
(2001) 02 AP CK 0106

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 240 of 1997

G. Venkatachandra Reddy and Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 05-02-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Dowry Prohibition Act, 1961 — Section 2
Penal Code, 1860 (IPC) — Section 304B

Citation : (2001) 1 ALD(Cri) 727 : (2001) 1 ALT(Cri) 324 : (2001) CriLJ 2630

Hon'ble Judges : T. Ch. Surya Rao, J

Bench : Single Bench

Advocate : A. Narasimha Reddy, for the Appellant; P.P., for the Respondent

Final Decision : Allowed

Judgement

T. Ch. Surya Rao, J.—This appeal has been filed by accused Nos. 1 to 4 assailing the convictions and sentences passed against them by the learned Additional Sessions Judge, Mahabubnagar, by his judgment dated 5-3-1997 in Sessions Case No. 307 of 1993.

2. The appellants-accused Nos. 1 to 4 stand convicted for the offence punishable u/s 304-B of the Indian Penal Code ("the IPC for brevity) and each one of them sentenced to suffer Rigorous Imprisonment for ten years.

3. The gravamen of the charge against them was that A-1 to A-4 subjected Smt. Lelamma wife of A-1 to cruelty and harassed her by demanding dowry and that within seven years of the marriage of the deceased with A-1 i.e. on 16-1-1993 at 5-00 a.m. at Shakapur village, the deceased died by committing suicide on account of the cruelty and harassment meted out to her and thereby they committed the offence punishable u/s 304-B of the IPC.

4. The prosecution examined at the trial in all twelve witnesses. The case of the prosecution as unfolded by the testimony of the witness, in brief, may be stated

thus :

5. A-2 and A-3 are the parents of A-1 and A-4 is the younger brother of A-1. P.Ws. 1 and 2 are the parents of the deceased, who was the wife of the first accused. P.W. 3 is another daughter of P.Ws. 1 and 2. The marriage in between A-1 and the deceased was performed in the year 1987. At the time of the marriage, P.W. 1 promised to pay an amount of Rs. 60,000/- as dowry. Out of that amount, he paid an amount of Rs. 40,000/- in the first instance and then he paid another amount of Rs. 10,000/- and later he paid an amount of Rs. 5,000/-. There remained the balance of Rs. 5,000/-. It is said that for the non-payment of the balance of Rs. 5,000/-, A-1 to A-4 used to harass the deceased by demanding her to bring the balance amount.

6. About ten days prior to death of the deceased, she came to her parents house and informed them that A-1 to A-4 had been harassing her by demanding to bring the balance dowry amount. P.W. 1 sent back the deceased to A-1's house after having convinced her that he would pay the balance amount within one month thereof. On 16-1-1993, one small boy from the village of A-1 came and informed P.W. 1 that the deceased fell in the well. Thereupon, P.Ws. 1 to 3 went to the village of the first accused and saw the dead body of the deceased in the well. Thereupon, P.W. 1 gave Ex. P1 written report to P.W. 11 who registered the case as Crime No. 4 of 1993 on Ex. P. 1 and issued Ex. P. 7-FIR. He took up investigation in this case; visited Shakhapur village and the well in question situate in the agricultural field of one Kammari Balaswamy. Having found the dead body of the deceased in the well, he got it removed from out of the well and then sent requisition to P.W. 10 the Mandal Revenue Officer, who conducted inquest over the dead body of the deceased pursuant to the said requisition in the presence of P.W. 8 and Ors. inquestdars and Ex. P. 4-inquest report was drafted there. The inquestdars opined that the deceased died due to drowning in the well. P.W. 11 thereafter sent the dead body to P.W. 9 the Doctor for conducting autopsy and accordingly P.W. 9 conducted post-mortem examination and issued. Ex. P-5 post-mortem certificate. P.W. 9 opined that the deceased died due to asphyxia due to drowning about two to five days prior to the autopsy. P.W. 11 found all the accused absconding from the village.

7. P.W. 12 took up further investigation in this case and eventually laid the charge sheet against the accused.

8. As aforesaid, the prosecution examined as many as twelve witnesses and got Exs. P. 1 to P. 7 marked. None was examined on the side of the accused when called upon to enter upon their defence and no documents were got marked on their side.

9. After considering the evidence on record, both oral and documentary and having heard on either side, the learned Additional Sessions Judge found all the accused guilty of the charge u/s 304-B of the IPC and accordingly convicted them for the said offence and sentenced each one of them to suffer Rigorous

Imprisonment for ten years. Having been aggrieved by the said convictions and sentences passed against them by the learned Additional Sessions Judge, the appellants herein-accused Nos. 1 to 4, filed the present appeal.

10. Sri C. Padmanabha Reddy, learned senior counsel appearing for the appellants-accused, contends that there is no proof as regards the suicidal death of the deceased. The learned senior counsel further contends that even the evidence of P.Ws. 1 to 3 that is available only on records, is not sufficient enough to bring home the guilt to the accused to the charge framed, even otherwise on factual aspect.

11. There is no gainsaying that the deceased in this case died due to asphyxia due to drowning. Even otherwise, the evidence adduced on the point on the side of the prosecution through P.W. 9 the Doctor who held autopsy over the dead body of the deceased clearly shows that the deceased died due to asphyxia due to drowning. Ex. P. 5 post-mortem report further corroborates the testimony of P.W. 9 the Doctor. This evidence clinches the issue that the deceased in this case died due to asphyxia due to drowning.

12. There is no whisper either from the oral testimony of P.Ws. 1 to 3 or from the evidence of P.Ws. 11 and 12 the Investigating Officers or from any other source that the deceased in this case committed suicide. In other words, there is no clear proof on the side of the prosecution on the crucial aspect that the deceased committed suicide by jumping into the well. The facts emanating from the record will not, in my considered view, rule out the possibility of accidental death. The Court below in para 27 of its judgment has come to the conclusion that the possibility of accidental falling in the well cannot be drawn in the circumstances, on account of the conduct of the accused that he having not gone in search of the deceased and not informing about the death of the deceased to her parents immediately thereafter,- which arouses suspicion and that lends support to the view that it was a case of suicide. In all criminal cases, the burden squarely lies upon the prosecution to establish the guilt of the accused and this burden cannot be shifted to the accused. It is too well settled that suspicion, however grave it might be, cannot take the place of proof and it is for the prosecution to prove the case beyond all reasonable doubt.

13. Even otherwise, the medical evidence adduced by the prosecution through P.W. 9 shows that the deceased died about two to five days prior to the post-mortem examination. Post-mortem examination in this case was conducted on 18-1-1993. The learned Additional Sessions Judge has fallen into error in having come to the conclusion that for nearly three days there had been no whisper on the side of the accused about the death of the deceased. The clear evidence of P.W. 1 was that he was informed by a boy who came from the village of the accused on 16-1-1993 about the death of the deceased. That evidence of P.W. 1 is consistent with the medical evidence, which shows that the deceased might have died about two to five days prior to the post-mortem examination. This glaring evidence emanating from the record has been lost sight of by the learned

Additional Sessions Judge and has preferred to take only the upper time limit and thereby arrived at a wrong conclusion on the crucial aspect of death of the deceased as to whether accidental or suicidal.

14. For the foregoing reasons, I am of the considered view that the prosecution miserably failed to establish that the deceased in this case died a suicidal death. At any rate, in the event of any doubt as regards the cause of death, the benefit should always go to the accused.

15. The charge that has been framed against the accused is one u/s 304-B of the accused. For brevity and better understanding of the matter, it is expedient here to extract Section 304-B of the IPC hereunder thus :

304-B Dowry death :- (1) Where the death of a woman is caused by any burns or body injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death.

Explanation :- For the purposes of this Sub-section, "dowry" shall have the same meaning as in Section 2 of the Dowry Prohibition Act 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

16. A mere glance of the said Section shows that the death of a woman is caused either by any burns or by bodily injury or otherwise than under normal circumstances within seven years of her marriage and if it is shown that before her death the woman was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, it is deemed under law that such death of the deceased is on account of the dowry and it becomes a dowry death. By means of a legal fiction, a deemed offence has been created in the said Section so as to eradicate the evil of dowry and the consequential death of the innocent women. Such presumption shall have to be drawn only when the facts emanating from the record are clear enough to warrant the same. The requirements that are to be satisfied which constitute the offence, as aforesaid, are that the death of the woman shall be on account of any burns or any bodily injuries or otherwise than under normal circumstances and soon before the death of the woman it should be proved that she was subjected to cruelty or harassment in connection with dowry. Obviously, it is not a case of the deceased dying on account of any burns or after having sustained bodily injuries. There remains the third category namely death which occurs otherwise than under normal circumstances. The third category of death gains importance in this case. However, the third category shall have to be read along with the other two categories i.e. the burns or bodily injury. Even assuming for a moment

that the deceased was subjected to cruelty or harassment in connection with the demand of dowry but that was not the cause, which led to the death of the deceased when it is said to be accidental. The expression "otherwise than under normal circumstances " must have a nexus with subjecting the deceased with cruelty and harassment in connection with dowry as cause and effect. Therefore, it must be a death, which must have occurred on account of the demand for dowry. By any stretch of the imagination, an accidental death cannot be brought under the third category namely "otherwise than under normal circumstances". Therefore, in my considered view, an accidental death cannot come squarely within the expression "otherwise than under normal circumstances".

17. In this case, as discussed by me supra, there is any amount of paucity of evidence to show that it is a case of suicidal death. The possibility of accidental death cannot be ruled out. On the legal aspect, the death of the deceased, who died though unfortunately due to asphyxia due to drowning, cannot legitimately be called as a dowry death.

18. Turning to the factual aspect, there is the testimony of P.Ws. 1 to 3. Unfortunately for the prosecution P.Ws. 4 to 7 have shown their volte-faces and have not supported the case of the prosecution. P.Ws. 1 and 2 being the parents and P.Ws. 3 being the younger sister of the deceased, are certainly interested witnesses. Their evidence shall have to be approached with all circumspection. It is the clear case of P.W. 1 the father of the deceased that out of the agreed amount of Rs. 60,000/-, he paid in the first instance an amount of Rs. 40,000/-, in the second instance an amount of Rs. 10,000/- and on the third instance an amount of Rs. 5,000/- and for the balance amount of Rs. 5,000/- the deceased was subjected to cruelty and harassment. It is his clear case that the accused demanded the balance dowry amount for the purpose of purchasing a land by them. In contra-distinction to this clear evidence of P.W. 1, P.W. 2 mother of the deceased, however, speaks that the entire agreed amount of Rs. 60,000/- was paid and that the accused having not been satisfied with the dowry amount paid, again demanded an amount of Rs. 10,000/- for the purpose of purchasing the land. P.W. 3 also deposed to the same effect as in the case of P.W. 2. On the crucial aspect of demanding dowry, there appears a clear-cut cleavage in the testimony of P.W. 1 on one side and P.Ws. 2 and 3 on the other side, apart from the omissions that have been elicited from the previous statements of these witnesses recorded by the investigating Officer. On the crucial aspect of the deceased informing P.Ws. 1 to 3 about the cruelty and harassment meted out to her at the hands of A-1 to A-4, there has been omission in the previous statements of P.W. 1 in Ex. P. 1 and the other statement recorded by the Investigating Officer u/s 161 of the Criminal Procedure Code. This omission gains significance as it touches the main case of the prosecution and, in my considered view, it has to be considered as a contradiction. Even in the evidence of P.Ws. 2, again there has been omission as regards the demand of additional amount of Rs. 10,000/-. These omissions have been duly proved through the evidence of P.W. 11 the Investigating Officer, who recorded their previous statements. The

witnesses who gave different versions at different stages cannot ordinarily be implicitly believed. Now, it is a case where there has been total absence of independent testimony on the side of the prosecution. On account of the fact that P.Ws. 1 to 3 being the parents and sister of the deceased, are interested witnesses; their testimony having been riddled with contradictions and omissions; and on account of divergent versions given by the witnesses, it is not safe to rely upon the testimony of P.Ws. 1 to 3, in the absence of any independent corroboration on the crucial aspect, nay hazardous, to find the accused guilty particularly in view of the nature of the offence where a presumption under law has to be drawn about the death of the deceased on account of the existence of certain circumstances enjoined u/s 304-B of the IPC. Even on factual aspect, in my considered view, it is not a clear case where the evidence of P.Ws. 1 to 3 can be safely relied upon so as to come to a definite conclusion that the deceased in this case was subjected to cruelty or harassment in connection with the demand of dowry. In any view of the matter, the prosecution in this case has failed to bring home the guilt beyond all reasonable doubt to the accused of the charge framed against them.

19. The learned senior counsel appearing for the accused seeks to place reliance upon a judgment of the Apex Court in *Kans Raj v. State of Punjab* (2000 Cri LJ 2993) so as to drive home the point that in cases where such accusations of cruelty and harassment have been made against the in-laws or other relations along with the husband of the deceased, the overt acts attributed to the persons other than the husband are required to be proved beyond all reasonable doubt and by mere conjectures and inference, such relations cannot be held guilty for the offence relating to dowry deaths. I see considerable force in the contention of the learned senior counsel. Here is a case where an omnibus allegation of the accused demanding dowry has been made without attributing any individual overt acts either to A. 1 or to other accused. Such an attempt on the part of the witnesses P.Ws. 1 to 3 shall not be taken into consideration without any pinch of salt, more particularly in view of the divergence appearing in their evidence.

20. For the foregoing reasons, the Criminal Appeal is allowed and the conviction and sentences passed against the appellants A1 to A-4 are hereby set aside. They shall be set at liberty if they are not required in any other case. Their bail bonds shall stand cancelled.