

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.451 of 2009

JUDGMENT:

1. The 1st appellant is convicted for the offence under Section 304-B of IPC and sentenced to undergo ten years rigorous imprisonment and appellants 2 and 3 are sentenced to undergo rigorous imprisonment for a period of three years vide judgment in S.C.No.375 of 2008, dated 24.04.2009 passed by the III Additional Sessions Judge at Khammam. Aggrieved by the same, present appeal is filed.

2. The case of the prosecution is that PW.1 filed a complaint stating that her daughter was married to the 1st appellant on 10.04.2006. Prior to her marriage, the deceased eloped with the 1st appellant and after 20 days, she was traced by the police. With the intervention of elders and family members, the marriage of the deceased with the 1st appellant was performed. However, after marriage, 1st appellant wanted to learn computer course and on demand by the deceased, P.W.1 paid an amount of Rs.5,000/- to her. After completing computer

course, the 1st appellant started demanding an amount of Rs.2.00 lakhs for putting up a computer center. However, P.W.1 advised that she would pay an amount of Rs.2.00 lakhs later. The deceased used to call P.W.1 on phone and informed that the 1st appellant and others were demanding money. Both the appellant and the deceased shifted to Yellandu and were living there as income was insufficient and they could not afford to stay in Hyderabad. However, the deceased informed that the appellants were harassing her physically and mentally. On 23.10.2006, P.W.1 came to know on phone that she was killed by the appellants. P.W.1 and others went to the house and found the deceased dead and found injuries on the neck and blood was oozing from ears and accordingly, she lodged complaint on 24.10.2006. On the basis of the complaint, the police, P.S.Yellandu registered a case in Cr.No.236 of 2006 under Sections 498-A and 302 of IPC. After investigation, charge sheet was filed under Section 304-B of IPC finding that the death of the deceased was not homicidal but suicidal.

3. The prosecution examined witnesses P.Ws.1 to 17 and marked Exs.P1 to P21. The learned Sessions Judge found that the appellants were guilty for the offences charged against them and accordingly convicted as stated supra.

4. Learned counsel for the appellants would submit that there is any amount of improvement made during trial and as seen from the complaint given by P.W.1, she did not state anything about Rs.2.00 lakhs to be given for putting up of computer institute. It was stated in the complaint that the deceased and the 1st appellant shifted to Yellandu as they could not afford to live in Hyderabad. Except stating that the deceased informed on phone regarding harassment, PW.1 has not given any details of what was informed by the deceased.

5. Learned counsel for the appellants relied on the judgment in the case of **Raja Lal Singh v. State of Jharkhand**¹, wherein the Hon'ble Supreme Court held as follows:

¹ (2007) 15 Supreme Court Cases 415

“17. It has been held in *Satvir Singh* [(2001) 8 SCC 633 : 2002 SCC (Cri) 48] that the essential components of Section 304-B are: (i) death of a woman occurring otherwise than under normal circumstances, within 7 years of marriage, (ii) soon before her death she should have been subjected to cruelty and harassment in connection with any demand for dowry. In the present case, Gayatri died about 7 months after her marriage in April 2000. Also, it has come in evidence that she had been harassed for dowry 10 or 15 days before her death. This has come in the evidence of her father PW 5 and brother PW 3 and we see no reason to disbelieve them. She had earlier also been subjected to harassment on account of demand for dowry when she had gone to her parents' house in August 2000, as has come in the evidence of PW 5 Dashrath Singh. Thus, in our opinion, the ingredients of Section 304-B IPC are satisfied in this case (see also in this connection *T. Aruntperunjothi v. State* [(2006) 9 SCC 467 : (2006) 2 SCC (Cri) 528]).”

6. As argued by the learned counsel for the appellants, there is no mention about any demand made prior to the deceased committing suicide. The written complaint Ex.P1 was made on the next day of the death. Except stating that the deceased was harassed, P.W.1 failed to give any details about what was the kind of harassment either physically or mentally that was inflicted by these appellants. In the said circumstances, when prosecution has failed to prove that immediately preceding the death of the deceased, there was any harassment, offence under Section 304-B of IPC is not made out. Though, ‘soon before death’ has to be looked into while

determining the case on facts, there cannot be any fixed time of what is meant by 'soon before death'. However, on facts of each case, the proximity of harassment to the death would differ and same has to be considered by the Court on the basis of evidence on record.

7. In the present case, the only allegation against the appellant is that there was harassment for money from P.W.1. However, alleged demands were stated by the deceased to P.W.1. There is no single incident which is stated by P.W.1 regarding any demand that was made by the appellants herein. In the said circumstances, the prosecution has failed to prove the offence under Section 304-B of IPC. However, the fact that the deceased was treated with cruelty, cannot be ruled out. Therefore, the conviction under Section 304-B of IPC is set aside. However, the appellants are convicted for the offence under Section 498-A of IPC for treating the deceased with cruelty. Since the offence is of the year 2006 and the counsel for the appellant submits that the 1st appellant has to take care of his children and his parents, the

appellants are sentenced to the period already undergone by them for the offence under section 498A of IPC.

8. Accordingly, the Criminal Appeal is partly allowed.

K.SURENDER, J

Date: 04.08.2022

kvs

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