

(2011) 08 AP CK 0004

Andhra Pradesh High Court

Case No: Criminal Appeal No. 974 of 2007

Shaik Moulana Saheb

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision: Aug. 4, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 304B, 306, 498A

Citation: (2012) 3 ALT(Cri) 92

Hon'ble Judges: R. Kantha Rao, J

Bench: Single Bench

Advocate: K. Satyanarayana Rao, for the Appellant;

Final Decision: Allowed

Judgement

R. Kantha Rao

1. This appeal is filed against the Judgement passed by the V Additional Sessions Judge, West Godavari at Eluru in S.C.No. 89 of 2006 convicting and sentencing the appellant to undergo RI for a period of 10 years and to pay a fine of Rs. 500/- for the offence u/s 304-B IPC and further convicting and sentencing him to undergo RI for two years and to pay a fine of Rs. 300/- for the offence u/s 498-A IPC.

2. I have heard Dr.Satyanarayana Rao, the Learned Counsel for the appellant and the learned Additional Public Prosecutor representing the State.

3. In all three accused were tried by the learned Sessions Judge on the allegation of committing the offences under Sections 304-B and 498-A IPC. A.1 is the husband of the deceased, A.2 is the mother of A.1 and A.3 is a relative of A.1 and A.2. During the pendency of the case, A.2 died and as such the case against A.2 was abated. The trial court acquitted A.3 while convicting and sentencing the appellant/A.1 as mentioned above.

4. The case of the prosecution in brief is that the appellant and the deceased Imam Bee belong to Ramachandrapuram in East Godavari District. The marriage of the deceased with A.1 was performed on 25.4.1997. According to the prosecution, at the time of marriage, Pw.2 the adopted father of the deceased gave an amount of Rs. 11,000/- to the appellant as dowry and the marriage was consummated and both the appellant and the deceased lead marital life for a month and thereafter, the appellant left the deceased and absconded from the house. After some time, again he joined the deceased at Ramachandrapuram and started demanding additional dowry of Rs. 5,000/- . The matter was placed before the villager elders and it was settled.

5. About 20 days prior to 19.7.1998, the appellant and the deceased came down to Jangareddygudem and started living there along with A.2 the mother of A.1 and it is stated that A.1 and A.2 continued their harassment for additional dowry. On 18.7.1998, when the deceased was alone in the house, the appellant/A.1 threatened her demanding for additional dowry and left the house. On 19.7.1998, in the absence of A.1 and A.2, the deceased died by committing suicide by hanging to the roof of the house. The version of the prosecution is that the deceased committed suicide being unable to bear the harassment of the appellant and other accused for additional dowry. Thereafter, on a report lodged by Lw.1, a neighbour, a case in Cr.No. 94 of 1998 of Jangareddigudem Police Station was registered for the offence u/s 306 IPC and was investigated into by Pw.11, the SI of police. After conducting a part of investigation, the section of law was altered to one u/s 304-B IPC by on memo filed issued by the Investigating Officer. Subsequently, after filing of the charge sheet, the case was committed to the V Additional Sessions Judge, West Godavari at Eluru by the concerned Magistrate.

6. The learned Sessions Judge framed charges against the appellant and the other accused for the offences under Sections 304-B and 498-A IPC and after conclusion of trial, the appellant was convicted and sentenced as mentioned above.

7. Dr. Satyanarayana Rao, the Learned Counsel for the appellant contended that absolutely there is no satisfactory evidence adduced by the prosecution warranting conviction for the offence u/s 304-B IPC or u/s 498-A IPC and the appellant/A.1 is entitled for acquittal. On the other hand, the learned Additional Public Prosecutor would submit that the evidence on record is sufficient and the prosecution could be able to establish both the charges and the trial court is justified in convicting and sentencing the appellant for the offences under Sections 304-B and 498-A IPC and as such the order of conviction and sentence warrants no interference in the present appeal.

8. Lw.1, a neighbour who lodged the report died before the commencement of trial and therefore the prosecution could not examine her. Pw.2 who is the adopted father of the deceased stated about the performance of marriage of the deceased with the appellant on 24.5.1997 and giving him an amount of Rs. 11,000/- towards

dowry. He also spoke about the appellant beating and harassing the deceased demanding additional dowry of Rs. 5,000/- . He also stated that the deceased was informing him about the appellant telling her to die by leaving a suicide note so that he could marry another woman. Pw.3 did not support the case of the prosecution and he was treated hostile by the prosecution. Pw.4 who is the wife of Pw.2 (adopted mother of the deceased) also stated in her evidence about their giving dowry of Rs. 11,000/- at the time of marriage and the appellant leaving the deceased and absconding from the house. She also stated about the appellant subjecting the deceased to cruelty with a demand for additional dowry of an amount of Rs. 5,000/- . She further stated that the deceased was informing her that the appellant was forcing her to commit suicide by leaving a suicide note. However, the material fact that the appellant was forcing the deceased to commit suicide by leaving suicide note was not spoken to by both Pws 2 and 4 to the police in their statements recorded u/s 161 Cr.P.C. and thus this is a material omission in the version of Pws 2 and 4. Pw.5 who is the natural father of the deceased also stated in his evidence about the appellant harassing the deceased for additional dowry. He also spoke about the appellant deserting the deceased and harassing her with a demand for additional dowry.

9. Though the evidence of autopsy surgeon and the report of the forensic science laboratory are to the effect that no conclusive opinion can be obtained about the cause of the death of the deceased, the inquest panchayatdars as well as the doctor Pw.7 who conducted post mortem examination noticed a ligature mark on the neck of the deceased and the body of the deceased was found hanging to the roof of the house. Therefore, it can be undoubtedly said that the death of the deceased is unnatural and it took place in the house of the appellant in the absence of the appellant and A.2.

10. Curiously, the Investigating Officer admitted in his cross examination that he did not ascertain from the witnesses as to whether the death of the deceased Imam Bee took place within seven years of her marriage or not. Therefore, except the oral evidence of Pws 2,4 and 5, there is no reliable evidence to show that the death of the deceased occurred within seven years of her marriage. When the Investigating Officer himself admitted that he did not ascertain the said fact during the course of investigation, it is not possible to give a finding that the death of the deceased occurred within seven years of her marriage. The Investigating Officer Pw.11 stated in his cross-examination that he did not visit the village of the parents of the deceased and did not examine any witness in the village.

11. Though the medical opinion about the cause of the death is not conclusive because of the decomposition of the body of the deceased, from the evidence of Pw.7 the doctor who conducted post mortem examination and the evidence of Mandal Revenue Officer and Panchayatdars, it is clear that there was a ligature mark on the neck of the deceased and the prosecution therefore could be able to

established that the death of the deceased occurred otherwise than in normal circumstances. However, the prosecution is not able to establish that the deceased died within seven years from the date of her marriage. The prosecution further failed to establish that soon before the death, the deceased was subjected to cruelty in connection with the demand for additional dowry. Therefore, the learned trial court erred in convicting the appellant for the offence u/s 304-B IPC and the conviction and sentence for the said offence is liable to be set aside. In the decision in the case of [State of U.P. Vs. Santosh Kumar,](#), the Supreme Court held that the offences under Sections 304-B and 498-A IPC are distinct and separate offences and therefore even there is acquittal of the offence u/s 304-B IPC, conviction for the offence u/s 498-A IPC can be recorded, if there is sufficient evidence to hold the accused guilty of the said offence. Section 498-A IPC reads as under:

498-A. Husband or relative of husband of a woman subjecting her to cruelty:--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extent to three years and shall also be liable to fine.

Explanation:--For the purpose of this section, "cruelty" means-

- a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

12. To attract the offence u/s 498-A IPC, cruelty must be in such a nature which is likely to drive the woman to commit suicide and the harassment should be in connection with any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

13. In the instant case, there is the evidence of Pws 2, 4 and 5 that the appellant was harassing the deceased to bring additional dowry. The appellant cannot be convicted for the offence u/s 304-B IPC because the prosecution could not successfully establish the main ingredient of the offence u/s 304-B IPC that the death of the deceased was within seven years of her marriage and soon before her death, she was subjected to cruelty. However, there is no impediment to convict the appellant for the offence u/s 498-A IPC on the same evidence. The learned trial court therefore is justified in convicting and sentencing the appellant for the offence u/s 498-A IPC though it erred in convicting and sentencing him for the offence u/s 304-B IPC.

14. For the foregoing reasons, the conviction and sentence passed against the appellant for the offence u/s 304-B IPC is set aside and he is acquitted of the said offence. However, the conviction and sentence passed by the trial court against the appellant for the offence u/s 498-A IPC is confirmed. Since the appellant (A.1) has been in jail from 20.3.2006 and since the appellant has already served the sentence of imprisonment imposed against him for the offence u/s 498-A IPC, he shall be released forthwith, if he is not required to be detained in any other case.

15. In the result, the appeal is partly allowed.