

THE HONOURABLE SRI JUSTICE A.SANTHOSH REDDY

CRL.A.No.30 OF 2016

JUDGMENT:

This criminal appeal under Section 374(2) Cr.P.C., is directed against the judgment dated 06.01.2016 in S.C.No.326 of 2012, on the file of the V-Additional Metropolitan Special Judge (Mahila Court) at Hyderabad, whereby and whereunder the appellants-A-1 to A-3 were convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.500/- each in default to undergo simple imprisonment for two months for the offence punishable under Section 304-B IPC.

2. Heard the learned counsel for the appellants-A-1 to A-3 and learned counsel for the respondent-State. Perused the material on record.

3. The prosecution case, in brief, is as follows:-

A-1 is the husband of the deceased Rubina Begum. Their marriage was held on 23.11.2010. A-2 and A-3 are the parents of A-1. At the time of marriage, the parents of the deceased presented cash of Rs.25,000/-, 5 grams of gold and other household articles.

They also agreed to give another 5 grams of gold to A-1 soon after marriage. After marriage, the deceased started living with her husband in a rented house and her husband was working as a Mechanic. Since two months prior to the incident, her husband started harassing her by demanding her to bring 5 gms of gold as agreed by her parents and A-1 even beat her several times. He also demanded her mother to give the same. On 11.09.2011, in the evening at about 06:40 p.m., A-1 abused her saying that her younger brother Feroz is not going to any work and picked up quarrel with the deceased and abused her. The deceased got vexed on her life and attempted to commit suicide by pouring kerosene and set herself ablaze at her residence. The mother of the deceased and A-1 shifted her to Osmania General Hospital for treatment. P.W.13, the Inspector of Police, recorded her statement under Ex.P-7 on the basis of which, a case in Cr.No.218 of 2011 was registered by police against A-1 to A-3 for the offences punishable under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. Ex.P-8 is the F.I.R. P.W.13 gave requisition to P.W.5, V-Additional Chief Metropolitan Magistrate, Hyderabad,

to record the dying declaration of the deceased and P.W.5 visited the hospital and recorded the dying declaration-Ex.P-3 of the deceased. P.W.13 visited the scene of offence and examined P.W.2 and Mr.Ahmed Khan, brother and father of the deceased and recorded their statements. He also recorded the statements of P.W.1, who is mother of the deceased. P.W.13 examined the scene of offence and prepared scene of offence panchanama in the presence of P.W.7 and another. Ex.P-4 is the observation panchanama. On 13.09.2011 at about 01:30 a.m., police received information that the deceased succumbed to injuries and P.W.1 requested to take necessary action against A-1 to A-3, as they have tortured and harassed the deceased demanding additional dowry due to which she committed suicide. P.W.13 addressed letter to the then Tahsildar-P.W.4 to conduct inquest over the dead body of the deceased. P.W.4 held inquest over the dead body of the deceased in the presence of P.W.6 and another and as per the opinion of the panchas, the cause of death was due to harassment and torture by her husband (A-1) and her in-laws (A-2 and A-3). After inquest, the dead body of the deceased was sent for

post-mortem examination. P.W.9 is the doctor, who conducted post-mortem examination over dead body of the deceased. At the time of death, she was carrying 7th month pregnancy. Ex.P-1 is the inquest report. Later, P.W.13 altered the section of law from Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act to Section 304-B IPC. Subsequently, P.W.11 took up investigation and visited the scene of offence and examined the neighbours P.W.3 and others (L.Ws.5, 6 & 8) and recorded their statements. The deceased suffered ante-mortem infected surface burns involved all over the body of 98% burns body area and succumbed to burns on 13.09.2011. Ex.P-6 is the post mortem certificate. P.W.8 is a plastic surgeon who treated the deceased prior to her death and he gave Ex-P-5 certificate. After completion of investigation, charge sheet came to be submitted before the XVI Additional Chief Metropolitan Magistrate, Hyderabad.

4. The learned Magistrate took the charge sheet on file and numbered it as P.R.C.No.52 of 2011 and committed the case to the court of Metropolitan Sessions Judge, Sessions Division, Hyderabad. The learned Metropolitan Sessions Judge took the

case on file as S.C.No.326 of 2012 and made over the same to the court of V-Additional Metropolitan Sessions Judge-, Hyderabad for disposal according to law.

5. The trial court on hearing the prosecution and the accused framed the charge under Section 304-B IPC against A-1 to A-3, read over and explained the same to them. The accused pleaded not guilty and claimed to be tried.

6. The prosecution examined P.Ws.1 to 13 and marked Exs.P-1 to P-10 and marked Exs.P-1 to P-10 and produced material objects M.Os.1 to 4.

7. The trial court, on considering the evidence on record and on hearing the prosecution case and learned counsel for the accused, found A-1 to A-3 guilty for the offence punishable under Section 304-B IPC and convicted them for the same and imposed sentence as stated supra. Aggrieved by the said conviction and sentence, the present appeal is filed by appellants-A-1 to A-3.

8. The learned counsel for the appellants-A-1 to A-3 submits that the evidence of P.Ws.1 and 2 do not indicate the specific

demands of dowry against the accused and, therefore, the charge under Section 304-B IPC fails and except the interested testimony of P.Ws.1 and 2, there is no evidence to speak of dowry demand soon before the death of the deceased. As such, the conviction of the appellants is not legal and proper and the same is liable to be set aside. The learned counsel relied on the following decisions:

- i) **HARJIT SINGH v. STATE OF PUNJAB**¹
- ii) **MANOHAL LAL v. STATE OF HARYANA**²
- iii) **BHOLA RAM v. STATE OF PUNJAB**³
- iv) **BALAK RAM AND ANOTHER v. STATE OF U.P**⁴
- v) **MAMIDI VENKANNA @ VENKAIAH @ PRAKASAM v. STATE OF A.P**⁵
- vi) **MAHESH KUMAR v. STATE OF HARYANA**⁶
- vii) **STATE OF MAHARASHTRA V. HEMANT KAWADU CHAURIWAL AND OTHERS**⁷

¹ (2006) 1 SCC 463

² AIR 2004 SC 2555

³ AIR 2014 SC 241

⁴ AIR 1974 SC 2165

⁵ 2002(2) ALT (CrL.) 569 (DB)

⁶ 2019(2) ALD (CrL.) 710 (SC)

⁷ (2015) 17 SCC 598

9. The learned Assistant Public Prosecutor appearing for the respondent-State submits that the prosecution evidence is cogent and consistent with regard to the dowry demand made by A-1 to A-3 and the harassment of the deceased and the said judgment is not required to be interfered with.

10. Section 304-B IPC deals with dowry death, which reads as follows:

"304-B. Dowry death :

(1) where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation. For the purpose of this sub-section, "dowry" shall have the same meaning as in S.2 of the Dowry Prohibition Act, 1961 (28 of 1961)

(2) whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

11. In order to attract application of section 304-B IPC, the essential ingredients are as follows:

- (i) the death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance;
- (ii) such a death should have occurred within seven years of her marriage;
- (iii) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (iv) such cruelty or harassment should be for or in connection with demand of dowry;
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

12. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted by the Dowry Prohibition (Amendment) Act, (43 of 1986), with a view to combat the increasing menace of dowry deaths. Section 113-B of the Evidence Act reads as follows:

"113-B. Presumption as to dowry death:- when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any

demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation: for the purpose of this section, "dowry death", shall have the same meaning as in section 304 - b of the Indian Penal Code (45 of 1860).

13. The presumption under section 113-B of the Evidence Act, shall be raised only on proof of the following essential ingredients:

(1) the question before the court must be whether the accused has committed the dowry death of a woman. (this means that the presumption can be raised only if the accused is being tried for the offence under section 304-B IPC).

(2) the woman was subjected to cruelty or harassment by her husband or his relatives. (3) such cruelty or harassment was for, or in connection with any demand for dowry.

(4) such cruelty or harassment was soon before her death.

14. The determination of the period which can come within the term 'soon before' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty

or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

15. In view of the above stated legal position, in the present case, the following question that would arise for determination is – whether the conviction of appellants-A-1 to A-3 recorded by the trial court for the offence under Section 304-B IPC is sustainable, both in law and on facts?

16. It is important to note that it is not enough that the harassment or cruelty was caused to the woman with a demand for dowry at some time if Section 304-B is to be invoked, but it should have happened ‘soon before her death’.

17. P.W.1, who is mother of the deceased, deposed that A-1 married her elder daughter Rubina (deceased) in the year 2010 and during marriage they have given cash of Rs.25,000/-, half gold,

besides household articles and also promised to give half tola after marriage. She further deposed that the accused started demanding additional dowry and she used to pay. Her daughter informed her that A-1 used to beat her for not bringing additional dowry as demanded. A-2 and A-3 used to abuse her. On the day of incident, she was informed by A-1 that Rubina attempted suicide. She further deposed that prior to her death, there was a panchayat about the giving of gold and she promised to provide the gold before or after Ramzan. She accompanied her daughter to the hospital and she informed her that the accused abused her and she committed suicide. In cross-examination, she stated that the marriage between A-1 and deceased was love marriage and after marriage, A-1 and her daughter took a room on rent and are residing separately. She also admitted that A-1 was a motor mechanic.

18. P.W.2, who is brother of the deceased, corroborated the evidence of P.W.1 and stated that his sister Rubina lived happily for six months and thereafter, A-1 started harassing her. A-2 and A-3 instigated A-1 demanding half tola gold. On 11.09.2011, his

sister came to their house and at about 06:00 or 06:30 p.m., she was taken back by the accused and at about 07:00, accused informed him that his sister committed suicide.

19. P.W.3 is an independent witness and he deposed that a panchayat was held at the house of P.W.1 regarding giving of 5 gms gold to the accused by the parents of the deceased. In the said panchayat, the deceased Rubina Begum informed him that the accused are harassing her for gold and P.W.1 promised to fulfill the said demand in and around Ramzan festival.

20. P.W.4 is the Deputy Tahsildar who held inquest over the dead body of the deceased in the presence of P.W.6 and another. She deposed that as per the opinion of panchas, the cause of the death was due to harassment by her husband and her in-laws and at the time of death, she was 7 months pregnant.

21. P.W.6, who is the panch witness for inquest panchanama, deposed that he was present at the time of conducting panchanama under ExP-1.

22. P.W.5, who is then V-Additional Chief Metropolitan Magistrate, Hyderabad, deposed that on 11.09.2011, she received a requisition from police for conducting dying declaration and she went to Osmania General Hospital, Hyderabad by 11:30 p.m. She identified the patient with the help of duty doctor and in his presence recorded the dying declaration. Ex.P-2 is the requisition and Ex.P-3 is the dying declaration. She further deposed that the deceased stated that she herself set ablaze as her husband was torturing her. In cross-examination, she stated that the declarant did not state before her that the accused was harassing her in respect of 5 gms of gold and also A-1 beating her.

23. P.W.8 is the plastic surgeon. He deposed that the deceased was admitted on 11.09.2011 at 07:25 p.m., and she was found with 98% burns with 7 months pregnancy and the ultrasound scan revealed foetus with absence of cardiac activity and she was aborted on 12.09.2011 at 08:00 p.m., and subsequently she died on 13.09.2011 at 01:30 a.m., in the hospital. Ex.P-5 is the certificate issued by him.

24. P.W.9, who is the Assistant Professor in the Department of Forensic Medicine, deposed that he conducted post-mortem examination over the dead body of the deceased Rubina Begum. He deposed that he found ante-mortem infected surface burns all over the body of 98% of body area. The deceased expired on 13.09.2011 at 01:30 a.m., while undergoing treatment. He held autopsy between 01:00 p.m., and 02:00 p.m., on 13.09.2011. The cause of death was due to burns. Ex.P-6 is the post-mortem certificate issued by him.

25. P.W.10 is the Sub-Inspector of Police. He deposed that on 12.09.2011 at 00:15 hours P.W.13 recorded the statement of the deceased and handed over the same to him for registration. P.W.10 recorded the statement of the deceased under Ex.P.-7 and issued F.I.R under Ex.P.8.

26. P.W.13 is the Sub-Inspector of police. He recorded the statement of deceased Rubina Begum under Ex.P-7. On the basis of it, P.W.11 registered the case. P.W.13 visited the scene of offence and conducted scene of offence panchanama in the

presence of P.W.7 and another and recovered M.Os.1 to 4 under a panchanama under Ex.P-4.

27. P.W.7, who is the panch witness for the scene of offence panchanama and seizure of M.Os.1 to 4, deposed corroborating the contents of the panchanama.

28. P.W.12 is the then Assistant Commissioner of Police who took up investigation from P.W.11 and conducted further investigation.

29. It is a fact that the deceased committed suicide by pouring kerosene and setting herself ablaze on 11.09.2011 and succumbed to injuries on 13.09.2011. The marriage of the deceased with A-1 was held on 23.11.2010. The prosecution had fully established that the evidence of P.W.9, the doctor who conducted post-mortem, opined that the cause of the death of the deceased was due to burns. It is also not in disputed that the death of the deceased occurred within seven years of marriage.

30. The only question that survives for consideration is – whether the deceased was subjected to cruelty or harassment soon before her death in connection with demand of dowry?

31. P.W.1 is the mother and P.W.2 is brother of the deceased Rubina Begum. According to the evidence of P.W.1, the marriage of the deceased was held with A-1 and during marriage, they have given cash of Rs.25,000/- 5 grams of gold, besides other household articles. She stated that they gave the above articles voluntarily. P.W.1 also stated that the accused demanded her additional dowry and A-1 used to beat her daughter. There was a panchayat prior to the death of her daughter wherein she promised to provide gold. However, in cross-examination, she admitted that she is working as a maid servant and her husband had no avocation and she used to earn Rs.1,500/- to Rs.2,000/- per month. She also admitted that A-1 was a motor mechanic and the marriage of her daughter with A-1 was a love marriage. Though the brother of the deceased corroborated the testimony of her mother about the presentation of cash and gold and other household articles, but having regard to the admission made by P.W.1 that she is earning only Rs.1,500/- to

Rs.2,000/- per month and that her husband has no avocation, her evidence is not believable about the presentation of dowry and more particularly when she admits that it is a love marriage. Interestingly, P.W.1 also admitted in the cross-examination that her daughter has not resided with A-2 and A-3. P.W.1 stated that there was a panchayat about half tola gold wherein she promised to provide the same before or after Ramzan which took place in the house of accused. She also stated that P.W.3 and Imran were also present during panchayat, whereas P.W.3 stated that panchayat was held at the house of P.W.1 and in the panchayat itself, Rubeena Begum informed him that the accused was harassing her for gold. So, there is no consistency in the evidence of P.Ws.1 and 3 on the panchayat held in respect of demand of half tola gold. P.W.2, brother of the deceased, in his evidence stated that A-2 and A-3 instigated A-1 demanding half tola gold. This fact is not stated either by P.W.1 or P.W.3. However, P.W.2 also deposed that A-1 and his sister lived happily for about six months and thereafter, A-1 started harassing his sister for not giving half told gold, as promised. P.W.2 also stated that on the

day of incident, Rubina Begum came to their house at about 03:30 p.m., and at about 06:00 or 06:30 p.m., the accused took her back and at about 07:00 p.m., they were informed about the incident of Rubina Begum committing suicide. This fact is not stated by P.W.1. There is no corroboration to the evidence of P.W.3 on the said aspect that on the day of incident also, Rubina Begum came to their house. The evidence of material witnesses P.Ws.1 to 3 corroborates one aspect i.e., the deceased Rubina Begum and A-1 lived happily for about six months and thereafter disputes arose between them and it appears it is with regard to demand of half tola gold. There is no evidence against A-2 and A-3 alleging any type of harassment about the demand of dowry by any of the witnesses.

32. P.W.5 is the learned Magistrate who recorded the dying declaration of the deceased. She stated that the deceased herself set ablaze as her husband was torturing her. The dying declaration is Ex.P-3. Though the evidence of P.Ws.1 to 3 was that the accused, more particularly A-1, was demanding 5 gms of gold, however, in the dying declaration the deceased has not stated the said fact.

It appears she only stated that her husband was torturing her, but she has not given any reasons regarding the same. However, the statement of the deceased Rubina Begum was recorded by the Sub-Inspector of Police under Ex.P-7 wherein she specifically stated that her husband abused her and demanded her to bring 5 gms of gold since two months prior to the alleged incident. P.W.5 also stated in the cross-examination that the deceased has not specifically stated that A-1 was harassing her in respect of 5 gms of gold and he used to beat her. However, the evidence of P.Ws.1 to 3 and the statement in Ex.P-7 and a part of the dying declaration proves the factum of demand of half tola gold with Rubina Begum which allegedly is a promise made by her parents to give after the marriage and it might be the reason for the disputes between A-1 and deceased and it appears vexed with the attitude of A-1, the deceased committed suicide. The evidence of P.W.8, who is the Plastic Surgeon, shows that the deceased was carrying seven month pregnancy when she was admitted in the hospital and the foetus was aborted on 12.09.2011 and on the next day, she died. It appears that A-1 has not taken care of her despite the deceased

was carrying seventh month pregnancy. That itself indicates the amount of harassment meted out to the deceased who took such a drastic step of putting an end to her life and it is none other than her husband (A-1) who should be made responsible since the parents of A-1 are not residing with them.

33. On a careful perusal of the entire evidence of the prosecution witnesses, particularly the evidence of P.Ws.1 to 3, it is crystal clear that A-1 harassed the deceased Rubina Begum on the ground of demand of additional dowry of half tola gold about two months prior to the alleged incident. From the evidence of P.Ws.1 to 3, coupled with the statement of the deceased in her dying declaration Ex.P-3 and also her statement in Ex.P-7 establish the factum of harassment meted out to the deceased by her husband (A-1) soon before her death and it can be safely classified as dowry death and the prosecution is able to prove with cogent and convincing evidence the offence against the appellant-A-1. There is no convincing, reliable and trustworthy evidence against the appellants-A-2 and A-3 to show that they subjected the deceased to harassment soon before her death. Hence, the appellants-A-2 and

A-3 are entitled to acquittal for the offence under Section 304-B IPC. I do not see any valid ground to interfere with the conviction of A-1 for the offence under Section 304-B IPC.

34. In the result, the appeal is allowed-in-part as under:

- (i) the conviction and sentence of the appellants-A-2 and A-3 for the offence under Section 304-B IPC is set aside and they are, accordingly, acquitted. Their bail bonds shall stand cancelled;
- (ii) the conviction of appellant-A-1 for the offence under Section 304-B IPC is confirmed. However, the sentence of rigorous imprisonment imposed by the trial court against the appellant-A-1 for the said offence is reduced to three years from ten years. The bail bonds furnished by the appellant-A-1 shall stand cancelled and he shall surrender before the trial court to serve remainder sentence.

35. Miscellaneous petitions, if any, pending shall stand closed.

A.SANTHOSH REDDY, J

27.09.2022

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