Magistrate, Bhongir, after securing the presence of the accused and following the due procedure contemplated under Sections 207 & 209

Cr.P.C., committed the case to the Court of Sessions observing that the offences punishable under Sections 498-A, 304-B and 302 IPC, are exclusively triable by the Court of Sessions.

4. In order to prove the guilt of the accused, the prosecution examined P.Ws.1 to 19 and marked Exs.P.1 to P.19 besides the material objects 1 to 3. On behalf of the defense, none of the witnesses were examined and no documents were marked. The trial Court after analyzing the oral and documentary evidence, convicted and sentenced both the accused as indicated above while acquitting them of the charges under Section 304-B IPC and Sections 3 & 4 of the Dowry Prohibition Act.

5. The learned counsel representing the appellants contended that although the trial Court has rightly acquitted the appellants for the offences under Section 304-B IPC and Sections 3 & 4 of the Dowry Prohibition Act, erred in convicting them for the offence under Section 498-A IPC though the prosecution has utterly failed to bring home the guilt of the accused beyond reasonable doubt. When the appellants are acquitted of the offence under Section 304-B IPC, it is crystal clear that they are not responsible for the death of the deceased and hence, no accusation can be attributed against the appellants even for the

offence under Section 498-A IPC. It is contended that the trial Court ought not to have relied on the evidence of P.Ws.1, 2, 3, 5 & 9, as they are family members and close relatives of the deceased, more particularly, when the independent witnesses did not support the version of the prosecution. It is contended that there are several omissions in the evidence of prosecution witnesses and even the deceased in the dying declaration, Ex.P.15, did not specifically depose about the dowry harassment. It is contended that in the absence of any specific allegation that the appellants subjected the deceased to cruelty, they cannot be convicted for the offence under Section 498A IPC. Therefore, he prays to set aside the conviction and sentence imposed by the trial Court.

6. On the other hand, the learned Additional Public Prosecutor while trying to sustain the judgment of the trial Court, have contended that although the P.Ws. 1, 2, 3, 5 & 9 are family members of the deceased, their evidence is cogent and consistent as to the harassment of additional dowry meted out to the deceased and therefore, the appellants were rightly convicted and sentenced for the offence under Sections 498-A and the judgment of the trial Court needs no interference.

7. In view of the above rival submissions, the point that arises for consideration is:

Whether the prosecution was able to bring home the guilt of the appellants-accused for the offence under Section 498-A IPC beyond all reasonable doubt and whether the conviction, as recorded and the sentence awarded by the trial Court is liable to be set aside or modified?

8. Out of the prosecution witnesses, P.Ws.4, 6, 7, 8, 10, 11 & 14 were declared hostile by the prosecution as they did not support its version. As seen from impugned judgment, the trial Court recorded the conviction based on the evidence of P.Ws.1,2,3, 5 & 9. Therefore, it is to be seen that whether the evidence of these witnesses is sufficient to hold the conviction and sentence recorded by the trial Court. The distinction between 304-B and 498-A IPC was clarified in *Shanti v. the State of Haryana*¹, and *Keshab Chandra Panda v. State Haryana*². These two sections are not mutually exclusive. While cruelty defined in Section 498-A is the same as cruelty under Section 304-B, under Section 498A, cruelty itself is punishable. But, under section 304B, dowry death as a result

¹ (1991) 1 SCC 371

² 1995 Cr.L.J. 174

of cruelty is punishable. Further, Section 304-B calls for a time frame of seven years, something which is not present in Section 498-A. Moreover, a person charged under Section 340-B can also be convicted under Section 498-A without the charge being there if such a case is made out. Keeping the said legal position in mind, it is to be seen whether the prosecution was able to bring home the guilt of the accused under Section 498-A IPC through the evidence of P.Ws.1,2,3,5& 9. Although it is the main contention of the learned counsel for the appellants that the evidence of these witnesses cannot be relied upon as a basis conviction for the reason that they are close relatives and interested witnesses, the said contention cannot be countenanced. For, if their evidence is found consistent and true, the fact that they being relatives cannot by itself discredit their evidence.

9. P.W.1 is the complainant who lodged Ex.P.1 complaint with the Police. He is the brother-in-law of the deceased. In the complaint, he stated that after the birth of female child, the accused and the father-in-law of the deceased, used to harass physically and mentally demanding additional dowry of Rs.50,000/-. When the deceased informed them about the harassment, himself, P.W. 2 & P.W.3, went to the house of the

accused and chastised them but they did not change their attitude and continued to harass the deceased physically and mentally. Before the Court, he deposed *inter alia* that the deceased informed him through phone call that both the accused harassed her to meet their demand of additional dowry of Rs.50,000/-. He went to the house of accused on two occasions and expressed their inability to pay the additional dowry and even P.W.2 went to the house of accused on two or three occasions and expressed her inability to meet the demand of additional dowry. When the accused beat the deceased for want of T.V., they presented the T.V. to the accused. He and P.W.2 went to the hospital and on their enquiry, the deceased informed them that she took the extreme step unable to bear the harassment of both the accused through the demand of additional dowry. P.W.2, the elder sister and P.W.3, the mother of the deceased, deposed in similar lines to the effect that both the accused used to beat the deceased demanding additional dowry of Rs.50,000/-. Although there is some inconsistency in the evidence of P.W.2 as to the deceased carrying 7th month at the time of the accident, the same cannot be taken into consideration as it would not substantially effect the version of the prosecution. The evidence of P.Ws.5 & 9, other elder sisters

of deceased, is to the effect that after the birth of female child, the accused used to harass the deceased with a demand of additional dowry. Thus, the evidence of P.Ws.1, 2, 3, 5 & 9 is to the effect that both the accused harassed the deceased with the demand of additional dowry of Rs.50,000/- and the deceased informed the said fact to them through phone and P.Ws.1 to 3 went to the house of accused and expressed their inability to pay the additional dowry. However, as rightly observed by the trial Court, in Ex.P.1, P.W.1 stated that himself, his wife, P.W.2 and his mother-in-law, P.W.3, went to the house of accused and chastised them. But, they deposed before the Court as if they went independently to the accused and expressed their inability to pay the additional dowry. Thus, there is material contradiction in Ex.P.1 and the evidence of P.Ws. 1 to 3 about the demand of additional dowry of Rs.50,000/- made by the accused. However, their evidence is consistent to the effect that both the accused used to harass the deceased physically and mentally, which would establish the ingredients of Section 498-A IPC to hold the conviction against the accused.

10. That apart, the deceased has given her statement in the hospital which is marked as Ex.P.15. Ex.P.15, dying declaration is given by the deceased before the Magistrate,

P.W.17. P.W.17 deposed that on receipt of the requisition, she rushed to Gandhi Hospital, identified the accused, after posing certain questions, and having satisfied that the patient was in fit condition, conscious state of mind, and having obtained the necessary certificate from the duty medical officer, she recorded the dying declaration of deceased under Ex.P.15. Under Ex.P.15, the deceased stated before P.W.17 that she and her husband lived along with her mother-in-law for a period of one year and that since one year, she and her husband were living separately and that her mother-in-law always used to abuse her and that even after they came separately, she used to come to her house and used to tell fictitious words to her husband and made him to beat her and that on the previous night also her husband, after returning from her mother-in-law house, picked up quarrel with her and asked her to go out of the house, thereby she was vexed with her life and in the morning she poured kerosene upon herself and lit it to fire. Thus, Ex.P.15 although does not disclose the demand made by accused about the additional dowry of Rs.50,000/-, still it discloses that both the accused harassed the deceased and subjected her to cruelty. Hence, even though the evidence of P.Ws.1, 2, 3, 5 & 9 did not disclose any specific act of cruelty or harassment meted out by the accused, based on the

statement made by the deceased under Ex.A.15, the trial Court has convicted and sentenced both the accused for the offence under Section 498-A IPC. It is settled legal position that there can be a conviction solely based upon the dying declaration even without corroboration if it is true and voluntary (refer to **State of U.P. v. Veerpal** (2022) 4 SCC 741). Since the medical evidence is consistent and the Magistrate, P.W.17, has recorded the dying declaration of the deceased following the established procedure, this Court is of the view that the conviction recorded by the trial Court against both the accused for the offence under Section 498-A IPC can be maintained even though there are certain variations and contradictions in the evidence of P.Ws.1, 2, 3, 5 & 9 regarding the harassment and cruelty meted out to the deceased.

11. Hence, the appeal is dismissed confirming the conviction recorded by the trial Court against the accused for the offence under Section 498-A IPC. However, considering the fact that the offence relates to 2009, the accused already served certain period of sentence and as the accused No. 2 is sexagenarian, this Court is inclined to modify the sentence of imprisonment to that of the period already undergone by both the accused. Both

the accused shall be set at liberty forthwith if not required in any other crime.

Miscellaneous pending applications, if any, shall stand closed.

JUSTICE M.G.PRIYADARSINI

1st NOVEMBER, 2022
Tsr/pgp.