

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

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**Criminal Appeal No.933 OF 2009**

Between:

Aspathi Raju.

... Appellant

And

The State of Andhra Pradesh,  
Rep. by Public Prosecutor,  
High Court of A.P, Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 30.08.2022

Submitted for approval.

**THE HON'BLE SRI JUSTICE K.SURENDER**

- |   |                                                                            |        |
|---|----------------------------------------------------------------------------|--------|
| 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 |

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**K.SURENDER, J**

\* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No. 933 of 2009

% Dated 30.08.2022

# Aspathi Raju.

... Appellant

And

\$ The State of Andhra Pradesh,  
Rep. by Public Prosecutor,  
High Court of A.P, Hyderabad.

...Respondent

! **Counsel for the Appellant:** Sri Vikas Joshi

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

>HEAD NOTE:

? Cases referred

1 (2021) 6 Supreme Court Cases 1

2 (2019) 4 Supreme Court Cases 522

**THE HON'BLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.933 OF 2009****JUDGMENT:**

1. The appellant is convicted and sentenced to undergo rigorous imprisonment for a period of seven years under Section 304-B IPC, further sentenced to undergo rigorous imprisonment for two years under Section 498-A of IPC and further sentenced to undergo rigorous imprisonment for a period of one year under Section 4 of Dowry Prohibition Act vide judgment in SC No.138 of 2009, dated 27.07.2009 passed by the I Additional Sessions Judge at Karimnagar. Aggrieved by the same, the present appeal is filed.

2. The appellant is the husband of the deceased. The acquitted accused i.e., A2 and A3 are the mother and brother of A1/appellant herein. According to the prosecution case, P.W.1, who is the brother of the deceased filed a complaint stating that the appellant was married to his sister. At the time of marriage, Rs.2,50,000/- towards dowry and 5 ½ tulas gold and other household articles were given. Both lead normal marital life for a period of six months. However, the appellant started harassing

the deceased physically and mentally stating that he would marry second time. For the said reason, panchayat was held on 24.09.2006 in the presence of P.Ws.3, 6, 7 and 9 and other elders. In the said panchayat, the appellant executed an agreement before the elders that he would look after the deceased well and will not marry another woman. However the harassment continued and the deceased was harassed for additional dowry, 15 days prior to the incident. P.W.1 paid an amount of Rs.15,000/- to the appellant. On 31.05.2008, the appellant called when the deceased was in the house of P.W.1 and asked her to get back. P.W.1 received a phone call from Bhoomaiah, who informed that the deceased died an unnatural death. The police after investigation filed charge sheet on the allegation that on 01.06.2008, the appellant, A2 and A3 throttled the deceased and threw her in the agricultural well of one Chakali Somaiah, which is at a distance of 250 yards from their house and created a scene of suicide. The police could not arrive at a conclusion whether the deceased committed suicide or whether the death was homicidal, for which reason police filed

charge sheet under Sections 498-A , 304-B, 302 and 201 of IPC and Section 4 of the Dowry Prohibition Act.

3. The prosecution examined P.Ws.1 to 16 and after considering the evidence on record, the learned Sessions Judge found that the death was suicidal and convicted the appellant as stated above and acquitted A2 and A2 for all the offences.

4. The learned Sessions Judge found that six months after the Panchayat that was held, the appellant started harassing the deceased for Rs.50,000/- and unable to bear his harassment, the deceased committed suicide by jumping into the well.

5. The learned counsel for the appellant submits that there are two first information reports in this case and the first FIR was suppressed. During the course of examination of P.W.1, he specifically mentioned that as on the date of incident, ten family members went to the village and while going to the village of the appellant, they lodged police complaint in PS Huzurabad stating that the deceased was found missing. The said complaint was suppressed by the prosecution and whether the FIR was registered or not has to be explained by the prosecution. When

the missing compliant is filed it corroborates with the defence version that the deceased might have accidentally fallen into the well and since she was not found, a missing complaint was given. He further submits that P.Ws.1 to 4 who are interested witnesses have supported the prosecution case. However, P.Ws.5 to 9 have turned hostile to the prosecution case and P.W.13 who was an elder in the Panchayat stated about the dowry and also advise given to the deceased and the appellant to lead a cordial life. The very genesis of the case of the prosecution is suppressed by the prosecution for which reason, the appellant is entitled to acquittal. Further, the allegation made against this appellant and A2 and A3 are one and the same. The learned Sessions Judge has not given any reasons to convict the appellant, while acquitting A2 and 3..

6. On the other hand, learned Assistant Public Prosecutor submits that the probable witnesses to any harassment in a family would be close relatives of the wife. In such case, there is nothing to disbelieve the evidence of the witnesses P.Ws.1 to 4 and independent witness P.W.13, who supported the case of the

prosecution stating that a panchayat was held regarding the disputes between the deceased and the appellant.

7. The evidence on record would go to show that there were differences between the deceased and the appellant. The said differences were with respect to the appellant trying to marry second time, for which reason, a panchayat was held. PW.13 who held panchayat specifically stated that panchayat was held for the reason of the appellant trying to marry second time and did not make any mention about any demand for additional dowry. In the complaint, Ex.P1, P.W.1 stated that the appellant took an amount of Rs.5,000/- for taking up Anjaneyaswamy Diksha. In the said circumstances, taking amount for the Diksha as stated by P.W.1 will not amount to demand for dowry. The word 'dowry' can be associated with any amount, which is demanded prior or during or subsequent to marriage in consideration of marriage. In the present case, when the appellant had taken the amount for meeting the expenditure of Diksha, it cannot be said that it forms additional dowry. P.W.1 has stated during examination before the Court that there was a demand for Rs.50,000/- as additional dowry, which was not

stated at the earliest point of time when the complaint was lodged.

8. In *Satbir Singh v. State of Haryana* [(2021) 6 Supreme Court Cases 1], while explaining the words ‘soon before’ and ‘death’, the Hon’ble Supreme Court held as follows:

“16. The aforesaid position was emphasized by this Court, in the case of *Kans Raj v. State of Punjab*, (2000) 5 SCC 207, wherein the threeJudge Bench held that:

“15. ... “Soon before” is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any timelimit. ... In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. .... Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.” (emphasis supplied) A similar view was taken by this Court in *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477.

17. Therefore, Courts should use their discretion to determine if the period between the cruelty or harassment and the death of the victim would come within the term “soon before”. What is pivotal to the above determination, is the establishment of a “proximate and live link” between the cruelty and the consequential death of the victim.

19. This Court, in the case of *Bansi Lal v. State of Haryana*, (2011) 11 SCC 359, emphasized the mandatory application of the presumption under [Section 113B](#) of the Evidence Act once the ingredients of [Section 304B](#) of [IPC](#) stood proved:

“19. It may be mentioned herein that the legislature in its wisdom has used the word ‘shall’ thus, making a mandatory application on the part of the court to presume that death had been committed by the person who had subjected her to cruelty or harassment in connection with any demand of dowry. Therefore, in view of the above, onus lies on the accused to rebut the presumption and in case of [Section 113B](#) relatable to [Section 304B IPC](#), the onus to prove shifts exclusively and heavily on the accused. ...

20. Therefore, in case the essential ingredients of such death have been established by the prosecution, it is the duty of the court to raise a presumption that the accused has caused the dowry death.”

9. In *Digamber Vaishnav v. State of Chattisgarh* [(2019) 4 Supreme Court Cases 522], the Hon’ble Supreme Court held as follows:



“16. In order to sustain the conviction on the basis of circumstantial evidence, the following three conditions must be satisfied:

- i.) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
- ii.) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; and iii.) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else, and it should also be incapable of explanation on any other hypothesis than that of the guilt of the accused.

17. In [Varkey Joseph v. State of Kerala](#), 1993 Suppl (3) SCC 745, this Court has held that suspicion is not the substitute for proof. There is a long distance between 'may be true' and 'must be true' and the prosecution has to travel all the way to prove its case beyond reasonable doubt.

18. In [Sujit Biswas v. State of Assam](#), (2013) 12 SCC 406, this Court, while examining the distinction between 'proof beyond reasonable doubt' and 'suspicion' has held as under:

"13. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved, and something that “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large, and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between mere conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny, based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure, that miscarriage of justice is avoided, and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense".

10. The allegation of demand of Rs.50,000/- was subsequent improvement during the course of trial for which reason, it cannot be believed that there was a demand ‘soon before the death’. However, the evidence is consistent regarding the appellant trying to marry again for which reason, a panchayat was held. The said attempts made by the appellant to marry second time amounts to cruelty punishable under section 498A of IPC.

11. For the aforementioned reasons, the conviction recorded under Section 304-B of IPC is set aside. However, the conviction recorded under Section 498-A of IPC is sustained. Since the offence is of the year 2008 and 14 years have lapsed, this Court deems it proper to reduce the sentence of imprisonment to the period already undergone under section 498A of IPC.

11. Accordingly, Criminal Appeal is disposed off.

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**K.SURENDER, J**

Date:30.08.2022

Note: LR copy to be marked.

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THE HON'BLE SRI JUSTICE K.SURENDER

Cr1.A.No.933 of 2009

Dated:30.08.2022

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