
(2022) 04 TEL CK 0057
In the Telangana High Court
Case No : Criminal Appeal No. 39 Of 2020

Orsu Nagesh And 2 Others

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 13-04-2022

Acts Referred:

Indian Penal Code, 1860 — Section 304B, 498A
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 113B

Citation : (2022) 04 TEL CK 0057

Hon'ble Judges : K.Surender, J

Bench : Single Bench

Advocate : G Jaya Reddy

Final Decision : Disposed Of

Judgement

1. This Criminal Appeal is preferred against judgment in S.C.No.630 of 2020 on the file of the VIII Additional District & Sessions Judge, Ranga Reddy District at L.B.Nagar, wherein the Accused No.1 was sentenced to undergo Rigorous Imprisonment for a period of seven years for the offence punishable under Section 304-B of IPC and to undergo Simple Imprisonment for a period of two years and also to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for a period of two months for the offence punishable under Section 498-A of IPC. Accused Nos.2 and 3 were sentenced to undergo Simple Imprisonment for a period of two years and also to pay a fine of Rs.10,000/-, in default, to suffer simple imprisonment for a period of two months for the offence punishable under Section 498-A of IPC. Accused 2 & 3 were found not guilty for the offence under Section 304-B IPC. The Accused Nos.4 and 5 were found not guilty for the offences under Sections 304-B and 498-A of IPC and were acquitted.

2. Brief facts of the case are that P.W.1, who is the father of the deceased filed a complaint on 08.03.2015 stating that he performed his daughter's (deceased)

marriage with A1. He agreed to pay Rs.15,00,000/- dowry and towards Rs.12,00,000/- of the said dowry, 92 sq.yds of land was given and for the remaining amount of Rs.3,00,000/-, 20 tulas of gold was given and the marriage was performed. The deceased daughter was happy for one year and she gave birth to one female child on 20.03.2011. Since the birth of the female child, the first appellant-husband and the parents-in-law i.e., Accused Nos.2 and 3 and also the acquitted Accused Nos.4 and 5, who are the brothers of Accused No.1, harassed the deceased mentally and physically for additional dowry of Rs.20,00,000/-. P.W.1 gave Rs.1,00,000/-, 80,000/- and Rs.30,000/- and Rs.5,00,000/- to A1 to A3. P.W.1 informed that he cannot pay remaining amount, as such, the deceased was beaten, for which reason, a panchayat was held. However, there was no change in the attitude of the appellants. P.W.1 lodged a complaint with Tappachaputra Police Station. The police reprimanded the appellants. However, after two months, the appellants started harassing again for additional dowry. For the said reason, a panchayath was held in the presence of P.Ws.6 to 10. Since P.W.1 and A2 are own brother and sister, they wanted to settle the issue within the family. However, in the presence of the said witnesses, P.W.1 gave an amount of Rs.3,00,000/- as additional dowry to the appellants. In the month of January 2015, A1 and the deceased shifted their house to Nagole and started living separately. A2 and A3 visited the house of the deceased and A1 harassed to get half share in the property of her father P.W.1. On 07.03.2015 at 8.00 a.m, the deceased called P.W.1 enquiring about P.Ws.1 and 2 and disconnected phone. On the same day, around 4.00 p.m, one Venkat Swamy informed that the deceased committed suicide. Thereafter, inquest and scene of offence panchanama were conducted. P.W.1 lodged a written Telugu complaint Ex.P1 before the Police Station, B.B.Nagar, wherein First Information Report in Cr.No.284 of 2015 was registered against the appellants for the offence under Section 304-B IPC and also against the acquitted A4 and A5.

3. The prosecution examined P.Ws.1 to 21 and marked Exs.P1 to P17. No documents are marked nor any witnesses examined on behalf of the accused in defence. During the course of Section 313 examination, all the accused/appellants denied the allegations leveled against them.

4. On considering the evidence on record, the trial Court convicted as stated supra.

5. Heard Smt.G.Jaya Reddy, learned counsel for the appellants and Sri Sudharshan, learned Assistant Public Prosecutor for the State.

6. Learned counsel for the appellants submitted that a false case is filed against the appellants herein. P.W.1 and A2 are own brother and sister and P.W.1 pleaded with the appellants to marry his daughter, upon which, the marriage was performed, without giving any dowry. As seen from the evidence, the alleged dowry of Rs.15,00,000/- was appropriated by way of gifting 92 sq.yds of land and 20 tulas of gold. However, neither P.W.1 produced any document nor any evidence revealed any such transfer of land in favour of the accused or the

deceased. Except the oral evidence of the witnesses P.Ws.1 and 2 regarding dowry and additional dowry, there is no other evidence to substantiate the allegations of harassment and taking dowry. In support of her contentions, she relied upon judgment of Hon'ble Supreme Court in the case of Gurdeep Singh v. State of Punjab Criminal Appeal No.1085 of 2003, dated 25.08.2011, judgment of High Court of Allahabad in the case of Manish Kumar Srivastava v. State of U.P. Criminal Appeal No.7335 of 2019 dated 05.03.2021 and argued that there is no demand soon prior to the death of the deceased to attract Section 304-B of IPC and the trial Court erred in convicting the accused on the basis of vague and uncorroborated allegations of giving dowry and harassing the deceased.

7. On the other hand, learned Public Prosecutor has submitted that the judgment of the trial Court is well reasoned and warrants no interference. Further, from the phone call made by the deceased in the morning of the day of committing suicide is sufficient to infer harassment 'soon before her death' to sustain the conviction under Section 304-B of IPC.

8. As seen from the evidence of witnesses, the alleged dowry of Rs.15,00,000/- was given by way of gifting 92 sq.yds of land situated at Peerzadiguda and 20 tulas of gold worth Rs.3,00,000/-. However, no details of the said transfer of land of 92 sq.yds is forthcoming, for which reason, it cannot be assumed, in the absence of either P.W.1 producing any evidence nor the Investigating Officer collecting any record to show that P.W.1 owned 92 sq.yds of land at Peerzadiguda or that it was transferred either in the name of the deceased or the accused.

9. The other allegation is of constant harassment by the appellants herein and also acquitted A4 and A5 demanding additional dowry, for which reason P.W.1 gave amount of Rs.1,00,000/-, Rs.80,000/- and Rs.30,000/-. The evidence regarding the amounts given is stated by P.W.1 and P.w.2, who are the parents of the deceased and also P.Ws.4, 5, 6 and 7. During the cross-examination of P.Ws.4, 5 and 6, the witnesses admitted that they do not have any personal knowledge about the dowry, additional dowry and they deposed on the basis of information given by P.W.1. Admittedly, the said witnesses have no knowledge about any such demand and their evidence is hearsay. For the said reason, except the evidence of P.Ws.1 and 2, who are the parents of the deceased, there is no independent corroboration of the allegations of payment of dowry of Rs.15.00 lakhs and additional dowry. However, for the said reason, the evidence of P.Ws.1 and 2, who are the parents of the deceased, cannot be disbelieved in its totality.

10. The complaint Ex.P1 and the evidence of P.Ws.1 and 2 is consistent regarding giving of additional dowry and harassment, however, without giving any specific dates or events when the said dowry was given.

11. The Hon'ble Supreme Court in the judgment reported in a case of Suresh Kumar Singh v. State of U.P. (2011) 1 SCC (Cri) 989, held as follows:

"22. It is in the aforementioned context, we may consider the effect of the term

"soon before death".

Section 304B of the Code provides for a penal offence. It has the following ingredients:

- (i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
- (ii) Such death must have occurred within seven years from the date of the marriage'
- (iii) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relative of her husband; and
- (iv) Such cruelty or harassment must be in connection with the demand of dowry."

12. As discussed above, there are no specific instances or dates on which the alleged harassment had taken place. In the absence of any such proof of harassment 'soon before the death' as termed under Section 304-B of IPC and Section 113-B of the Indian Evidence Act, presumption cannot be raised to shift the burden on to the accused. The proximity test, as stated by the Hon'ble Supreme Court fails for the reason of there being no evidence regarding any specific events of harassment leading to death of the deceased or any time 'soon before death'. The argument of the learned Public Prosecutor that the telephone call of the deceased in the morning of the day she committed suicide, is sufficient to draw inference of harassment cannot be accepted. It cannot be assumed that the telephone call was made due to any harassment and also in the absence of P.W.1 and 2 stating anything about deceased informing about harassment meted out to the deceased. In fact, the witnesses P.ws.1 and 2 stated that the deceased enquired about them and disconnected the phone. There is no evidence to the effect that the telephone call was a result of any harassment by the appellants or that any incident occurred after the phone call was made at 8.00 A.M.

13. On the basis of the evidence, it is found by the Trial Court that A1 and the deceased were staying separately and there is no evidence about the visits of the appellants 2 and 3 and there was no evidence to show that there was any kind of interference of A2 to A5. When such is the finding of Trial Court, the question of convicting the appellants 2 and 3/A2 and A3 under Section 498-A of IPC does not arise. As seen from the evidence on record and as found by the trial Court, there is no evidence to show that the appellants 2 and 3 have visited the house of the deceased and A1. Except making bald allegations of harassment against Appellants 2 and 3 and not satisfied with the amounts of Rs.1,00,000/-, Rs.80,000/- and Rs.30,000/- given to the Appellants 2 and 3. Further, the evidence in the Court that these amounts were given to A2 and A3 is an omission asked during the cross-examination of P.W.1 and proved through P.W.18. For the said reason, the benefit of doubt can be extended to the Appellants 2 and 3. For the reasons above mentioned, conviction under Section 498-A against A2 and A3

cannot be sustained and accordingly set aside. It is further in the evidence of P.W.1 that the appellants 2 and 3 had in fact raised an orphan girl, having adopted her by name Anita. A2 and A3 also performed the marriage of said Anita with one Ashok.

14. In the present facts of the case, when A1 and deceased were living separately, no evidence is forthcoming regarding any kind of harassment in proximity with the death of the deceased, the conviction of A1 under Section 304-B is also required to be set aside and accordingly set aside. However, A1 and also the deceased were staying together separately and the evidence of P.Ws.1 and 2 is consistent regarding additional dowry given after marriage and panchayat being held. Though it is suggested to the witnesses that the deceased was adamant, quarrelsome and short tempered, no specific instance of such conduct of the deceased is placed on record by adducing evidence or suggesting any such specific instance for the court to infer any adamant, quarrelsome or short tempered nature of the deceased.

15. In the facts and circumstances, the conviction against A1 for the offences under Section 498-A of IPC is maintained. The 1st appellant is in jail from 10.01.2020 to 18.11.2021, which is a period of nearly 23 months, as such, the sentence is reduced to period already undergone.

Accordingly, the Criminal Appeal is disposed off. As a sequel thereto, miscellaneous petitions, if any, shall stand closed. The bail bonds of the accused stands cancelled.