

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.171 OF 2016

JUDGMENT:

This criminal appeal is filed by the appellant/complainant by invoking the provision under Section 372 of the Code of Criminal Procedure (Cr.P.C.), challenging the order of acquittal, dated 12.11.2015, passed in S.C.No.538 of 2013 by the III Additional District and Sessions Judge, Ranga Reddy District, whereby and whereunder the learned Sessions Judge found A-1 to A-6/respondents 2 to 7 not guilty of the offence punishable under Section 304-B IPC and acquitted them for the said offence.

2. The allegations against the accused/respondents 2 to 7, in brief, are that on 22.11.2012 at 21.00 hours, Pallapu Yadagiri of Raghunathpally Mandal, Warangal District, lodged complaint before Alwal Police stating that he is having five daughters and two sons. Rajitha is his fourth daughter, who was married to Shivarathri Raju on 19.04.2012. At the time of marriage, he paid Rs.2,25,000/- (against agreed amount of Rs.2,50,000/-), 3 tulas of gold, utensils etc. He agreed to pay remaining dowry amount of Rs.25,000/- later. Since the date of marriage, his daughter was harassed for the said balance amount by the husband, mother-in-law, father-in-law, mother-in-law's younger sister and sister-in-laws for additional dowry. Two or three times, they called him in phone insisting for balance dowry amount and also threatened that if he fails to give money, they are going to send his daughter to his house. His daughter also narrated him about the harassment meted by her. On that he agreed to pay the said dowry amount on

25.11.2012. On 22.11.2012, he received phone call from his daughter and informed that if he fails to pay Rs.25,000/- to his in-laws, they are going to eliminate her. On the same day, at 3.30 p.m., he received phone call from his son-in-law that his daughter has committed suicide by hanging. Immediately, he rushed to the house of his daughter and found her body lying on the floor and he suspects that all the above persons have killed his daughter. Hence, the complaint.

3. The case was taken on file by the VI Metropolitan Magistrate, Cyberabad at Medchal, against A-1 to A-6 for the offence punishable under Section 304-B IPC. As the case was within the jurisdiction of the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions, Metropolitan Sessions Judge, Cyberabad, after adopting the procedure as laid down under Section 209 Cr.P.C., who registered a case against the accused as S.C.No.538 of 2013 for the offence under Section 304-B IPC and made over the same to the learned III Additional District and Sessions Judge, Ranga Reddy District, for trial and disposal in accordance with law.

4. On appearance of the accused, the trial Court framed charge under Section 304-B IPC against the accused, read over and explained to them in their vernacular language, for which, they pleaded not guilty and claimed for trial.

5. To substantiate its case, the prosecution got examined P.Ws.1 to 11 and marked Exs.P-1 to P-9. On behalf of defence, no oral evidence was adduced, but Exs.D-1 and D-2 were marked during the cross-examination of P.Ws.1 and 3.

6. After evaluating the oral and documentary

evidence adduced by the prosecution, the trial Court found the accused not guilty of the offence punishable under Section 304-B IPC and acquitted them for the said offence. Aggrieved by the said judgment, the complainant preferred the present appeal.

7. Heard the learned counsel for the petitioner, learned Additional Public Prosecutor for the 1st respondent and the learned counsel for respondents 2 to 7/A-1 to A-6.

8. The learned trial Judge considered all the evidence adduced by the prosecution and came to conclusion that the prosecution failed to prove the case. The learned trial Judge has recorded the reason for not believing the evidence of the witnesses, more particularly, the close relatives of the deceased concerned. The learned trial Judge has recorded as follows:

“14. As per the provisions of Section 304-B of IPC, the prosecution has to establish that the deceased was subjected to cruelty to bring additional dowry that soon before her death, she was subjected to cruelty or harassment by her husband or relative of her husband. No injury is found on the dead body of the deceased except ligature mark, which indicates that she committed suicide. Further as per the evidence of P.W-4 (B. Sunitha) that by the time she reached the house of the deceased, she found A-1 to A-6 were present. If A-1 to A-6 have committed the offence, the question of their present at the place of offence does not arise. Though the defence counsel argued that the deceased is having suicidal tendency, but they did not chose to adduce any

oral or documentary evidence to establish the same. The question that the accused were demanding Rs.1 Lakhs as additional dowry, as such they subjected the deceased to cruelty as such she committed suicide is not proved by the prosecution. PWs-1 to 4 in their 161 Cr.PC statements did not state before the police that there was a demand of Rs.1 Lakh from the accused as additional dowry. So also they did not depose that how the accused persons have harassed the deceased specifically. Though PW-1 deposed that the accused beat the deceased but he did not state the same in his 161 Cr.PC statement. It was alleged in the 161 Cr.PC statement that the deceased was subjected to mental harassment and he received two or three phone calls from his daughter asking him to pay the dowry amount. To prove this, the seizure of the cellphone of A-1 and PW-1 is necessary. As the police failed to seize the cellphone of PW-1 and A-1, this fact was not proved. It was alleged that PW-1 received phone call at 2-00 pm, where the deceased informed that the accused are threatening that they will kill her else they have to pay dowry amount for which he assured to pay the dowry amount to the accused. Why PW-1 has assured to pay the amount and what made the deceased to commit suicide is not know. Therefore, the additional dowry which was said to have been demanded by the accused soon before the death of the deceased is the cause to commit suicide is not proved. Though the death of the deceased was in the house of her in-laws, but it does not mean that she

committed suicide only because of the demand made by the accused and harassment to bring additional dowry and as P.W-1 failed to pay the additional dowry, she committed suicide. Thus, the prosecution miserably failed to satisfy the ingredients under Section 304-B of IPC to prove the guilt of the accused, as such the accused are entitled for acquittal. Accordingly, this point is answered.”

9. The learned trial Judge is of the view that the allegations, which are made before the Court are with an intention to attract an offence under Section 304 IPC. It is not stated by the witnesses before the Investigation Officer when they were examined under Section 161 Cr.P.C. The material grounds are nothing but contradictions and the witnesses tried to improve their case with an intention to convict the respondents herein and the learned trial Judge has also taken into consideration the main ingredients of the offence under Section 304-B IPC, which reads as follows:

- i. The death of a women must have been caused by any burns or any bodily injury or otherwise than under normal circumstances;*
- ii. Such death must have been occurred within seven years of marriage;*
- iii. Soon before her death, she was subjected to cruelty or harassment by her husband or relatives of her husband;*
- iv. Such cruelty or harassment must be in connection with the demand of dowry;*
- v. Such cruelty is shown to have been meted out to the women soon before her death.”*

10. The learned trial Judge is of the view that none of the ingredients of Section 304-B IPC are proved by the prosecution in this Court and the trial Court has independently examined the evidence and perused the

records. As rightly pointed out by the learned trial Judge, the entire evidence adduced by the witnesses are not in consonance with the statements given by the Investigation Officer. The allegations made before the Court are made for the first time when the witnesses were examined as prosecution witnesses and it is also evident that there is no evidence of any harassment or cruelty, which is said to drive to commit suicide to attract an offence under Section 304 IPC and there is no nexus about the demand of additional dowry and also the death of the deceased concerned. Hence, this Court is of the view that the order of acquittal recorded by the trial Court against respondents 2 to 7/A-1 to A-6 is in accordance with law and there is nothing to interfere with the same.

11. Accordingly, the Criminal Appeal is dismissed. Miscellaneous petitions, if any pending, in this criminal appeal shall stand dismissed.

RAJA ELANGO, J

Date: 22nd July, 2016

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HONOURABLE SRI JUSTICE RAJA ELANGO

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