

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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Crl.A.No.271 of 2006

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JUDGMENT:

This Criminal Appeal is filed challenging the judgment dt.20-02-2006 in S.C.No.297 of 2004 of the III Additional Sessions Judge (F.T.C.), at Medak convicting the appellant under Section 304-B IPC and sentencing him to undergo rigorous imprisonment for seven years.

2. Heard Smt. Vasundhara Reddy, learned counsel for the appellant and the learned Public Prosecutor for the State of Telangana for the respondent.
3. The respondent/A-1 was married to one B.Navaneetha in 1998. A-2 and A-3 are the parents of A-1. A-4 is the brother of A-1. The said B.Navaneetha was found hanging on 22-11-2003 in the house of the accused.
4. P.W.1, brother of the deceased, lodged Ex.P-1 complaint on 22-11-2003 at 1900 hours in Kulcharam police station alleging that at the time of marriage of his sister with A-1, they gave 9 tulas of gold and other articles all amounting to Rs.1,25,000/- in the shape of dowry and that the accused used to harass his sister daily to bring amount since they were not satisfied with the dowry given at the time of marriage. It is alleged that the deceased gave birth to a male child also. It is alleged that the gold which was given at the time of the marriage of A-1 with the deceased was sold away by A-1 and he used to send her to P.W.1's house once in two months demanding to bring amount.

He stated that he paid Rs.3,000/- by making debts when A-1 had sent his sister demanding to bring Rs.10,000/- and there were many occasions of this nature. He stated that several times the deceased had complained to him that A-2 to A-4 were also harassing her physically and mentally and that he visited the house of the accused and requested them not to harass the deceased for additional dowry. He stated that on 22-11-2003 at about 2 p.m. the accused telephoned stating that the deceased died due to snake bite but when they went to the village where the accused reside, they were informed that she died due to hanging and that they did not know how she died. He alleged that he suspected that the accused had killed her by hanging and requested to take action.

5. Basing on the complaint given by P.W.1, case was registered in Crime No.67 of 2003 under Section 304-B IPC by PW8, the then S.I of the Police Station, Kulcharam. P.W.6 conducted inquest over the dead body of the deceased and prepared Ex.P-3 inquest panchanama. Later, the body of the deceased was subjected to a postmortem examination at Government Area Hospital, Medak. P.W.7 performed postmortem examination and found the following injuries:

“1. ½ x ½” size contusions four in number over left side of front of the neck.

2. 1” x 1” size contusion one over the right side of the neck front.

3. Hyoid bone – left horn broken.”

6. The postmortem report is Ex.P-4 and in the report, it was indicated that the cause of death is “asphyxia due to throttling”. On the next day, P.W.8, the Sub Inspector of Police, Kulcharam

police station conducted the scene of offence panchanama in the presence of P.W.5 and L.W.12. After investigation by P.W.9, P.W.9 filed a charge sheet for offences under Sections 302 and 304-B IPC.

7. The Junior Civil Judge, Medak, took cognizance of offence under Sections 302 and 304-B IPC and then committed case to the Sessions Court. The III Additional Sessions Judge (F.T.C.) at Medak framed the charges under Sections 302 and Section 304-B IPC. After the charges were framed, they were read over to the accused and explained in Telugu. The accused denied the charges and claimed to be tried.
8. The prosecution examined P.Ws.1 to 9 and marked Exs.P-1 to P-5. On behalf of the defence, Exs.D-1 and D-2 were marked.
9. On completion of the prosecution evidence, the incriminating material in the evidence of prosecution witnesses was put to the accused as mandated by Sec.313 Cr.P.C. The accused denied the same.
10. By Judgment dt.20-02-2006, the trial Court acquitted A-2 to A-4 both under Sections 304-B and 302 IPC. It acquitted the appellant/A-1 of the charge under Section 302 IPC but convicted him under Section 304-B IPC.
11. Questioning the same, this Criminal Appeal is filed.
12. The learned counsel for the appellant contended that at best the evidence of prosecution witnesses indicates that there was only a demand for dowry; that mere demand for dowry is not sufficient to convict the accused under Section 304-B IPC; element of cruelty must also be found; that no specific overt acts

of harassment or cruelty were mentioned by any of the prosecution witnesses and they merely used the word 'harassment' without giving any details of even a single incident and that general allegations of harassment would not suffice to convict a person under Section 304-B IPC. She relied upon the decisions in **Vipin Jaiswal Vs. State of Andhra Pradesh** and **Yallamanda Chand Basha and others Vs. State of Andhra Pradesh**.

13. The learned Public Prosecutor on the other hand contended that the judgment of the Court below is correct and did not warrant any interference by this Court in appeal; that evidence of P.Ws.1 to 3 clinchingly and consistently proved that the deceased was frequently sent to her parents' house for additional dowry at least once in two three months; the deceased had a swollen cheek on the right side and injuries on her neck which clearly proved that cruel treatment was meted out to the deceased before her death by A-1. He therefore contended that the appeal be dismissed.
14. P.W.1 is the brother of the deceased. He stated that at the time of the marriage, his family presented 9 tulas of gold utensils and cash of Rs.1,25,000/- and after marriage, the deceased gave birth to a boy after 2 ½ years. He stated that after the marriage, the accused sold the gold ornaments presented by his family to the deceased and also started demanding for additional dowry two or three months after birth of the male child. He stated that A-1 to A-4 used to send deceased to his house after harassing her for additional dowry, demanded her to bring money from their house and it was disclosed to him by the

deceased. He stated that 10 days prior to the death of deceased, she came to their house and informed them that the accused are demanding Rs.10,000/- as additional dowry and since he did not have that much money at that time, he borrowed money from one Satyanarayana and gave Rs.3,000/- to A-1. He claimed that he requested all the accused to look after the deceased properly and left his sister at the house of the accused. He stated that when he reached the house of the accused on 22-11-2003 on receiving information about her death, he found the right cheek of the deceased swollen and marks of strangulation existed on the neck of the deceased. In the cross examination, he stated that no list of gold items or other items was prepared at the time of the marriage of the deceased with A-1. He stated that in his 161 Cr.P.C. statement, he mentioned that cash and articles were presented in the presence of particular elders. He stated that he did not state to whom and where the accused had sold the gold presented by his family to the deceased and he did not see the accused selling the gold. He claimed that his sister informed him of the said fact. He admitted that the deceased did not state and complain about the harassment before other persons. He also stated that he did not inform anybody about the alleged harassment. He denied the suggestion that he did not state before the police that *ten days* before her death, the deceased came to his house and informed about the demand of Rs.10,000/- by the accused. He also denied that he stated before the police as in Ex.D-1 that *some days* prior to the incident, the deceased came to his house. He admitted that he did not state before the police on which date he paid Rs.3,000/- to A-1. He stated that when his sister was pregnant, his mother

P.W.2 stayed for about eight months in the house of A-1 and looked after his sister. He admitted that no complaint was lodged against the accused before the incident in question, no panchayat was held and no information was given to any elders since family prestige was involved. He denied the suggestion that his sister used to demand A-1 to have separate family and was not interested in living with other accused A-2 to A-4 in the same village and that was the cause for her death and there was no harassment by the deceased for additional dowry. He denied the suggestion that the deceased committed suicide as A-1 was not caring her demand for separate living.

15. P.W.2 is the mother of the deceased. She also stated that at the time of marriage of the deceased with A-1, they had given 9 tulas of gold utensils and cash of Rs.1.00 lakh towards dowry. She stated that the accused sold the gold presented by them to the deceased and ten days prior to her death, the deceased came to their house and informed that accused harassed her and sent her to P.W.2's house to bring additional dowry. She stated that at that time, they sent her back with Rs.3,000/- along with P.W.1. She claimed that after giving the said amount and dropping the deceased in the house of the accused, P.W.1 had advised all the accused not to harass the deceased further and to treat her properly. She stated that when she saw the body of the deceased after her death in the house of the accused, the right cheek of the deceased was swollen and marks of pressing the throat were observed. She claimed to have stated before the police that *ten days* prior to the incident, the deceased came and informed her but not as in Ex.D-2 that *some days* prior to the incident, the deceased came to her house and informed about

the harassment. She also admitted that no complaint was lodged against the accused and no panchayat was held with regard to additional dowry. She however denied to have visited A-1 and the deceased when they were residing in Jagadgirigutta at which time her daughter was pregnant. She stated that the deceased never informed her that the accused demanded dowry in the presence of any villagers. She denied that the deceased used to demand A-1 to live separately and not with the other accused in the same village.

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16. P.W.3 is the paternal uncle of the deceased. He stated that prior to the death of deceased and a few days before that incident i.e. 9 or 10 days earlier to the incident, the deceased came to the house of her parents and informed that the accused was harassing her for additional dowry. He stated that he is residing at Ahmadnagar and the deceased came there and informed him about the demands of the accused for additional dowry. He also stated that on the dead body of the deceased, there were marks of throttling on the neck and the cheek was swollen on the right side. In cross examination, he admitted that he did not state before the police that the deceased came to his house at Ahmadnagar and informed her about her family affairs.

17. P.W.4 is a paternal uncle of the accused. In his cross examination, he stated that the deceased and A-1 were very cordial and were living happily during their marital life and A-1 never harassed the deceased for additional dowry nor did other accused.

18. It is strange that P.W.4, a relative of the accused, is

examined by the prosecution in support of the prosecution case.

19. P.W.5 is a panch witness to the scene of offence panchanama Ex.P-2. He stated that on 23-11-2003 when he went to see the dead body of deceased, he was called along with L.W.12 to act as panch witness at the scene of offence and after observing the dead body, he found that right cheek of the deceased was swollen and some marks were also there on throat. However, he is not a resident of Pothireddypally, where the deceased died, but he hails from Kagajmaddur village.
20. P.W.6 is Deputy Mandal Revenue Officer, who conducted inquest over the dead body of deceased and he prepared Ex.P-3 panchnama.
21. P.W.7 is the Doctor, who performed post mortem on the dead body of deceased. He did not state in his evidence that the right cheek of the deceased was swollen when he performed the post mortem on 23-11-2003 between 2 p.m. and 3 p.m. Ex.P-4 is the postmortem report given by him.
22. P.W.8 was the Sub-Inspector of Police at Police station, Kulcharam. He stated that on 22-11-2003 at 19.00 hours P.W.1 came to police station and lodged a written report Ex.P1, on the basis of which F.I.R was registered by him. He stated that he could not proceed to the scene of offence since it was night and on the next day he conducted the scene of offence panchanama in the presence of P.W.5 and L.W.12 and gave requisition to the Mandal Revenue Officer to conduct inquest over the dead body.
23. P.W.9 is the Dy.Superintendent of Police, Medak. He stated that he took up investigation on 25-11-2003 from P.W.8 and after

completion of investigation, he arrested A-1 to A-4, obtained post mortem examination report and other documents and then filed charge sheet. He stated that P.W.1 stated before him as in Ex.D-1 and P.W.2 stated before him as in Ex.D-2. He stated that P.W.1 informed him that he borrowed Rs.3,000/- as loan to pay to the in-law's of the deceased, but did not state specifically the name of the person who lent the money to him and P.W.1 also did not inform him in whose presence the amount was paid to accused. He also stated that P.W.1 did not tell him when deceased was sent back to her in-laws house just before the incident. He stated that his investigation revealed that accused A-1 was living together with other accused. He stated that P.W.2 did not state specifically how many days before her giving the statement the deceased had come to her house and when the deceased was sent back to her in-laws house before the incident. He admitted that panch witnesses for the inquest held by the Mandal Revenue Officer are not from the village of Pothireddipally village where the accused reside. He also stated that his investigation did not reveal that accused and deceased went to Jagadgirigutta to eke out their livelihood.

24. Admittedly, the appellant/A-1 was acquitted of charge under Section 302 IPC and was held guilty of charge under Section 304-B IPC only.

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25. Section 304-B IPC states:

“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 purposes of this sub-section, "dowry" shall have the same meaning as in Section 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."

26. To establish the offence under Section 304-B IPC, the following ingredients are to be fulfilled as held by the Supreme Court in **M.Srinivasulu Vs. State of A.P.** :

"(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."

27. In the present case, the death of the deceased was no doubt within 7 years of her marriage with A-1 and it was not under normal circumstance and according to the evidence of P.W.7, her death was caused on account of "asphyxia due to throttling". Therefore, the first and second conditions are fulfilled.

28. The burden is on the prosecution to establish that soon before her death, she was subjected to cruelty or harassment by her husband for or in connection with any demand for dowry.

29. A reading of the evidence of family members of deceased i.e. P.Ws.1 to 3 indicates that there were demands for additional

dowry by accused A-1. They mentioned about accused harassing the deceased, but no details of the harassment i.e. specific instances of cruelty meted out to her, were mentioned. While P.W.1 stated that *10 days* prior to the death of deceased, she came to their house and informed them that accused demanded Rs.10,000/- as additional dowry, in the Section 161 Cr.P.C. statement given by P.W.1 to police, he stated *some days* prior to the incident, the deceased came to their house and informed about the demand for additional dowry by accused. He did not mention before the police that 10 days before the incident the deceased had come to their house. This improvement is marked as Ex.D-1. Although P.W.1 stated that he did not state before the police as in Ex.D-1, P.W.9, the Investigating Officer categorically stated that P.W.1 stated before him as in Ex.D-1.

30. Likewise, P.W.2 also stated in her evidence that *10 days* before prior to her death, the deceased came to their house and informed that accused had harassed her and sent her to their house to bring additional dowry. But in her Section 161 Cr.P.C. statement given to police, P.W.2 mentioned that *some days* prior to incident, the deceased had come to their house. This improvement is marked as Ex.D-2 since she did not state in Section 161 Cr.P.C. statement that *10 days* prior to the incident the deceased visited the house of P.W.2. Although P.W.2 also denied that she stated as in Ex.D-2, P.W.9, the Investigating Officer asserted that P.W.2 stated before him as in Ex.D-2.

31. One of the requirements of Section 304-B IPC as mentioned above is that harassment of deceased should be shown to have occurred *soon before* her death. Therefore, there should be proximity in time between the death of deceased and the

harassment. The evidence of P.Ws.1 and 2 is not consistent with regard to the harassment before her death and they had stated before police in vague terms that the harassment was *some days* prior to the death, and improved it in Court by saying that it was *10 days* before her death. Having regard to this, it cannot be said that *son before* her death, the deceased was harassed.

32. It is pertinent to note that P.W.1 and PW2 admitted cross-examination that the deceased did not state and complain about harassment before other persons and he had not informed anybody about harassment of deceased by accused. He also admitted that no complaint was lodged to the police about the harassment before the incident and no panchayat was held. He also stated that it was not informed to any elders since family prestige was involved. P.W.2 stated that the deceased never informed her that accused demanded additional dowry in the presence of any village elders. She also admitted that no complaint was lodged against accused and no panchayat was held with regard to demand of additional dowry. If there was any harassment of the deceased by accused, it is natural that there would be some mediation by elders or at least they would be made aware of the conduct of the accused. This also throws a doubt about the story of the prosecution.

33. P.W.3, the paternal uncle of deceased, who is resident of Ahmed Nagar stated that few days prior to her death i.e. 9 or 10 days the deceased came to the house of her parents and informed that accused were harassing her for additional dowry. But in cross-examination, he admitted that he did not state to the police that deceased came to his house at Ahmad Nagar and

informed him about her family affairs. Therefore, this improvement in the evidence of P.W.3 also casts a doubt as to the prosecution story for if it were true, he would have mentioned it to the police in his Section 161 Cr.P.C statement.

34. Having regard to these circumstances, I am of the opinion that the prosecution has failed to prove that there was harassment by accused of deceased for additional dowry soon before her death.

35. As stated above, P.Ws.1 to 3 had only made general allegations of harassment by accused towards the deceased and have not brought out in their evidence any specific acts of cruelty or harassment by accused of deceased.

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36. The Supreme Court of India in **Vipin Jaiswal** (1 supra) held that the essential ingredients of offence under Section 304-B IPC is that accused, had subjected the deceased to cruelty as defined in Explanation to Section 498-A IPC. It held that for the Court to draw the presumption under Section 113B of the Evidence Act, 1872, the prosecution must show that the accused had caused dowry death as defined in Section 304-B IPC and the prosecution has to prove besides the demand of dowry, harassment or cruelty caused by the accused to the deceased soon before her death. The Supreme Court in the said case acquitted the accused of charge under Section 498-A r/w 304-B IPC on the ground that only general allegations of harassment were made by accused towards the deceased and specific acts of cruelty or harassment by accused on deceased were not spoken to by prosecution witnesses. The principle laid

down in the said case squarely applies to the present case.

37. In **Yallamanda Chand Basha** (2 supra), a Division Bench of this Court has held that where the prosecution witnesses had not mentioned any acts of cruelty or harassment and their evidence suggests that there were only demands of amounts from time to time which were being complied with, the provisions of Section 304-B IPC were not attracted. It held that mere making of demand of amounts, unless followed by an element of cruelty or harassment, would not attract Section 304-B IPC. In the present case also, at the most, the evidence of P.Ws.1 to 3 would suggest that accused were demanding amounts from time to time which were being complied with. In the absence of specific acts of cruelty or harassment, mere making demand of amounts would not attract the provisions of Section 304-B IPC.

38. Although the learned Public Prosecutor contended that the right cheek of the deceased was swollen and this was spoken to by P.Ws.1 to 3, 5 and this proves that the deceased was subjected to cruelty, P.W.7, the Doctor who performed post mortem on the dead body of deceased on the next day after the death of deceased, did not mention in the post mortem report Ex.P-4 any injury or swelling on the cheek. Since the medical evidence does not support the evidence of P.Ws.1 to 3 and 5, the contention the learned Public Prosecutor that the right cheek of the deceased was swollen and it is evidence of cruelty, cannot be accepted.

39. The Court below, however, took into account the evidence of P.Ws.1 to 3 about the swollen right cheek on the body of deceased (even though the same was not detected by P.W.7,

who performed post mortem on the dead body of deceased), and came to conclusion that the deceased was subjected to cruelty just before her death. This finding is clearly erroneous and unsustainable. The Court below also did not give importance to Exs.D-1 and D-2 improvements and erroneously came to the conclusion that soon before her death, the deceased was subjected to harassment for dowry.

40. In this view of the matter, the judgment of the Court below cannot be sustained and it is accordingly set aside.

41. The Criminal Appeal is allowed, and the conviction of accused A-1 under Section 304-B IPC is set aside, the bail bonds of accused A-1 shall stand cancelled, and the accused A-1 shall be entitled to set free.

42. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 07-04-2015

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