
(2012) 07 AP CK 0030

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1342 of 2005

Dontharaboina Sadanandam and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 23-07-2012

Acts Referred:

Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2012) 07 AP CK 0030

Hon'ble Judges : K.S. Apparao, J

Bench : Single Bench

Advocate : T.K. Sridhar, for the Appellant;

Final Decision : Allowed

Judgement

Honourable Sri Justice K.S. Apparao

1. Aggrieved by the judgment, dated 12.8.2005 passed by the learned 1st Additional Sessions Judge, Karimnagar in S.C. No: 308 of 2005 convicting the appellants and sentenced them to undergo R.I. for (7) years each and to pay a fine of Rs. 1,000/- each in default to suffer S.I. for two (2) months for the offence u/s 304-B IPC and further convicted and sentenced to undergo R.I. for a period of two (2) years each and to pay a fine of Rs. 500/- in default to suffer S.I. for 1 (1) month for the offence u/s 498-A I.P.C and further convicted and sentenced to undergo R.I. for two (2) years each and sentenced to pay a fine of Rs. 1,000/- each in default to suffer S.I. for two (2) months for the offence u/s 4 of Dowry Prohibition Act and further convicted and sentenced to undergo R.I. for five (5) years and to pay a fine of Rs. 5,000/- each in default to suffer S.I. for one (1) month for the offence u/s 306 I.P.C., the present appeal is filed by the appellants. The appellants are accused-1 to 3 and the respondents are the State represented by the Public Prosecutor.

2. The case of the prosecution in short is that on 30.4.2004, P.w.1 gave a report

to the police stating that he performed the marriage of his daughter (for short deceased) with A1 who is no other than the son of his elder sister. He gave a dowry of Rs. 50,000/- and the couple led happy marital life for one year. The marriage of the younger brother of A1 was performed and they are blessed with a son and since then, the husband and the in-laws of the deceased started harassing her. They also demanded her to bring additional dowry of Rs. 20,000/- and sent a word to her parents about three months back. P.w.1 could not pay the amount due to the financial problem. Due to the said harassment made by the husband and in-laws of the deceased, she stayed in the house of P.w.1 for one month. 18 days prior to the incident, a festival was celebrated at the house of P.w.1 and the husband and in-laws of the deceased attended the said festival. On the next day, they picked up a quarrel demanding additional dowry of Rs. 20,000/- and they also beat her in that regard. The relatives of P.w.1 consoled them and asked them to have consultation with a Doctor. 3 days prior to her death, the deceased made a phone call to P.w.1 and informed him that her husband and in-laws were harassing her for dowry. On that, when P.w.1 sent his son to the house of the deceased, he went there and returned to the house informing that the in-laws of the deceased drove him away while instructing him to send his father with dowry. On 29.4.2004, P.w.1 received information that the deceased had committed suicide and died in front of their house. They saw contusion on the neck of his daughter. Basing on the report of P.w.1, a case in Cr. No: 43 of 2004 for the offence u/s 304-B IPC was registered and after completion of the investigation, charge sheet was filed.

3. Before the trial Court, as many as 15 witnesses were examined as P.w.s.1 to 15 and Exs.P1 to P8 were marked. No oral evidence was adduced on behalf of the accused. But, Ex.D1 to D5 contradictions were marked on their behalf. The trial Court after evaluating the evidence on record and after finding the accused guilty, convicted them as stated supra. Having aggrieved by the same, the present appeal is filed by the accused-appellants.

4. The learned counsel appearing for the appellants mainly argued that the trial Court erred in convicting the appellants for both the offences under sections 306 and 304B IPC in the absence of any evidence to show that there was abetment to commit suicide and therefore, the conviction for the offence u/s 306 IPC is unsustainable. The trial Court has also failed to take into consideration the contradictions in the evidence of P.w.s.1 to 3 on the crucial aspects of time and the date of incidents and the alleged demand for additional dowry. The trial Court has failed to consider the contradictions in the evidence of P.w.5 on one hand and the evidence of P.w.s.1 to 3 on the other, with regard to the galata for additional dowry and that therefore, framing of charge under the provisions of Dowry Prohibition Act, is without any basis of material evidence. Hence, the accused are liable to be acquitted for the charges leveled against them.

5. The learned Public Prosecutor appearing for the State while supporting the judgment impugned, sought for dismissal of the appeal.

6. The point for consideration is whether the prosecution proved the guilty of the accused for the charges leveled against them and whether the judgment of the trial Court is sustainable.

7. Before going into the merits of the case, it is relevant to go through the charges framed against the accused, which read in the same verbatim as under:

Firstly, that you A1 to A3 being the husband and parents in law of the deceased-Dontharaboina Sujatha aged 24 years subjected her to cruelty and harassment with a demand to bring a motor cycle or an amount of Rs. 20,000/- as additional dowry after the birth of a child aged about 5 months and thereby committed an offence punishable u/s 498-A IPC and within my cognizance.

Secondly, that you all on the 29th day of April, 2004 at about 1500 hours at her in law's house at Mulkanoor village caused the death of the aforesaid Dontharaboina Sujatha within 7 years of her marriage by subjecting her to cruelty or harassing her soon before her death in connection with a demand to bring additional dowry and that you thereby committed an offence punishable u/s 304-B IPC and within my cognizance.

Thirdly, that you all on the same day, time and place as mentioned in charge No: 2 and during the course of same transaction, Dontharaboina Sujatha committed suicide by hanging and that you thereby committed an offence punishable u/s 306 IPC and within my cognizance.

Fourthly, that since three months prior to 30.4.2004 you all demanded motor cycle or Rs. 20,000/- as additional dowry from the parents of the deceased Dontharaboina Sujatha and thereby committed an offence punishable u/s 4 of Dowry Prohibition Act and within my cognizance.

8. After the answer to the plea of the charges denying the same, the signature of A1 and two mere thumb impressions were found. Likewise, on the depositions of P.ws.1 to 9, mere thumb impressions appear to have been taken. Except the bald thumb impressions, they do not indicate the name of the person who put the thumb impression. In the absence of mentioning name against the respective thumb impressions, it is much difficult to conclude whether such thumb impression belongs to a particular person who contributed the said thumb impression.

9. This sort of attitude in obtaining mere thumb impressions on the charges as well as the depositions, amounts to infer the callousness and negligence on the part of the Presiding Officer who conducted the trial.

10. Apart from that, the very framing of the charges against the accused is ambiguous and vague for the following reasons:

As per the allegations in the chargesheet, the trouble started between the deceased and the accused when the accused demanded for Rs. 20,000/- towards additional dowry and that when the brother of A1 was blessed with a son, all the

accused starting harassing the deceased on the ground that she did not beget children.

11. As a matter of fact, there is no whisper as to the demand of motor cycle and also as to the birth of a child, aged about 5 months to the deceased in the chargesheet. It is not known as to how the 1st charge was framed basing on such allegations, which are not found in the charge sheet.

12. Now coming to charge No: 3 pertaining to abetment to commit suicide punishable u/s 306 IPC., except baldly framing the said charge, there is no such whisper as to the abetment by the accused to the deceased to commit suicide.

13. In so far as charge No: 4 is concerned, the same is with regard to demand of motor cycle or Rs. 20,000/- by the accused since three months prior to 30.3.2004. As already stated, there is no such whisper as to the demand of a motor cycle in the charge sheet.

14. When inherently, the above charges that were framed against the accused, are beyond the allegations in the charge sheet, the conviction recorded for the said charges, in my view, is nothing but amounting to non application of mind by the trial Court and apart from that, it also amounts to convict the accused on the baseless charges.

15. There is no other go except to observe that the learned Presiding Officer had functioned as a silent spectator although from the stage of framing the charges till the recording of the depositions, without taking any proper care and caution. As such, the conduct on the part of the Presiding Officer who examined the accused before framing the charges and who obtained the thumb impressions on the charges and the depositions without indicating the names of the relevant person against the said thumb impressions, is very much questionable and the same is self explanatory.

16. All my above observations are regrettable, but in the circumstances, inevitable.

17. Now coming to the merits of the case, it has to be examined whether the prosecution proved the guilty of the accused for the charges leveled against them.

18. Out of the prosecution witnesses, the deceased is the daughter of P.ws.1 and 2 and sister of P.w.3. P.w.4 is a child witness who is the sister of A1. P.w.5, Sarpanch of the village, is the neighbour of P.w.1. P.w.6 is the R.M.P Doctor. P.w.7 is the Photographer. P.w.8 is the inquestdar. The deceased is a grand daughter of P.w.9 by curtesy and P.w.10 is the neighbour of P.w.1. P.w.11 is the S.I. of Police. P.w.12 is one of the inquestdars. P.w.13 is the Civil Assistant Surgeon and P.w.14 is the Mandal Revenue Officer. P.w.15 is the Sub Divisional Police Officer who took up further investigation.

19. At this stage, in support of contention that the conduct of the family

members of the deceased is relevant for considering the charges leveled against the accused and there was no such conclusion as to the death of the deceased at the time of conducting the inquest and that mere lodging a report against accused does lead to a conclusion that the accused committed the offence, the learned counsel for the accused relied on a judgment of the Apex Court reported in T. Aruntperunjothi Vs. State through S.H.O., Pondicherry,

20. Now, in the light of the principles laid by the Apex Court, let us examine the veracity of the testimonies of the prosecution witnesses.

21. According to P.w.1, the deceased is his daughter and she was married to A1 about 2 years back and they gave Rs. 50,000/- towards dowry. They lived happily for 2 years and thereafter, the accused started harassing the deceased for additional dowry. Having come to know about the death of his daughter, he went to her in laws' house and found the dead body of the deceased and on suspicion against all the accused, he lodged Ex.P1 report to the police.

22. During the course of cross examination, P.w.1 admitted that the marriage between A1 and the deceased was proposed long back i.e., from their childhood and the marriage was as such performed. He denied the suggestion that he stated to the police that the accused and the deceased lived happily for one year as in Ex.D2. He volunteered that the demand of dowry was firstly made one month prior to the death of the deceased and he did not inform to any of the caste elders or to the police about the demand of the dowry by the accused and no panchayats were convened. He further volunteered that he only informed to the police for the first time as to the harassment for dowry, after the death of the deceased. He denied the suggestion that he did not state before the police that the accused visited his house for the festival 15 days after the demand of dowry and he expressed his inability to give the additional dowry on the ground that his financial condition was not good.

23. A perusal of the evidence of P.w.1 makes it crystal clear that A1 is no other than the son of the sister of P.w.1 and the marriage of A1 and his daughter was settled even in the childhood itself and the accused started harassing the deceased for additional dowry from two months prior to the death of the deceased and that the alleged demand of additional dowry was not reported to anybody by P.w.1. Therefore, it can be said that by the date of giving Ex.P1, there was no such complaint by P.w.1 against any of the accused for the alleged demand of additional dowry of Rs. 20,000/-.

24. Now, coming to the evidence of P.w.2 who is the mother deceased, she stated that the marriage of the deceased with A1 was performed two years back and an amount of Rs. 40,000/- was given prior to the marriage towards the dowry and an amount of Rs. 20,000/- was given at the time of marriage and they lived happily for about 4 months. From then, A1 was harassing the deceased for bringing the amount so as to prosecute his studies. About 8 months after the marriage, they celebrated a festival. But, A2 and A3 did not attend the

festival. A1 refused to eat non-vegetarian food and he insisted for preparing vegetarian dishes and that he did not have his dinner and quarreled with the deceased. After making a big issue, he went to his house. After one month, A2 and A3 came to their house and the deceased was at their house by that time and both of them abused her in filthy language. They sent the deceased along with them. After 7 days, he received a phone call from the deceased to send her brother to her house. On that, she sent L.w.3 to her house and that L.w.3 returned and informed that herself and P.w.1 should go to the house of the deceased. Subsequently, they came to know about the death of the deceased.

25. During her cross examination, she admitted that she did not state the details as stated by her in the chief examination, to the police. It is also admitted that after they reached the house of the deceased, she along with the accused took her to the hospital.

26. A scrutiny of the evidence of P.w.2, the same is entirely different to that of P.w.1, her husband on all material aspects. Nowhere, she stated that the accused demand additional dowry of Rs. 20,000/-. But, she gave a different version with regard to the alleged dowry. She had also given a different version to the effect that A1 was harassing the deceased for bringing the amount so as to prosecute his studies. According to P.w.1, he signed Ex.P1 along with P.w.2 whereas P.w.2 did not state that she signed Ex.P1 on the next day of the alleged incident.

27. P.w.3 is the brother of the deceased and the son of P.w.s.1 and 2. According to him, the deceased was married to A1 about 2 years back and Rs. 50,000/- was given as dowry at the time of marriage and they lived happily for about one year. After the birth of son to the wife of the brother of A1, disputes arose between A1 and the deceased on the ground that the deceased did not beget children and also on the ground of additional dowry. He further added that the deceased came to their house after the disputes with A1 and stayed for one month and that in connection with the festival celebrating in their house, they invited all the accused and all the accused came to their house. The daughter of A2 and A3 also came to their house and later they left their house and subsequently, A1 and the deceased left their house. Prior to that, there was a small galata in their house. After 15 days, he received a phone call from the deceased informing that there were disputes. Thereafter, they came to know about the death of the deceased.

28. During the cross examination, he stated that he along with P.w.2, personally handed over Rs. 50,000/- to the accused. It is strange to note that neither P.w.1 nor P.w.2 stated that the said dowry amount of Rs. 50,000/- was paid through P.w.3. The evidence of P.w.3 on that count, is nothing but an improvement. During the cross examination, he volunteered that A1 to A3 and L.w.4 stayed for one day during their visit and the festival was celebrated by all of them together and that the deceased was happy while leaving their house.

29. Thus, P.w.s.1 to 3 did not state that the deceased was unhappy at the time of

leaving their house after celebrating the festival in their house. The evidence of P.ws.1 to 3 is inconsistent with regard to the quantum of dowry and also with regard to the mode of payment to the accused. Thus, the evidence of P.ws.1 to 3 suffers from contradictions, improvements and inconsistencies, which were falsified by the evidence of the Investigating Officer, P.w.15 as per Exs.D1 to D3. Exs.D1 to D3 are the material contradictions and if the same are taken into consideration, they create a doubt crept in the mind of the Court as to the veracity of the testimonies of P.ws.1 to 3.

30. The judgment relied on by the learned counsel for the accused, as stated *supra* lends support to the defence taken by the accused that the conduct of the family members of the deceased suffers from suspicious circumstances.

31. Coming to the evidence of P.w.4, a child witness who is the sister of A1, she stated that the deceased died by hanging herself on the ground that she disliked A1. On the date of incident, all the accused and herself went to attend their work and after returning, they found deceased died and they forcibly opened the doors of the room and A2 cut the rope with which the deceased hanged herself. She was not cross examined in this regard. If the evidence of this child witness is taken into consideration, it can easily be said that at the time of the alleged suicide, A1 to A3 including the child witness were not present in the house.

32. At this juncture, the case of the Investigating Officer as narrated in the remand, plays a vital role. According to the investigation, on 29.4.2004 at about 3 P.M. while A1 to A3 were in the fields, the deceased who disgusted with the harassment made to her, sent P.w.4 to have a chacklet and hanged with the rope already tied to the hook of the fan. P.w.4 who found the door bolted from inside, noticed the dead body of the deceased through the window and rushed to the accused and informed them and they came and broke opened the doors and A2 cut the plastic rope and relieved the deceased.

33. Even if the investigation done by P.w.15, is taken into consideration, there is no tangible evidence suspecting the involvement of the accused in this crime for the reason that at the time of the suicide, A1 to A3 went to attend their work in the fields and P.w.4, the child witness was sent for buying a chacklet by the deceased and by the time, A1 to A3 came to the house on intimation by P.w.4 about the hanging of the deceased, the doors were found locked from inside and therefore, they were broke opened by the accused and A2 cut the rope and laid the deceased on the ground. From these circumstances, it can be inferred that the conduct of the accused in breaking opened the doors and cutting the rope and laying the deceased on the ground and sending for a Doctor, shows their anxiety to survive the deceased and the said attitude and the conduct of the accused, appears to be a bonafide one in the ordinary course of life of a person.

34. The case of the prosecution rests on the following: The alleged harassment according to the prosecution version is that trouble started on the ground that the deceased did not beget children and she did not bring additional demand of

dowry of Rs. 20,000/-. In this regard, the framing of the charge, which is framed on the allegations that are not found in the chargesheet, is very vague. With regard to the demand for additional dowry of Rs. 20,000/-, the evidence of the witnesses is not consistent as to the quantum of dowry, the mode of payment and as to the demand for additional dowry. Admittedly, the factum of demand of additional dowry has not been reported to any of the elders. On a perusal of the evidence, the fact that remains undisputed is that P.w.1 is no other than the brother of the mother of the deceased and the deceased is his niece and the marriage between A1 and the deceased was fixed even from their childhood. In this background of the matter, it gives rise to a doubt in the mind of the Court as to the veracity of the testimonies of the prosecution witnesses as to the dowry and the demand for additional dowry and the alleged harassment.

35. P.w.5 who is the sarpanch of the village is a neighbour to P.w.s.1 and 2. He deposed that he was not informed about any disputes and about 20 days prior to the death of the deceased, there was a galata near the house of P.w.1 and when he enquired, P.w.1 informed him that the accused demanded Rs. 20,000/- as additional dowry.

36. According to him, he did not know any disputes. If there were really disputes in the family of his daughter, the silence on the part of P.w.1 without intimating the same to P.w.5, being neighbour who is a sarpanch and elder of the village, appears to be quite unnatural and apart from that, the silence on the part of P.w.1 leads to draw an adverse inference against the case of the prosecution. However, the evidence of P.w.5 is falsified due to the contradiction marked as Ex.D5.

37. P.w.6 is a R.M.P. Doctor by profession. He deposed that about a year back, A2 came to him and informed that the deceased hanged herself and that she was struggling for life and thereby, requested him to examine her. Therefore, he went to his house and on examination, advised them to take her to Dr. Sudhakar who is a M.B.B.S Doctor.

38. P.w.8, one of the inquestdars deposed that the issue of dowry death did not arise at the time of inquest and the said fact was not stated by any of the witnesses examined at the time of inquest. He postulated that the contents of panchanama were not read over to him.

39. It is to be noted that in spite of the above deposition, this witness has not been declared as hostile and thereby, his evidence remains unrebutted. If this piece of evidence is taken into consideration, no motive has been gathered at the time of even conducting panchanama on the death of the deceased i.e., with regard to the alleged harassment or the additional dowry.

40. P.w.9 is the grand mother of the deceased by curtesy. She gave a different version that one year back, A1 to A3 came to the house of P.w.1 and there was a quarrel in their house and in that quarrel, A3 got enraged and took a broom stick and a chappal and scolded P.w.s.1 to 3. But, at this stage, it is strange to note

that none of the prosecution witnesses have stated these facts either in their chief examination or in the cross examination or in their 161 Cr. P.C statements.

41. However, this witness turned hostile and did not support the case of the prosecution.

42. P.w.10 who is a neighbour of P.w.1 stated that on behalf of P.w.1, he paid Rs. 40,000/- which was raised through a sale of the land by P.w.1, to A-2 and A3. But, it is neither the case of the prosecution witnesses nor the case of the prosecution and apart from that, the evidence of this witness, falsifies the evidence of P.w.3 who stated in his cross examination that he personally handed over Rs. 50,000/- to the accused. P.w.3 also stated that he was not aware of the alleged harassment and he was not present at the time of conversation between the deceased and the accused.

43. P.w.11, the S.I. of Police stated that he registered Ex.P.6 F.I.R and arrested the accused. He stated that P.w.1 gave Ex.P1 report and the said report was already drafted. According to P.w.1, Ex.P1 was written in the police station and himself and P.w.2 signed in the document.

44. A perusal of Ex.P1, it does not contain the signature of P.w.2 except P.w.1.

45. Thus, there are inconsistencies as to the presentation of Ex.P1 and it goes a long way to infer against the case of the prosecution.

46. P.w.12, one of the inquestdars stated that he was present at the time of inquest conducted over the dead body of the deceased on 30.4.2004 at the house of the accused. In his cross examination, he stated that the details of the examination of the witnesses and regarding the relations between the deceased and A1 were not mentioned in Ex.P6 and he affixed signatures on 3 pages of the inquest report and he did not know the contentions of Ex.P6. For the reasons best known, the prosecution did not make any efforts to get the witness turned hostile.

47. P.w.14 is the Mandal Revenue Officer. According to him, he prepared Ex.P3 inquest report on the requisition given by the S.I. of Police. In the cross examination, he admitted that he did not remember the scribe and he did not obtain the signatures of the scribe on Ex.P3.

48. In view of the failure to obtain the signatures of the scribe on Ex.P3 and apart from that, in view of the failure to examine the scribe, the same is fatal to the case of the prosecution.

49. P.w.15 is the Sub Divisional Police Officer who took up the investigation in this case. During his cross examination, he stated that the statements of the witnesses were scribed by P.C.1467. But, he was not cited as a witness.

50. If the contradictions under Exs.D1 to D5 are taken into consideration, the evidence of P.w.s.1 to 5 has no legs to stand in support of the case of the prosecution.

51. But, the trial Court without appreciating all these aspects and the evidence on record in a proper perspective, simply carried away with the arguments of the learned Public Prosecutor and convicted the accused without any positive, cogent, convincing and trustworthy evidence. In any view of the matter, in my considered opinion, the prosecution has miserably failed to prove the charges, which are very vague and ambiguous, against the accused and consequently, the accused are found not guilty for the charges leveled against them and they are entitled to be acquitted and hence they are acquitted.

52. Accordingly, the appeal is allowed setting aside the conviction and sentenced imposed by the trial Court in S.C. No: 308 of 2005, dated 12.8.2005. The bail bonds of the accused, if any shall stand cancelled and the fine amount paid, if any shall be refunded to the accused after the expiry of the statutory period.