

**THE HON'BLE SRI JUSTICE M.LAXMAN
AND
THE HON'BLE SMT. JUSTICE G.ANUPAMA CHAKRAVARTHY**

CRIMINAL APPEAL Nos. 222 and 362 OF 2013

COMMON JUDGMENT: *(per Hon'ble Sri Justice M.Laxman)*

1. The challenge in the present criminal appeals is to the judgment of conviction and sentence dated 07.03.2013 in Sessions Case No.508 of 2011 on the file of Judge, Family Court-cum-Additional District and Sessions Judge, Nalgonda, (hereinafter referred to as 'trial Court'), whereunder the appellants in Criminal Appeal No.222 of 2013, who are accused were convicted for the offence punishable under Section 304-B of IPC and were sentenced to undergo rigorous imprisonment for a period of 10 years each.

2. Criminal Appeal No.222 of 2013 is filed at the instance of accused Nos.1 to 3 seeking to set aside the judgment of conviction and sentence. Criminal Appeal No.362 of 2013 is filed by the defacto complainant challenging the sentence imposed by the trial Court, seeking to enhance the sentence. Both the appeals are taken up for disposal by this Court by way of this common judgment.

3. The case of the prosecution is that accused No.1 is husband of victim i.e., Smt. Parepalli Shanthi (hereinafter referred to as 'deceased'). P.W.1 and 2 are parents of the deceased and P.W.3 is her brother. Accused Nos.2 and 3 are parents of accused No.1 and in-laws of deceased. The marriage of accused No.1 and deceased was arranged marriage. At the time of marriage, Rs.2,00,000/- cash and Rs.1,00,000/- worth gold and house hold articles were given to the accused towards dowry. After marriage, accused No.1 and deceased lived happily for about two years and subsequently, all the accused started harassing the deceased both mentally and physically for want of additional dowry. They also harassed her for not giving birth to children and on one occasion she was necked out of her matrimonial house. On account of such harassment, the matter was taken up before the elders i.e., P.W.5-Koppu Krishnaiah, L.W.7-Nakrekanti Janaiah, L.W.8-Palakuri Papaiah and L.W.10-Palakuri Srinu and panchayat was held. At the time of panchayat, all the accused agreed to take back deceased to matrimonial house and promised not to harass her. Later, the deceased was again subjected to harassment. In this regard, on 20.10.2009 at about 07.00 AM, P.W.2 visited the house of the accused to enquire about the harassment and he was abused and driven out of the house. On the same day, at about 11.00

AM, the deceased after consuming pesticide came to the house of P.Ws.1 to 3 and informed them about the demand of additional dowry, harassment and beating by the accused. Thereafter, she was shifted to Government Hospital, Nalgonda for treatment, where while undergoing treatment she succumbed to death at about 10.00 PM on the same day. Later, on 21.10.2009 at about 11.30 AM complaint was lodged in Nalgonda Rural Police Station by P.W.1. Basing on the First Information Report (FIR), investigation commenced and ended with filing of charge sheet for the offence punishable under Section 304-B of IPC.

4. Upon committal, the trial Court framed charges under Section 304-B of IPC against all the accused. The accused denied the charge and claimed to be tried.

5. The prosecution, to support its case, examined P.Ws.1 to 12 and got marked Exs.P-1 to P-9 and M.O.1. The accused to support their case examined D.W.1 and got marked Ex.D-1 and denied the incriminating evidence.

6. The trial Court on the basis of above evidence found that all the ingredients under Section 304-B IPC were attracted and prosecution has established its case. Consequently, all the

accused were convicted for the offence under Section 304-B IPC under the terms referred hereinbefore. Challenging the same, the present appeals are filed by both parties i.e., the accused as well as the defacto complainant.

7. Heard both sides.

8. In order to attract charge under Section 304-B IPC, the prosecution has to establish the following ingredients: (1) The death of the deceased woman must be out of any burns or bodily injury or occurred otherwise than under normal circumstances, (2) Such death must be within seven years of her marriage and (3) Soon before her death, she must have been subjected to cruelty or harassment in connection with dowry by her husband or his relatives. Upon establishing the above said ingredients, as per Section 113-B of the Indian Evidence Act, 1872 presumption would arise that such death was on account of dowry harassment and it is for the accused to rebut such presumption.

9. In order to prove the above said charge, the prosecution relied upon the evidence of P.Ws.1 to 3 and 5. P.Ws.1 to 3 are parents and brother of the deceased and P.W.5 is elder, who participated in panchayat. Other witnesses and evidence relied

on by the prosecution were to prove performance of marriage and presentation of dowry.

10. In the present case, undisputedly death of the deceased was within seven years of her marriage with accused No.1. It is also not disputed that the death is otherwise than in normal circumstance. The only dispute is whether the prosecution established that the deceased was subjected to cruelty or harassment in connection with dowry soon before her death.

11. The evidence of P.Ws.1 to 3 consistently shows that there was harassment from the accused demanding additional dowry. The evidence of P.W.5 shows that a panchayat was conducted six months prior to the incident and he also supported that the said panchayat was in connection with demand of additional dowry. The only evidence to prove that soon before death, the deceased was subjected to demand of additional dowry and harassment, is evidence of P.Ws.1 to 3. The evidence of P.Ws.1 to 3 further shows that P.W.2 went to the matrimonial house of the deceased in the morning at about 07.00 AM on the date of incident and all the accused demanded additional dowry, abused him in filthy language. However, in the FIR there is no mention with regard to abuses made to P.W.2 by the accused for want of additional dowry.

12. The evidence of P.Ws.1 to 3 further shows that the deceased consumed poison and came to their house and made a statement that she was being harassed and beaten up by the accused for want of additional dowry. The FIR does not indicate that deceased made any such statement to her parents or her brother. Further, the evidence of P.W.3 shows that P.W.2 was not present when the deceased was shifted to Government Hospital; in fact, P.W.1 and paternal aunt of deceased one Narsing Laxmi shifted her to Government Hospital, Nalgonda. This shows that there was no occasion for the deceased to state before P.W.2, that she was subjected to harassment and she was physically abused by the accused for want of additional dowry. P.W.1 was author of Ex.P-1, which is complaint made by her to police, but said complaint does not clearly show that the deceased made such statement to P.W.2 before her death. Further, Ex.P-6 inquest report shows that the deceased was fully unconscious while she was being shifted to Government Hospital from her parents' house. Ex.D-1-case sheet of deceased demonstrates that she was conscious when she was admitted in the hospital. It is not known whether she regained her conscious after she was admitted into hospital. Apart from that, the evidence of P.W.2 do not reflect holding of any

panchayat, whereas, P.Ws.1, 3 and 5 claim conducting of panchayat. This also creates some doubt, as P.W.2 is the best person to state about panchayat, but he is silent.

13. Further, the deceased was shifted to Government Hospital, Nalgonda, on 20.10.2009 at about 12.00 PM and death occurred on the same day at about 10.00 PM. The police jurisdiction is Police Station, Nalgonda, which is where the Government Hospital is located, but FIR was not lodged until 11.30 AM on the next date i.e., 21.10.2009. This delay results in scope for concoction and invention of theory of dowry harassment. Further, if the theory of deceased making statement about the beating of accused to her parents and such beating was result of consumption of poison, is to be believed, such a claim is getting support from the evidence of doctor P.W.10 and he found no injury marks. The inquest witness i.e., P.W.8-Tahsildar also did not find any external injury on the deceased, so as to corroborate evidence of P.Ws.1 to 3. This creates some kind of doubt on the claim set up by the prosecution witnesses that the deceased informed them about harassment for dowry and physical abuse by the accused.

14. The other circumstance is that according to prosecution, the deceased consumed pesticide in her matrimonial house and

travelled to her parents' house. The accused resided in Sheshammagudem village and parents of deceased resided in Khaji Ramaram village. Though, there is no evidence in respect of distance between two villages. It is noticed the distance is about 4 kms. If such is the distance, it is not clear how the deceased reached from her matrimonial house to her parents' house. This aspect is not explained by the prosecution. All the said evidence creates a doubt over the deceased making statement about the harassment and beating on the date of incident.

15. The other circumstance is that deceased was conscious, when she was admitted into hospital. There was ample time to record her valuable evidence and she could have been best witness to the case of the prosecution. This was not done by the authority in-charge and no efforts were made by the police to get such valuable piece of evidence by setting in motion the investigation process. The police outpost was situated in the Government Hospital itself and according to the doctor, information was given to the outpost police in respect of deceased being admitted into hospital, but there was no prompt response from police.

16. If this evidence is excluded, there is no evidence of proximate and live link relationship between the harassment and death. In said facts and circumstances, this Court feels that ingredient of soon before her death she was subjected to cruelty or harassment in connection with dowry has not been established by the prosecution beyond reasonable doubt. This aspect was not considered by the trial Court while convicting the accused under Section 304-B of IPC. Hence, the accused are liable to be acquitted for the offence under Section 304-B of IPC.

17. Having, the accused acquitted for the offence under Section 304-B of IPC, now the question is whether the evidence makes out for offence under Section 498-A of IPC. The consistent evidence of P.Ws.1 to 3 and more particularly P.W.5 clearly shows that the deceased was subjected to harassment by accused demanding additional dowry. In this regard, panchayat was conducted before P.W.5 and other elders. This claim made by the prosecution has not been impeached, so as to disbelieve the same. Therefore, the evidence clearly makes out case against the accused for the offence punishable under Section 498-A of IPC and they are liable to be convicted for the offence.

18. In the present case, having convicted the accused for the offence under Section 498-A of IPC, this Court would have heard

the accused on quantum of sentence. Since, the appeals pertain to the year 2013 and accused No.2 and 3 are now i.e., by this date became senior citizens. We are inclined to sentence, to which they have undergone by awarding compensation, as such, we are not inclined to hear the accused. The evidence shows that some dowry amount was given at the time of marriage apart from gold ornaments and other articles to the accused. There is no evidence to show that such amount is returned by the accused to the parents of the deceased. Therefore, instead of giving more than sentence what is under gone, this Court feels that the amount in the form of compensation shall be given to the parents of the deceased, so as to meet the ends of justice.

19. In the said circumstances, this Court is inclined to sentence the accused for the period already undergone and also to pay compensation of Rs.1,00,000/- to the parents of deceased i.e., P.Ws.1 and 2. Such compensation shall be paid within three months from the date of receipt of copy of this order. On default of payment of compensation amount each of the accused shall undergo simple imprisonment for a period of three months each.

20. In the result, the Criminal Appeal No.222 of 2013 is partly allowed setting aside sentence in judgment dated 07.03.2013 in

Sessions Case No.508 of 2011 on the file of Judge, Family Court-cum-Additional District and Sessions Judge, Nalgonda, for the offence under Section 304-B of IPC. Accordingly, all the accused are convicted under Section 498-A of IPC and sentenced to imprisonment for period already undergone and also to pay compensation of Rs.1,00,000/- to the parents of deceased within three months from the date of receipt of copy of this order. On default of payment of such compensation amount each of the accused shall undergo simple imprisonment for a period of three months. Consequently, Criminal Appeal No.362 of 2013 is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

M.LAXMAN, J

SMT.G. ANUPAMA CHAKRAVARTHY, J

Date: 31.01.2023
GVR