
(2007) 11 AP CK 0005

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1186 of 2003

Vippala Srinivasa Reddy

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 30-11-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 304B, 34

Citation : (2008) 1 ALD(Cri) 477 : (2008) 1 ALT(Cri) 179 : (2008) 1 ALT(Cri) 173

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : Ravindra Babu, for the Appellant; Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Gopala Krishna Tamada, J.—This criminal appeal is directed against the judgment dated 11-11-2003 passed in S.C. No. 552 of 2000 on the file of the Court of the II Additional Sessions Judge, Guntur, convicting and sentencing the first appellant - A-1 of the charge u/s 304-B of the Indian Penal Code, 1860 and the second appellant - A-2 of the charge u/s 304-B read with 34 of IPC, to undergo rigorous imprisonment for a period of seven years each.

2. The case of prosecution, in nutshell, is that the marriage between one Vippala Madhavi (hereinafter called as "the deceased") and A-1 was performed in the month of May, 1996 and the parents of the deceased, who were examined as PWs.1 and 2 gave a cash of Rs. 10,000/- and also gifted Ac.1-00 of land towards pasupukunkuma. The marriage was immediately consummated and the deceased joined the company of A-1, where his mother i.e., A-2 also is residing. Since the date of joining the deceased with A-1 for conjugal life, both A-1 and A-2 subjected her to cruelty and harassment demanding her to dispose of the said Ac.1-00 of land and to bring money from PWs.1 and 2, so that an alternate land can be purchased in their village. The deceased informed the said intention of A-1 and A-2 to PWs.1 and 2 and other relatives and also about the harassment

meted out to her. The parents of the deceased agreed to dispose of the land and give money. Thereafter, the deceased gave birth to a male child and when she again became pregnant, not to the willing of A-1 and A-2, they got her aborted saying that one son is enough. It is alleged that two months prior to the occurrence, the deceased was necked out from the marital home, but, however, six days prior to the occurrence A-1 went to Seethapuram and brought the deceased back to his house threatening to commit suicide. On the next day that was on 01-07-1999 PW- 6 i.e. father of A-2 and grandfather of A-1 on sighting the deceased hanging with a saree to the wooden beam in the house of A-1 raised alarm. Immediately PWs.5, 9 and other neighbours gathered there, cut the saree and brought the deceased down. Later on the advise of the village RMP doctor, who was examined as PW-8, the deceased was shifted to the hospital in the adjacent village in tractor and PW-7 examined her and declared her dead. On receipt of the said information PWs.1 and 2 came to Veerlapalem along with their relatives on 01-07- 1999 at about 23.30 hours and PW-1 gave a complaint to the Station House Officer, Duggirala Police Station and PW-15 registered the same as a case in Crime No. 98 of 1999 for the offence u/s 302 of IPC and after completion of investigation PW-18 laid charge sheet against the accused.

3. On appearance of the accused and on hearing both sides, the trial Court framed a charge u/s 304-B of the IPC against A-1 and a charge u/s 304-B read with 34 of IPC against A-2, and additional charges under Sections 302 and 201 of IPC against A-1 and A-2, read over and explained to them in Telugu, for which they pleaded not guilty.

4. In order to establish its case, the prosecution examined PWs.1 to 18 and marked Exs.P1 to P12. On behalf of defence no oral or documentary evidence is adduced.

5. On an analysis of both oral and documentary evidence, the trial Court though held that the offences punishable under Sections 302 and 201 of IPC are not proved, found A-1 guilty of the charge u/s 304-B of IPC and found A-2 guilty of the charge u/s 304-B read with 34 of IPC and accordingly convicted and sentenced them as stated supra, by judgment dated 11-11-2003. Against the said judgment, appellants - A-1 and A-2 preferred this appeal.

6. Learned Counsel for the appellants, Sri Ch, Ravindra Babu, mainly contended that there is absolutely no evidence to prove that the said unnatural death of the deceased was a dowry death and the same occurred solely on account of the harassment meted out to her at the hands of the appellants. According to him, though the death of the deceased occurred within seven years from the date of her marriage and it is an unnatural death, there is absolutely no material on record to establish that there was harassment towards the deceased soon before her death, for or in connection with dowry. He further contended that there are no eyewitnesses to the occurrence and it is only on suspicion a false case has been foisted against the appellants for the unnatural death of the deceased.

7. Per contra, learned Additional Public Prosecutor contended that the evidence of the doctor, who was examined as PW-10 clinchingly establishes that the death occurred only at the hands of the appellants and the prosecution is able to prove the guilt of first appellant and there are clear circumstances basing on which only the trial Court convicted the appellants for the offences punishable under Sections 304-B and 304-B read with 34 of IPC.

8. The undisputed facts are that the marriage between the deceased and A-1 was performed in May, 1996 and the death of the deceased occurred on 01-07-1999 and the death was not under normal circumstances. Hence, the requirements u/s 304-B of IPC are satisfied to certain extent. But the most important and crucial requirement, which has to be established, is that soon before her death the deceased was subjected to cruelty or harassment, by her husband or any relative of her husband, for or in connection with any demand for dowry. Unless and until the prosecution establishes the said aspect, no Court can hold that it is a "dowry death" as defined u/s 304-B of IPC. Hence, it is necessary to refer to the evidence of the prosecution witnesses.

9. PW-1 is the father of the deceased, PW-2 is the mother of the deceased, PW-3 is the brother of PW-2, PW-4 is the brother of the deceased by courtesy and PW-16 is also the brother of the deceased. No doubt, they have spoken about the said illegal demand for dowry, but that alone is not sufficient to base a conviction holding that the appellants are guilty of an offence punishable u/s 304-B of IPC. Mere asking for dowry on one or two occasions in my considered view would not amount to harassment for dowry, but when the other circumstances are taken into consideration, definitely it shall be viewed that the deceased met with an unnatural death on account of the said dowry harassment.

10. The most important aspect in this case is that the deceased died because of "smothering". Of course it is contended by the learned Counsel for the appellants that at the relevant point of time, the appellants were not in the house and the said "smothering" may be on account of the hanging by the deceased for which the appellants cannot be said to be responsible.

11. The word "smothering", as explained by Dr. K.S. Narayan Reddy, a famous author of the Essentials of Forensic Medicine and Toxicology, is a form of asphyxia caused by closing the external respiratory orifices either by the hand or by other means, or blocking up the cavities of the nose and mouth by the introduction of a foreign substance, such as mud, paper, cloth etc. Smothering has been used synonymously with suffocation by some authors. Further, "suicidal smothering" by the hand is impossible and suicide is possible by burying the face in a mattress or lying against the bed clothing to obstruct the nose and the mouth. He also explained as to what is "accidental smothering". According to him "homicidal smothering" is possible where the victim is incapacitated from drink or drugs, very weak, child or old person, in ill-health and when the victim is stunned by a blow. Usually, the mouth and nose are closed by a hand or cloth, or the face may be pressed into a pillow. Further "smothering" can be caused by

pinching the nose, with child in one hand, while the other hand is used to push the jaw to close mouth.

12. From the above it is clear that no individual can cause his own death by "smothering" or "accidental smothering". When once the expert opined that the death was due to "smothering", it shall automatically be presumed that there was the hand of some other individual or individuals. The doctor, who conducted autopsy over the dead body of the deceased, was examined as PW-10. According to him, the following are the external injuries--

1. A contusion of 5cms x 1cm in size obliquely placed below the left angle of the mouth.
2. A contusion of 3 x 2 cms longitudinally placed in right cubital fossa.
3. A contusion of 3 x 1.5 cms in size over the upper lip on right side.
4. A contusion of 1.5 x 1.5 cms in size over the left side of upper lip.
5. A linear abrasion of 1 cm over the upper lip on the right side near the angle of the mouth.
6. A linear abrasion of 1 cm in length on the upper lip on left side near the angle of the mouth.
7. A lacerated injury of 0.75 cms x 0.75 cms x 0.25 cms in size on the muscle surface of the upper lip on the right side.
8. A lacerated injury of 0.5 cms x 0.25 cms x 0.25 cms in size over the muscle surface of the lower lip in the centre.

At the end of his report, he gave his final opinion stating that the deceased would appear to have died of "Asphyxia due to smothering". The very purpose of examining the doctor, who conducted autopsy over the dead body of the deceased and marking the postmortem report as an exhibit is only to know the reasons for the death. When once PW-10 opined that the death of the deceased was on account of "asphyxia due to smothering";

in the light of the observation made by this Court that an individual cannot cause his own death by reason of "smothering" without there being an involvement of other individuals to block the nose or mouth of the deceased in order to cause death, it shall be held that other individuals are responsible for the death of the deceased. From the evidence it is clear that the deceased was residing in the house of the first appellant at the relevant point of time and the said other individual can be only the husband of the deceased i.e., the first appellant.

13. When the evidence of PWs.1 to 4 and 16 is taken into consideration, it is clear that there was harassment for dowry and such harassment eventually lead to the death of the deceased at the hands of her husband. From the above it can be deduced that the death had taken place for more dowry. Therefore, it can definitely be construed that it is an offence falling u/s 304-B of IPC. Hence, this

Court has no hesitation to hold that the husband, who is arrayed as first appellant is guilty of the offence punishable u/s 304-B of IPC. Therefore, the contention put forth by the learned Counsel for the appellants that there were no eyewitnesses to the said occurrence cannot be accepted.

14. Insofar as the accusation levelled against A-2 is concerned, it came out in the evidence that the second appellant - A-2 is residing in a separate portion but not with the first appellant and the deceased. The prosecution witnesses also have not stated anything about the active collusion of the second appellant with the first appellant. Of course, PW-1 stated that the appellants - A-1 and A-2 also demanded the deceased to get the amount by selling the land. For the reasons stated supra, the said demand alone is not sufficient, hence, it is difficult to hold that the second appellant is guilty of the offence punishable u/s 304-B read with 34 of IPC.

15. In the light of the said discussion, it is clear that A-1 is guilty of the offence punishable u/s 304-B of IPC and A-2 cannot be found guilty of the offence punishable u/s 304-B read with 304-B of IPC.

16. In the result, the criminal appeal is allowed in part. The conviction and sentence imposed on first appellant - A-1 of the charge u/s 304-B of IPC in S.C.No. 552 of 2000 on the file of the Court of the II Additional Sessions Judge, Guntur, is confirmed. Insofar as the conviction and sentence imposed on A-2 of the charge u/s 304-B read with 34 of IPC is concerned, is set aside and accordingly A-2 is acquitted of the said charge and her bail bond shall stand cancelled.