

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CRIMINAL APPEAL NO.1402 OF 2010

J U D G M E N T

(per Hon'ble Sri Justice M.Seetharama Murti)

In this appeal under Section 374(2) CrPC by the appellant/A1, the challenge is to the judgment dated 18.10.2010 of the learned IV Additional Sessions Judge (Fast Track Court) at Mahabubnagar in Sessions Case No.563 of 2008.

By the said judgment, the learned Judge acquitted A2 having found him not guilty of the offences with which he was charged along with A1 but found A1/appellant guilty of the offences punishable under Section 4 of the Dowry Prohibition Act, 1961 and Sections 498-A and 304-B read with Section 201 IPC and sentenced him to undergo imprisonment for life for the offence punishable under Section 304-B IPC and pay a fine of Rs.1,000/- and suffer simple imprisonment for three months, in default thereof; to undergo rigorous imprisonment for a period of six months for the offence punishable under Section 4 of the Dowry Prohibition Act, 1961 and pay a fine of Rs.500/- and suffer simple imprisonment for three months, in default thereof; and to undergo rigorous imprisonment for a period of one year for the offence punishable under Section 201 IPC and pay a fine of Rs.500/- and suffer simple imprisonment for three months,

in default thereof, but did not impose any sentence for the offence punishable under Section 498-A IPC as sentence was imposed for the offence punishable under Section 304-B IPC.

We have heard the learned counsel for the appellant/A1 and the learned Public Prosecutor appearing for the State.

Perusal of the judgment of the Court below reflects that though a charge for the offence punishable under Section 302 read with Section 34 IPC was framed against A1 and A2 and a finding was recorded that A2 was not guilty of the said offence, there was no finding recorded in so far as A1 is concerned for the said offence and the learned Sessions Judge only proceeded to deal with the case with regard to the alternative charge under Section 304-B read with Section 34 IPC and the other charges first referred to *supra*.

Thus, insofar as the appellant/A1 is concerned no finding at all, much less a reasoned finding was recorded for the offence punishable under Section 302 IPC. In that view of the matter and in the light of the provision under Section 386 CrPC, we are of the considered view that the matter requires to be remitted to the Court of Session with a direction to deal with the matter comprehensively and on merits and record a finding as to whether or not the evidence already adduced by the prosecution and available on record sufficiently established the guilt of appellant/A1 for the offence punishable under Section 302 IPC.

Accordingly, the appeal is allowed for the limited purpose indicated above and the judgment impugned in this appeal is accordingly set aside and Sessions Case No.563 of 2008 on the file of the learned IV Additional Sessions Judge (Fast Track Court) at Mahabubnagar is remitted to the said Court of Session for consideration of the material already available on record and recording a reasoned finding as to whether or not the evidence brought on record by the prosecution established beyond reasonable doubt and as required under law the charge under Section 302 IPC against A1/appellant and for passing appropriate judgment, however after examining A1 once again, if necessary, under Section 313 CrPC in regard to the incriminating circumstances appearing against him in the evidence concerning the said charge. Since this Court did not express any opinion on the merits of the matter and the judgment impugned in this appeal is set aside purely on technical grounds, the trial Court shall examine and consider the entire case against A1/appellant in respect of all the charges and then dispose of the case afresh and on merits keeping in view the directions in this judgment, however, after giving an opportunity of hearing to both sides. While doing so, the learned Sessions Judge shall be mindful of the relevant legal propositions in ***RAJBIR @ RAJU AND ANR. V/s. STATE OF HARYANA***¹ and ***WILLIE (WILLIAM) SLANEY V/s. THE STATE***

¹ (2010) 15 SCC 116 : AIR 2011 SC 568

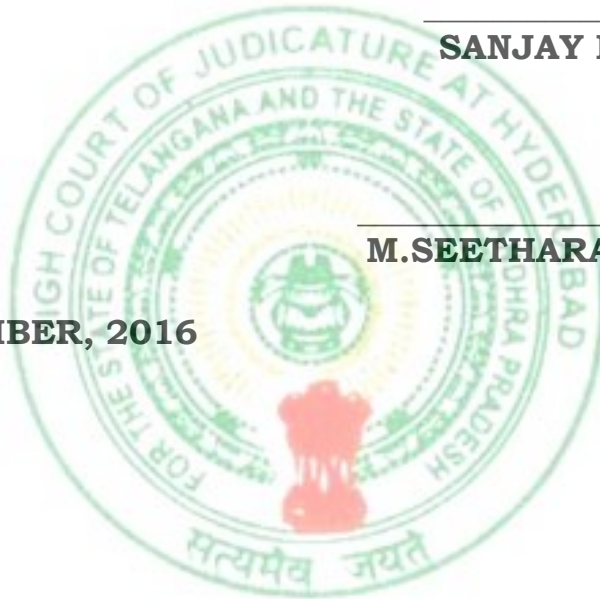
OF MADHYA PRADESH² reiterated and applied recently in **VUTUKURU LAKSHMAIAH V/s. STATE OF A.P³**. The entire exercise as indicated in this judgment shall be completed as expeditiously as possible and in any event within one month from the date of receipt of a copy of this judgment. It is also made clear that Appellant/A1 who is in confinement shall remain so subject to his entitlement to move an appropriate application for grant of bail before the learned Sessions Judge.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

19th SEPTEMBER, 2016

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² 1956 Cri LJ 291 = AIR 1956 SC 116

³ (2015) 11 SCC 102 : (2015) 4 SCC (Cri) 299