

Akula Ravinder and others

Vs

State of A.P.

Criminal Appeal No.350 of 1990

(S. R. Pandian, K. Jayachandra Reddy JJ)

11.01.1991

ORDER:-

1. It is a case of dowry death. There are three appellants. First appellant is the husband of the deceased wife. The second appellant is his father and third appellant is his mother. All the three were tried for offence punishable u/ Ss. 498-A IPC, 302 IPC and 201 IPC. The trial court convicted all the three u/ S. 498A and sentenced each of them to undergo two years' imprisonment. They were also convicted u/ Ss. 304B and 498A, IPC. First appellant was sentenced to 10 years and other two for seven years. They were acquitted of the charge of the offence under S. 201, IPC. In the appeal the learned single Judge of the High Court confirmed the conviction but reduced the sentence of A-1 to seven years rigorous imprisonment. Aggrieved by the said judgment this appeal, pursuant to the special leave granted by this Court, is before us. The learned counsel for the appellants submits that the cause of death is not established and therefore all the ingredients of S. 304B, IPC are not made out. It is also submitted that in the absence of charge u/ S. 304B the appellants ought not to have been convicted. The last submission of the learned counsel is that there is no evidence to show that the appellants namely A-2 and A-3 were in any manner responsible for the death of the deceased.

2. To appreciate these submissions it is necessary to state the facts which have given rise to this appeal. The deceased as well as the accused, their parents are closely related. The deceased is A-2's sister's daughter. The marriage took place in the month of April, 1984. At the time of the marriage a demand was made out for a dowry of Rs. 10,000/-. But the parents of the deceased PW-1 paid Rupees 8,000/- and promised to pay the balance amount some time after marriage. But they could not pay. The accused harassed the deceased for the payment of the balance amount. A-1 was working in Army and used to come now and then and used to demand the balance of the dowry from the parents of the deceased and he also used to join with the other two accused in harassing the deceased. The deceased died in the month of April, 1987 i.e. within seven years from the date of marriage. The dead body showed some external injuries. The parents were informed. The report was lodged. The case was registered. The dead body was sent for post-mortem. The doctor PW-8 who conducted the post-mortem opined that death was homicidal in nature and was not a suicidal. The viscera was not sent for examination since the doctor did not suspect that the death was due to poisoning. The prosecution examined PWs. 1, 2, 4 and 7 to prove about the demand of the dowry made out to the deceased. The trial court, however, did not accept the prosecution case that the death was due to asphyxia because it appeared from the investigation that the deceased survived for about 15 minutes even after death as per PW 3 who is the first doctor who examined and gave the first aid to the deceased. However, both the courts below held that alternatively the offence u/ S. 304B is made out.

3. A perusal of the S.304B shows that one of the essential ingredients that has to be established is

that death was otherwise than in normal circumstances. In this case no doubt, the other circumstance namely that the death occurred within seven years of the marriage and that before her death they have harassed her for demand of dowry are established. Coming to the other ingredient we find that the prosecution has miserably failed to establish that death was otherwise than in normal circumstances. The learned counsel appearing for the State, however, submits that the deceased was young and the death was not due to natural cause nor it was due to an accident and the only inference that can be drawn is that it was otherwise than under normal circumstances. In a case of this nature where the prosecution has failed to establish that it was an unnatural death it cannot be surmised that death must be due to unnatural circumstance. In this context the framing of the charge and the circumstances that are put to accused u/ S. 313, Cr. P.C. also assume importance. The charge was u/ S. 302, IPC and the contents of the charge are to the effect that death was only due to asphyxia. In the examination of S. 313 it was not even indicated that the death could be due to poisoning. In any event in view of the facts and circumstances regarding the death, it has become very difficult, rather impossible, to hold that the death was otherwise than the normal circumstances and consequently we are constrained to hold that this important aspect of S. 304B is not met out. Consequently the appellants are entitled to acquittal of the said offence.

4. In this case we do not propose to examine the other submission namely that in the absence of charge u/ S. 304B the conviction cannot be awarded since we are acquitting the appellants of the charge of the offence punishable u/ S. 304B, IPC.

5. So far as offence u/ S. 498A is concerned the evidence of P.Ws. 1, 2, 4 and 7 would show beyond a reasonable doubt that the three appellants were harassing the deceased and making the demand for dowry. The evidence would show that the deceased was subjected to cruelty within the meaning of S. 498A, IPC. For the aforesaid reasons the conviction of the appellants u/ S. 304B, IPC, sentence of 7 years' imprisonment awarded against each of them are set aside. Conviction u/ S. 498A, IPC and the sentence of 2 years are maintained with default clause. The appeal is partly allowed.

Appeal partly allowed.

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