

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.02 OF 2009

Between:

Pasuladi Ramesh

... Appellant

And

The State of Andhra Pradesh,
rep by its Public Prosecutor,
Hyderabad

... Respondent

DATE OF JUDGMENT PRONOUNCED: 11.08.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No. 2 of 2009

% Dated 11.08.2022

Pasuladi Ramesh

... Appellant

And

\$ The State of Andhra Pradesh,
rep by its Public Prosecutor,
Hyderabad

..Respondent

! **Counsel for the Appellant:** P.Prabhakar Reddy

^ **Counsel for the Respondent:** Public Prosecutor

> **HEAD NOTE:**

? **Cases referred**

¹ (2022) 5 Supreme Court Cases 401

HON'BLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.02 OF 2009

JUDGMENT:

1. The appellant is convicted and sentenced to undergo imprisonment for six months and to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for six weeks for the offence under Section 4 of the Dowry Prohibition Act, the accused is further convicted and sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for one month for the offence under Section 498-A of IPC and the appellant is further convicted and sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months for the offence under Section 304-B of IPC. Aggrieved by the same, the present appeal is filed.

2. The case of the prosecution is that P.Ws.1 and 2 are the parents of the deceased Jyothi, who is the wife of the appellant/accused. Both the deceased and the appellant eloped and got married elsewhere in the month of December 2006. Three

months after the marriage, they returned to the village and started living together in the house of the appellant.

3. P.W.1 and others did not oppose the marriage as they belong to same community. However, the appellant started harassing the deceased to get the dowry from P.W.1. According to P.W.1, he was prepared to marry the deceased with another person namely Yadagiri giving dowry of Rs.1,40,000/-. The appellant started harassing the deceased to get Rs.1,40,000/- from P.W.1. He started beating the deceased and ultimately on 09.06.2007 at 9.00 p.m, the appellant poured kerosene on the deceased and set her on fire.

4. Learned counsel for the appellant submits that the witnesses P.Ws.1 and 2 who are parents have exaggerated regarding their alleged demand of dowry, which is not found in the complaint Ex.P1 which was lodged at the earliest point of time except stating vaguely that there was demand for dowry. No specific instance or the quantum of dowry was mentioned in the complaint. The crucial evidence is the dying declaration recorded under Ex.P6 by the Magistrate-P.W.9. In the said Dying Declaration, the deceased

stated that the appellant fought with the deceased and beat her. The father of the appellant gave Rs.5,000/- to the appellant, the appellant gave the said amount to his friend and failed to collect interest. When the deceased questioned the appellant and for the said reason, there was a quarrel and accordingly, she threatened that she would pour kerosene on herself and though poured kerosene on herself, the appellant did not pay attention. The deceased further stated that when she stated that she was going to lit herself, even then the appellant did not stop her and when she lit herself, the neighbours came there and took her to the hospital.

5. Counsel submits that the Dying Declaration is totally contradictory to what the witnesses stated regarding dowry. There is no mention of any dowry in the Dying Declaration. Even according to her declaration she committed suicide but her parents stated that appellant burnt her. In the said circumstances, the appellant is liable to be acquitted.

6. Learned Assistant Public Prosecutor submits that there is a presumption that is raised under Section 113-B of the Indian Evidence Act for the reason of the deceased dying of an unnatural

death within seven years of marriage, the appellant has failed to discharge his burden and for the said reason, conviction under Section 304-B of IPC cannot be set aside.

7. The alleged incident of the deceased setting herself on fire and attempting suicide was on 09.06.2007 and the Dying Declaration was recorded on 11.06.2007. The complaint, Ex.P1 was filed on 12.06.2007. The deceased died on 15.06.2007. The complaint Ex.P1 was lodged after three days of the incident. In the said complaint P.W.1 has not mentioned anything about the dowry that was demanded by the appellant. It is stated in Ex.P1 complaint that the deceased informed P.W.1 that the appellant was asking for dowry and the parents-in-law and the brother of the appellant also harassed her for dowry. For the said reason, she attempted suicide on 09.06.2007. During the course of examination before the Court, P.W.1 stated regarding Rs.1,40,000/- to be given to one Yadagiri and it was the admission of the appellant that Rs.1,40,000/- was demanded. P.W.2, who is the mother of the deceased stated that Rs.1,00,000/- dowry was to be given to one Mallesham, who was to marry the deceased and the Rs.30,000/- was taken from the house

before the deceased and the appellant eloped. PW.2 further stated that Rs.5,00,000/- and five tulas was demanded by the appellant.

8. The entire story regarding the demand of dowry of Rs.1,40,000/- or Rs.1,00,000/- or eloping with Rs.30,000/- were all stated for the first time before the Court. Even during their statement under Section 161 of Cr.P.C before the police, no such instances were narrated by any of these witnesses.

9. Admittedly, the deceased and the appellant eloped and got married and lived at some places for a period of three months. There was never any complaint regarding the elopement or regarding the alleged harassment after they came back and started living in the village. In Ex.P1 complaint, except stating that the parents of the appellant and also his brother harassed for additional dowry, there is no specific instance or the amount that was asked by them. The police, after investigation found that the parents and brother and appellant had nothing to do with the alleged offence, for which they were not charge sheeted.

10. The narration by the deceased in her Dying Declaration Ex.P6 was that there was an altercation regarding the interest amount

that had to be paid by the friend of the appellant. For the reason of the deceased demanding the appellant to get interest amount, there was quarrel between them and for which reason, she threatened the appellant that she would commit suicide and accordingly, poured kerosene on herself and lit fire. There is no whisper of any kind of harassment for additional dowry or that the appellant had asked the deceased or her parents to bring any dowry. In the said circumstances, when the complaint was lodged with delay of three days, without narrating any instance of dowry demand and also several improvements made during the course of their evidence before the Court contradicting one another, such evidence regarding demand for dowry cannot be believed. Further the deceased appears to be too sensitive to normal issues and reacted abnormally to the situation of the appellant not getting interest from his friend for the money loaned by appellant, taking money from his father.

11. The Hon'ble Supreme Court in the case of **State of Madhya Pradesh v. Jogendra**¹, held as follows:

¹ (2022) 5 Supreme Court Cases 401

“9. The most fundamental constituent for attracting the provisions of Section 304-B IPC is that the death of the woman must be a dowry death. The ingredients for making out an offence under Section 304-B have been reiterated in several rulings of this Court. Four prerequisites for convicting an accused for the offence punishable under Section 304-B are as follows:

(i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;

(ii) that such a death must have occurred within a period of seven years of her marriage;

(iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and

(iv) that such a cruelty or harassment must have been for or related to any demand for dowry.”

12. The appellant was also convicted under 498A of IPC. For the reasons mentioned in the above paras, no case of cruelty is made out.

13. For the said reasons, the appellant is found not guilty for the offence under Sections 4 of Dowry Prohibition Act and Sections 304-B and 498-A of IPC.

Accordingly, the Criminal Appeal is allowed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date:11.08.2022

Note: LR copy to be marked.

B/o.kvs

HON'BLE SRI JUSTICE K.SURENDER

Cr1.A.No.2 of 2009

Dated:11.08.2022

kvs