

PANAKANTI SAMPATH RAO

v.

STATE OF A.P.

MAY 18, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

*Penal Code, 1860:*

*ss.302 and 498-A—Husband along with his parents prosecuted for causing death of his wife within seven years of marriage—Evidence indicating cruelty and harassment of wife for dowry by husband—Medical evidence disclosing death by asphyxia due to throttling—Circumstances pointing out that husband caused death of his wife—Trial Court convicting all accused u/s 304-B, 498-A IPC and s. 4 of the Dowry Prohibition Act—High Court acquitting parents and converting conviction of husband from 304-B to 302—Held, accused is guilty of offence u/s 302—Conviction of accused by trial court for other offences also confirmed—Dowry Prohibition Act, 1961—s.4.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 946 of 2004.

From the Judgment and Order dated 18.4.2003 of the High Court of Judicature, Andhra Pradesh at Hyderabad in CrI. Appeal No. 81 of 2003.

Baijoyonta Barooah, for Sunil Kumar Jain for the Appellant.

P. Vinay Kumar and D. Bharathi Reddy, for the Respondent.

The Order of the Court was delivered :

#### ORDER

Heard Mr. Baijoyonta Barooah, learned counsel appearing on behalf of the appellant (A-1) and Mr. P. Vinay Kumar, learned counsel appearing on behalf of the respondent. This appeal is directed against the judgment and order dt. 18.04.2003 passed by the High Court of Andhra Pradesh in Criminal Appeal No. 81 of 2003 whereby the High Court has dismissed the appeal filed by the appellant herein challenging his conviction under Sections 498-A, 304-B of the IPC read with Section 3 of the Dowry Prohibition Act. The

A High Court has converted the conviction of the appellant under Section 302 IPC and sentenced him to undergo life imprisonment while acquitting the father and mother of the appellant (A-2 and A-3) from the convictions under Sections 498-A and 304-B read with Sections 2 and 3 of the Dowry Prohibition Act.

B The short facts are as follows:-

The appellant married Panakanti Kavitha. They lived together for three months in a rented house. According to the accused, he being a medical representative had to leave for Hyderabad on 06.08.2000 itself for official reasons. On 07.08.2000, the PW-8 pushed the door-wing of the house of Accused No.1 and found Panakanti Kavitha lying dead by the side of the cot on the ground with injuries in the body. On the same day, at about 7.55 p.m., P.W.-1 (the father of the deceased) filed a complaint at Karimnagar police station. The same was registered as a case in Cr.No.15/2000 for offences punishable under Sections 498-A, 302, 304-B IPC. The police recorded the statements of PW 3 to PW 6, PW 9, LW 14, PW 12, LW 16, PW 13 and LW 18 on 08.08.2000. A chargesheet was filed against the appellant and his father and mother as accused No. 2 and 3 for the offences under Section 498-A, 302, 304-B IPC and Sections 3 and 4 of the Dowry Prohibition Act. The Additional Judicial Magistrate 1st Class, Karimnagar registered the case as P&C No. 20/01 and committed the same to the Sessions Court, Karimnagar. The learned Sessions Judge, Karimnagar upon committal, registered the case as Sessions Case No. 36/2002. The Sessions Court examined 20 witnesses and the appellant, along with accused Nos. 2 and 3, were examined under Section 313 Cr.PC wherein they denied their involvement in the offences alleged.

The trial court, after taking in view the evidence adduced, convicted the appellant besides Accused Nos. 2 and 3 under Sections 498-A, 304-B IPC and Section 4 of the Dowry Prohibition Act and sentenced each of them as follows:-

“In view of the seriousness of the offence and with a view to curb the menace of the social evil dowry, I am inclined to sentence A-1 to A-3 to undergo rigorous imprisonment for a period of three years each and to pay fine of Rs. 5,000 each in default of payment of fine, they shall undergo simple imprisonment for

one month for the offence punishable U/s 498-A IPC. I also sentence A-1 to A-3 to undergo imprisonment for life for the offence punishable under Section 304-B IPC. I also sentence A-1 to A-3 to undergo rigorous imprisonment for a period of two years each and to pay fine of Rs.10,000 each in default of payment of fine, they shall undergo simple imprisonment for one month each for the offence punishable U/s 4 of Dowry Prohibition Act. All the sentences shall run concurrently. Out of the total fine amount of Rs.45,000 if paid, an amount of Rs.30,000 shall be paid to PW-2 who is the mother of the deceased as compensation. Mos.1 to 4 shall be destroyed after expiry of appeal time. The unmarked property [non-valuable] if any shall be destroyed after expiry of appeal time.”

Being aggrieved, the appellant, besides accused Nos. 2 and 3, filed Criminal Appeal Nos.81 and 536 of 2003 under Section 374[2] of Cr.P.C. before the High Court. An appeal under Section 378[3][1] Cr.P.C. was also filed being Criminal Appeal No.536 of 2003. The Division Bench of the High Court, after hearing the parties and after perusing the evidence on record, allowed the criminal appeal as far as accused Nos. 2 and 3 are concerned and dismissed the appeal of the appellant (Accused No.1). The Division Bench has also allowed the appeal filed by the State. Aggrieved by the same, the appellant (Accused No.1) has preferred the present appeal.

We have heard the learned counsel appearing on behalf of the appellant and the respondent. Learned counsel for the appellant has challenged the evidence on record and also the judgments rendered by the trial court as well as by the High Court. The learned counsel for the appellant submitted that the High Court is not justified in convicting the appellant under Section 498-A read with Section 4 of the Dowry Prohibition Act and reversing the conviction from Section 304-B IPC to Section 302 IPC without any reason and in the face of the overwhelming contradictions and discrepant testimony of the prosecution witnesses who all are close relatives of the deceased and are highly interested in conviction of the appellant more so in the presence of independent witnesses from whom nothing substantial could be elicited and majority of them being declared hostile. It is further submitted that the prosecution has not proved that the victim was subjected to cruelty and harassment for dowry soon before the death, which is totally lacking in the present case. He further submitted that the courts below overlooked the facts

A that the appellant was a medical representative and was required to go on official tours and on 06.08.2000 at about 6.00 p.m., he had to leave for Hyderabad after informing PW-10, a fact which is substantiated in the evidence of PW-9 and 10 and that he was not at all present at his residence when the fateful act was occurred. It is further submitted that the courts below totally ignored the aspect of suicide and delved into the conclusion solely relying upon the opinion of the doctor and further erred in holding the death to be homicidal in nature inasmuch as in the post-mortem report injury No.4 was caused at the right knee and below knee patella being dislocated no swelling was found which clearly goes to show that it was a case of hanging and not throttling. He also submitted that the High Court has committed a grave mistake in convicting the appellant under Section 302 IPC.

D The learned counsel appearing for the respondent submitted that the High Court has come to the right conclusion after keeping in view the evidence on record in its proper perspective and, therefore, the judgment passed by the High Court does not call for any interference.

E We have carefully gone through the judgments passed by the learned Sessions Judge and also the High Court and perused the evidence adduced in this case. The charge against the appellant-accused is that on 06.08.2000, the accused was alleged to have caused the death of the deceased within seven years of marriage by subjecting her to cruelty and harassment for more money. The case of the prosecution has been extensively dealt with by the High Court in paragraph 5 of its judgment. It is also the case of the prosecution that on the date of shifting of the house by the accused at the request of the accused P.W.-1 went to their house where A-1 (the appellant herein), in the presence of A-2 and A-3, demanded him to pay the balance of the amount of dowry due and also to provide extra furniture. At that time, P.W.-1 gave Rs.10,000 to A-1 for purchase of extra furniture. During holidays, the deceased used to visit the house of PW 1 and PW 2 and informed them about the demand for dowry made by the accused. Therefore, F PW-1 gave cash of Rs.70,000 to A-2 as agreed upon. It is also alleged that G on 06.08.2000, at about 06.08.2000 when P.W.-1 telephoned to PW-10 to know about the welfare of the deceased, P.W.-8 the daughter of PW-10, informed him that A-1 was not in the house and that the deceased is not responding to her call. It is also alleged that on 07.08.2000 at about 6.00 a.m., H PW-8 while collecting water from the tap called the deceased, but as there

was no response, PW-8 went to the portion of the house of the deceased and pushed the door and the door opened and so she entered the house and found the deceased lying on the floor by the side of her bed, and not responding to her calls.

We have also perused the post-mortem certificate. According to P.W.-17, Civil Asstt. Surgeon, Govt. Hospital, Karimnagar who conducted the autopsy over the dead body and issued P.11 M.E. Certificate, the cause of death was due to asphyxia due to throttling. P.-11 M.E. certificate shows the following injuries :-

1. "Multiple minor abrasions over sternum with medial side of right shoulder.
2. Contusions both upper arms middle 1/3 10X6 cm left upper arm. 8 cm x 6 cm right upper arm.
3. Contusions in front and around the neck;
  - a) Three over left side of neck, extending from upper end of thyroid cartilage to below the left ear (6 cm)
  - b) Extending from Thyroid cartilage to middle of the neck, 7 cm from the cartilage;
  - c) Lower end of Thyroid cartilage to left supra clavicular region 6 1/2 cm.
  - d) One contusion over right side of the neck from Thyroid cartilage to right side of cervical spine 10 x 3/4 cm.
4. Multiple minor abrasion over right knee and below the knee patella dislocated.
5. Hyoid bone intact.
6. Rupture of right eye ball corneal traumatic. Lungs congested. Stomach containing pinkish liquid. Liver congested."

It is the evidence of the doctor that the deceased died on account of asphyxia due to throttling and the approximate time of death was about 30 to 42 hours prior to his post mortem examination. The doctor further stated that it was not a case of suicidal death, but a homicidal death.

A We have carefully perused the evidence tendered by P.W.-17 (the doctor). He was cross-examined by the counsel appearing for the accused. He has not elicited anything from him to discredit his evidence-in-chief and the certificate issued under Exh.P.W.-11. The doctor was of the opinion that the possibility of using rope is ruled out and that the injury No. 4 is not possible in the case of hanging and that injury No.4 might be possible due to pressure applied either with hand or with legs and the nails can create multiple abrasion. He also denied the suggestions that his opinion as to asphyxia due to throttling is incorrect and that it is a case of suicidal hanging.

C As already noticed, the prosecution in order to prove its case examined as many as 20 witnesses and got marked PW-1 to PW-21. The defence marked two contradictions as Exh.D-1 and Exh.D-2. Out of the witnesses examined by the prosecution, P.W.11, 12 and 13 did not support the case of the prosecution and were declared hostile.

D We have also considered the evidence tendered by the above witnesses and we are convinced that the involvement of A-1 (the appellant herein) has been clearly established. It is in the evidence of prosecution witnesses that A-1 and the deceased were staying in a rented house belonging to PW-9 in Bhagyanagar locality situated at No.2-10-1370 and the appellant and the deceased were the only persons who were residing at the said house. The Evidence of P.W-8, the daughter of P.W.-10, shows that on 07.08.2000 at about 6.00 a.m., PW-8 while collecting water from the tap called the deceased, but as there was no response PW-8 went to the portion of the deceased and pushed the door and the door was opened and so she entered the house and found the deceased lying on the floor by the side of her bed, and not responding to her calls. P.W.-4, the aunt of the deceased was also residing at Karimnagar where the deceased was living clearly stated about the harassment and cruelty by the appellant. As rightly pointed out by the High Court, we also see no grounds or reasons to disbelieve the evidence of P.W.4 regarding cruelty and harassment of the deceased for dowry by the appellant.

G There is ample evidence which shows that the appellant has harassed and ill-treated the deceased for dowry and the circumstances point out that he has caused the death of the deceased. Therefore, we find the appellant (A-1) guilty of the offence under Section 302 IPC. The conviction and the sentence recorded by the learned Sessions Judge against the appellant for the other offences is also confirmed and we direct that the substantive sentence shall run concurrently. In the result, we affirm the order passed

by the High Court and dismiss the appeal.

A

The High Court has imposed the fine of Rs. 15,000 on A-1 and ordered the payment of Rs.10,000 as compensation to P.W.-2. In the facts and circumstances of the case, we are of the opinion that the fine imposed by the High Court is very high and we, therefore, reduce the fine from Rs. 15,000 to Rs.1,000. In default, he shall undergo the simple imprisonment for one week.

B

We place on record our appreciation in the manner in which the appeal was ably argued by the learned counsel for the appellant Mr. Baijoyonta Barooah who was appointed as the counsel by the Supreme Court Legal Services Committee. We, therefore, direct the Supreme Court Legal Services Committee to pay a sum of Rs.3,000 towards fees to the learned counsel for the appellant as a special case. The appeal stands dismissed accordingly.

C

R.P.

Appeal dismissed.