

**THE HONOURABLE SRI JUSTICE RAJA ELANGO**  
**CRIMINAL APPEAL No.116 OF 2008**

**JUDGMENT:**

This Criminal Appeal is filed by the sole accused challenging the judgment of the IV Additional District & Sessions Judge (Fast Track Court), Ranga Reddy District dated 29.01.2008 in S.C.No.446 of 2006 whereby the learned Sessions Judge convicted the appellant-accused for the offence under Section 304-B IPC and sentenced him to undergo R.I. for seven years.

The case of the prosecution is that the deceased Jayalakshmi's marriage took place with the accused in July, 2002 and they were blessed with two sons. Few days after the marriage, the accused started demanding more dowry and the mother of deceased paid Rs.10,000/-. Addicted to alcohol and other vices, the accused increased the harassment over the deceased physically and mentally. Unable to bear the harassment in the hands of accused, on 23.2.2006 at 8.00 p.m., the deceased poured kerosene on her person and set fire and died while undergoing treatment on 24.2.2006 at 6.00 a.m. On the basis of complaint-Ex.P.1 lodged by P.W.1-mother of deceased, police registered a case for the offence under Section 304-B IPC and after completion of investigation, laid the charge sheet against the accused.

In order to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 10 and marked Exs.P.1 to P.14. On behalf of defence, no oral or documentary evidence was adduced.

After analyzing the evidence brought on record, the trial Court convicted and sentenced the appellant-accused as aforementioned. Hence, the appeal by the accused.

Heard the learned counsel for the appellant and learned Public Prosecutor. Perused the material available on record.

Even though the crucial witnesses turned hostile and failed to support the case of the prosecution, the trial Court convicted the appellant holding that though the witnesses turned hostile, a conviction can be recorded. It is true that if any of the witnesses turned hostile and if there is any positive evidence available on record other than the said witness, a conviction can safely be recorded. The crucial witnesses in this case are P.Ws.1,2 and 3, who are mother and brothers of deceased. Strangely, P.W.1 deposed that the accused looked after the deceased property and that the deceased committed suicide unable to tolerate the stomach ache. She was not even declared hostile by the prosecution. The evidence of P.Ws.2 and 3 is also in similar lines as that of the evidence of P.W.1 and they were declared hostile by the prosecution. The evidence of P.W.4 is to the effect that the deceased died of burn injuries. P.Ws.5 and 6 did not support the case of the prosecution and were declared hostile. The other part of the evidence is about the procedural aspects.

Taking into consideration the entire evidence brought on record, this Court is of the view that the said evidence does not disclose any offence to attract an offence under Section 304-B IPC. Section 304-B IPC runs as follows:

“304B (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: xxxxx

(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.”

Mere death of a person within seven years of marriage would not attract an offence under Section 304-B IPC and the Court cannot invoke the presumption under Section 113-B IPC unless and otherwise the following ingredients are proved.

- (a) That death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- (b) Such death should have occurred within 7 years of her marriage;
- (c) The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- (d) Such cruelty or harassment should be for or in connection with the demand of dowry ; and
- (e) To such cruelty or harassment the deceased should have been subjected soon before her death.

In the present case, the undisputed facts are that the death of the deceased is in unnatural circumstance and that the death is occurred within four years of the marriage and that these ingredients have been proved by the prosecution. But at the same time, with regard to the other ingredients that the deceased was subjected to cruelty or harassment, and such harassment was in connection with demand of dowry that too soon before her death have not been proved by the prosecution to convict the appellant herein for an offence under Section 304-B IPC. Nowhere, it is specifically stated by any of the witnesses that the deceased was subjected to cruelty/harassment which is of such a nature that necessitated the deceased to commit suicide. In view of the same, this Court is of the view that the prosecution miserably failed to prove the ingredients of Section 304-B IPC and the trial Court erred in convicting the appellant without there being any evidence available on record. Therefore, the appellant is entitled for acquittal setting aside the impugned judgment of the trial Court.

In the result, the Criminal Appeal is allowed. The impugned judgment of the trial Court is set aside. The conviction and sentence imposed on the appellant-accused for the offence under Section 304-B IPC is hereby set aside and he is found not guilty of the said offence and acquitted of the charge. Their bail bonds shall stand cancelled.

Pending Miscellaneous petitions, if any, shall stand closed.

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JUSTICE RAJA ELANGO

09.08.2016

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