

(2003) 11 AP CK 0023

Andhra Pradesh High Court

Case No: Criminal Appeal No. 125 of 2001

Mummidi Udaya Bhaskar

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: Nov. 6, 2003

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 374(2)
- Penal Code, 1860 (IPC) - Section 304B

Citation: (2003) 2 ALD(Cri) 891 : (2004) 2 ALT(Cri) 662 : (2004) 1 APLJ 58 : (2004) 1 DMC 524

Hon'ble Judges: B. Seshasayana Reddy, J

Bench: Single Bench

Advocate: K. Suresh Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

B. Seshasayana Reddy, J.

This is an appeal u/s 374(3), Cr.P.C. by accused (A-1) M. Udaya Bhaskar who has been convicted for the offence punishable u/s 304B, IPC and sentenced to undergo RI for a period of seven years in S.C.No. 293 of 1999 on the file of III Additional Sessions Judge, Kakinada.

2. The prosecution case in brief is as follows:

The appellant/A-1 got married to Mummidi Kasiratnam (hereinafter referred to as the deceased) five years prior to the date of the occurrence, P.W. 1 K. Satyanarayana is father, P.W. 2 K. Venkateswar Rao is brother and P.W. 3 K. Raghavulu is mother of the deceased. P.W. 4 K.Gouri is the daughter-in-law of P.W. 1 and P.W. 3. P.W. 1 gave Rs. 20,000/- towards dowry and Rs. 350/- towards adapaduchulanchanan at the time of the marriage of the deceased with the appellant/ A-1. He also presented six sovereigns of gold to the deceased. Acquitted accused (A-2) is the mother of the appellant/A-1. The deceased lived in her nuptial home for about a month after the

marriage. During her stay in the nuptial home, it is alleged, the appellant/A-1 and his mother/A-2 ill-treated her and beat her on the ground of additional dowry. The appellant/A-1 said to have demanded the deceased to bring money from her parents for purchase of lorry/Since the demand of the accused was not complied with, the deceased was sent to her parental home with instructions to return marital home with money. During the stay of the deceased in her parental home, the appellant/A-1 used to visit her and demand her additional dowry. He also used to beat her on that score. Five or six days prior to the incident the deceased said to have expressed her desire to go to her in-laws house and, therefore, P.W. 1 sent the deceased through his daughter in-law (P. W. 4) who took the deceased to the house of her in-laws. When the deceased came to the house of her in-laws, appellant/A-1, allegedly enquired the deceased as to whether she has brought the money and that on her replying in negative, he beat her with a tiffin carrier and thereupon P.W. 4 intervened and advised the appellant/A-1 not to beat the deceased. P.W. 4 returned to her in-laws house after dropping the deceased in the house of the appellant/accused and appraised. P.W. 1 of what all happened at the house of the appellant/accused. On the afternoon of 8.8.1998 the deceased committed suicide by hanging in her in-laws house. P.W. 6 M. Appa Rao, the father-in-law of the deceased presented Ex.P-1 report before the SHO, 1 Town (L & O) P.S. Kakinada on 8.8.1998 at 7 p.m. P.W. 12 K. Hanumanth Rao received Ex. P-1 report and registered a case in Cr. No. 102/1998 u/s 174, Cr.P.C. and issued FIR. He visited the scene of offence, conducted panchanama in the presence of P.W. 9 Arjun Rao and got the scene of offence photographed by P.W. 7 Sheikh Ashraf Ali. Ex. P-4 is the observation report, Ex.P-7 is the rough sketch and Ex. P-2 is bunch of photographs numbering five along with the negatives. He sent requisition to Mandal Executive Officer to conduct the inquest on the dead body of the deceased. P.W. 8 B. Yadagiri, Mandal Executive Officer, conducted inquest on the dead body of the deceased in the presence of P.W. 9, L.W. 18 M. Tirumalam and L.W. 19 Saladi Veerendera Prasad. He examined P.Ws. 1 to 3 during the inquest and recorded their statements. Basing on the statements of the witnesses examined during the inquest, the panchas opined that the deceased committed suicide by hanging being not able to put up with the ill-treatment of the appellant/accused. Ex. P-3 is the inquest report scribed by P.W. 9. After the inquest, the dead body was sent for post-mortem. P.W. 10 Dr. T. Rama Rao conducted post-mortem examination on the dead body of the deceased on 9.8.1998 at 4.15 p.m. and noted the following injuries:

1. A pressure abrasion of 29 x 4 to 10 cm on front of neck, 5 cms below the chin, go line backwards, obliquely upto the level of left angle of mandible on left side of the neck which is 5 cm below the left angle of mandible, upto the right angle of mandible on right side of the neck which is 2.5 cm below the right angle of mandible. The width of the ligature mark is maximum on the front of neck and less on the sides of the neck. The base of the ligature mark is brown in colour and peeled off at some places. It is not hard and parchment-like. No abrasions are seen on the

edges of the ligature mark. There is no ecchymosis or extravasation of blood is seen with naked over underlying tissues and muscles of the neck under the ligature mark. Hyoid bone, thyroid and cricoid cartilages, and tracheal rings are intact. Tissue bits were collected from the neck and sent for histopathological examination to know whether the ligature mark is ante-mortem or post-mortem.

2. Three nail marks (crescentic marks) 0.5. cms each over an area of 6 x 3 cms on the top of the right shoulder. Tiny blood clots are seen in the wound.

3. An abrasion of 3 x 1/2 cm on outer aspect of right lower part of abdomen. Reddish brown in colour.

4. A contusion of 10 x 4 cm on lower part of front of right knee. Reddish blue in colour.

5. A contusion of 4 x 1 1/2 cm on outer aspect of right leg 10 cm below the right knee. Reddish blue in colour.

6. A contusion of 4 x 2 cm on the back of right leg, 14 cm below the right knee. Reddish blue in colour.

7. A contusion of 4"x 3 cm on the front and lower aspect of left knee. Reddish blue in colour.

8. A contusion of 2 1/2 x 1 1/2 cms on front and lower aspect of left leg. Reddish brown in colour.

9. A contusion of 4 x 2 cm on outer aspect of left knee, horizontal in position. Reddish blue in colour.

10. A contusion of 5 x 3 cm on the back and middle of left leg. Reddish blue in colour.

11. A contusion of 4 x 3 cm on inner aspect of lower 1/3rd region of left leg.

12. An abrasion of 2 1/2 x 1 1/2 cm on the middle of left side body of mandible. Reddish brown in colour.

13. A contusion of 2 x 1 cm on dorsal aspect of left hand at the base of ring finger. Reddish blue in colour.

14. Haematoma of 6 x 4 cm under the scalp on front and left side of forehead 7 cm above the left eyebrow. Brown in colour.

15. Haematoma of 10 x 8 cm under the scalp hair occipital protuberance at its middle. Brown in colour.

16. Subdural and subarchnoid haemorrhages on both the hemispheres of the brain with 1 mm thickness.

He opined that the injuries 2 to 16 are ante-mortem in nature and they could be caused due to blunt and hard object. He preserved tissue bits and sent for histopathological examination. After receipt of the report of the histopathological examination he gave his opinion on 24.9.1998 that the cause of the death of the deceased was due to ASPHYXIA as a result of hanging with multiple injuries. Ex. P-5 is the post-mortem report and Ex. P-6 is his opinion. P.W. 12 examined P.Ws 1 to 7 and recorded statements. He altered the section of law from Section 174, Cr.P.C. to Section 304B read with Section 34, IPC and issued Ex. P-8 altered FIR. P.W. 11 M. Rama Rao took up investigation, arrested the accused on 14.8.1998 at Karnamgari Junction and sent them for remand. After completing the investigation, he laid the charge-sheet in the Court of III Additional Judicial First Class Magistrate, Kakinada. The learned Magistrate took the charge-sheet on file as P.R.C.No. 35 of 1998 and committed the case to the Court of Sessions. On committal the case was taken on file as S.C. No. 293 of 1999 and was made over to III Additional Sessions Judge, Kakinada. On appearance of the accused and on hearing the prosecution and the accused, the learned Sessions Judge framed a charge u/s 304B, IPC against the accused. He read over and explained the charge to them. They pleaded not guilty and claimed to be tried. In order to substantiate the charge levelled against the accused, the prosecution examined 12 witnesses and marked Exs. P-1 to P-8 and MOs 1 to 8. On behalf of the defence, a portion in 162 statement of P.W. 2 was marked as Ex. D-1. Learned Sessions Judge after evaluating the evidence held that the offence punishable u/s 304B, IPC is proved beyond reasonable doubt against the appellant/A-1 and convicted him accordingly and sentenced him to suffer RI for 7 years. However, the learned Sessions Judge found that the prosecution failed to prove the guilt of A-2 and acquitted her accordingly for the offence punishable u/s 304B, IPC. Assailing the conviction and sentence passed against A-1, this Criminal Appeal is filed.

3. Mr. Ball Reddy, learned Senior Counsel appearing on behalf of the appellant/A-1, contends that the lower Court failed to note the improvements made by P.Ws. 1 to 4 on vital aspects in their evidence before the Court over their police statements. It is also contended by him that P.Ws. 1 to 3 did not whisper of dowry harassment when the Mandal Revenue Magistrate examined them during the inquest and they spoke about the dowry demand for the first time before the Court. Therefore, their evidence with regard to the dowry demand is liable to be discarded. In order to convince the Court that the evidence of P.Ws. 1 to 4 contains embellishments and improvements on vital aspects, he took me to the depositions of P.Ws. 1 to 4 in detail. On the other hand, the learned Additional Public Prosecutor submitted that the Trial Court appreciated the evidence of P.Ws. 1 to 4 in right perspective in finding that the appellant/A-1 guilty for the offence u/s 304B, IPC and, therefore, the impugned judgment is not liable to be interfered in this appeal. He further submits that the prosecution is able to prove all the essential ingredients of dowry death to bring home the guilt of the appellant/A-1 for the offence u/s 304B, IPC by examining

P.Ws. 1 to 4. It is also submitted by him that it is too much for any one to expect P.W. 1 to P.W. 3 to narrate details of harassment during the inquest since they were under sudden bereavement and grief and that more particularly P.Ws. 1 and 3 who are parents of the deceased may have suffered shock by seeing the unnatural death of their daughter and the sudden bereavement or grief must have shut their mouths at the time of inquest.

4. The appellant/A-1 and his mother/A-2 were put up for trial before the Sessions Judge for the offence punishable u/s 304B, IPC. In order to bring home the guilt of the accused for the offence u/s 304B, IPC, the prosecution examined P.Ws. 1 to 12 and marked Exs. P-1 to P-8 and MOs. 1 to 8. P.W. 1 is father, P.W. 2 is brother and P.W. 3 is mother of the deceased. P.W. 4 is the daughter-in-law of the P.W. 1 and P.W. 3. P.W. 5 is the owner of the house where the accused and the deceased resided as tenants. He is also neighbour to the accused. P.W. 6 is father of A-1 who presented a report before the SHO regarding the death of the deceased. P.W. 7 is a photographer who photographed the scene of offence and dead body of the deceased. P.W. 8 is Mandal Executive Magistrate who conducted inquest on the dead body of the deceased. P.W. 9 is the panch witness for the observation of the scene and the inquest held on the dead body of the deceased P.W. 10 is post-mortem Doctor. P.W. 11 and P.W. 12 are the Investigating Officers. Section 304B, IPC deals with dowry death which reads as follows:

"304-B. Dowry Death--(i) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal conditions 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 purpose of this Sub-section "dowry" shall have 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."

The provision has application when death of a woman is caused by any burns or bodily 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 relatives of her husband for, or in connection with any demand for dowry. In order to attract application of Section 304B, IPC the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

- (ii) Such a death should have been occurred within seven years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.
- (iv) Such cruelty or harassment should be for or in connection with demand of dowry.
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

Section 113B of the Evidence Act is also relevant for the case at hand. Both Section 304B, IPC and Section 113B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113B reads as follows:

"113-B. Presumption as to dowry death. When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation--For the purposes of this section "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860)."

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on "Dowry Deaths and Law Reform". Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry related deaths, Legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of "dowry death" in Section 304B, IPC and the wording in the presumptive Section 113-B in the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption u/s 113 is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before, the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence u/s 304B, IPC.)
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with, any demand for dowry.

(4) Such cruelty or harassment was soon before her death.

5. A conjoint reading of Section 113B of the Evidence Act and Section 304-B, IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the "death occurring otherwise than in normal circumstances." The expression "soon before" is very relevant where Section 113-B of the Evidence Act and Section 304B, IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption u/s 113B of the Evidence Act. The expression "soon before her death" used in the substantive Section 304B, IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression "soon before" is not defined. A reference to expression "soon before" used in Section 113, Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods "soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession." The determination of the period which can come within the term "soon before" is left to be determined by the Court, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence. If the death occurred independent on demand of dowry it cannot be termed as dowry death.

6. It is an undisputed fact that the deceased stayed at her parental home for about five years before she resumed her marital relationship with appellant/A-1 six days prior to her death. It has also come on record that her parents sent the deceased to her in-laws house accompanied by P.W. 4. It is also not in dispute that the deceased committed suicide in her in-laws house on the afternoon of 8.8.1998 in the absence of inmates of the house. It may be noted at this juncture that the inmates of the house are the appellant/A-1, his father-P.W. 6 and his mother (acquitted accused A-2). P.Ws 1 to 4 speak of dowry paid to the appellant/ A-1 at the time of the

marriage. P.W. 1 testifies that he gave Rs. 20,000/- to the appellant/A-1 towards dowry and Rs. 3,000/- towards adapaduculanam and six sovereigns of gold to the deceased. P.W. 2 testifies that an amount of Rs. 20,000/- was paid to the appellant/A-1 as dowry and presented six sovereigns of gold at the time of marriage. P.W. 3 testifies that an amount of Rs. 20,000/- and six sovereigns of gold were given to appellant/A-1 as dowry at the time of the marriage. P.W. 4 testifies that cash of Rs. 20,000/- and six sovereigns of gold were given to the appellant/A-1 at the time of marriage. None of them stated that the appellant/A-1 insisted any dowry either before the marriage or at the time of the marriage. According to P.W. 1 to P.W. 4, the appellant/A-1 started harassing the deceased to bring money to purchase a lorry. The deceased spent hardly a month in her in-laws house after the marriage and returned to her parental home and lived there for five years. The deceased earlier got married to a person of Madras and she stayed with him for two months and a year thereafter she divorced him in the presence of elders and married the appellant/A-1. It can be said without any hesitation that the marriage of the deceased with the appellant/A-1 was her second marriage. Admittedly, no panchayats were held despite the deceased continued to stay in her parental house for a period of five years. What prompted P.W. 1 to send the deceased to her in-laws house six days prior to the incident is not clear from the evidence of the prosecution witnesses. P.W. 4 took the deceased to her in-laws house six days prior to the incident. It is the evidence of P.W. 4 that when she took the deceased to the house of the appellant/A-1, the appellant/A-1, said to have asked the deceased whether she brought money and when the deceased replied in the negative, he allegedly beat her with a tiffin carrier. It is also the evidence of P.W. 4 that she advised the appellant/A-1 not to beat the deceased, and she returned home and informed the high-handed behaviour of the appellant/A-1 to her in-laws. P.W. 1 to P.W. 3 testified that they were informed of the high-handed behaviour of the appellant/A-1 on the deceased by P.W. 4. P.Ws. 1 to 3 were examined during the inquest held on the dead body of the deceased. They did not speak of any dowry demand made by the appellant/A-1 and harassment of the deceased on that score by him. P.W. 8 who conducted inquest on the dead body of the deceased admits of P.Ws 1 to 3 not stating before him about the appellant/A-1 demanding the deceased to bring additional dowry for purchasing a lorry. The version of P.W. 4 that she advised appellant/A-1 not to beat on the date on which she took the deceased to his house is an improvement over her police statement. I feel it apposite to refer the cross-examination of P.W. 4 in her own words and it reads as follows:
"I did not state before the police that I advised A-1 not to beat, and that I would ask my in-laws to arrange money and that when I informed to my in-laws about the demand of A-1, they told me that they would arrange money within few days."

The improvement made by P.W. 4 in her evidence before the Court is a major improvement and it is liable to be excluded from consideration. Once the evidence of P.Ws. 1 to 4 with regard to dowry demand prior to the deceased resuming her

association with the appellant/A-1 six days prior to the occurrence is eschewed, there is no evidence on record that the appellant/A-1 demanded additional dowry soon before the death of the deceased and that he harassed the deceased on that score. Once the prosecution failed to prove the dowry demand, the conviction and sentence of the appellant/A-1 for the offence u/s 304B, IPC does not stand and the same is liable to be set aside.

7. Learned Additional Public Prosecutor submits that the injuries found on the deceased suggest that she was tortured soon before her death and, therefore, the appellant/A-1 being the husband of the deceased was to be held responsible for the said injuries. The argument advanced by the Additional Public Prosecutor seems to be impressive, but on thorough reading of the evidence brought on record the same is not liable to be rejected. There were three inmates in the house where the deceased committed suicide. In addition to the appellant/A-1, there were two more persons in the in-laws house of the deceased. They are; mother and father of the appellant/A-1. Of them, the mother is arrayed as A-2 and father figured as P.W. 6. The Trial Court recorded acquittal of A-2. In these circumstances, it cannot be said with certainty that it was the appellant/A-1 responsible for the injuries found on the deceased. In view of the above discussion, I find that the conviction of the appellant/A-1 for the offence u/s 304B, IPC is not sustainable and liable to be set aside.

8. Accordingly this Criminal Appeal is allowed setting aside the conviction and sentence of the appellant/A-1 for the offence u/s 304B, IPC and he is acquitted of the same. Bail bonds furnished by him shall stand cancelled.