

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.445 OF 2011

J U D G M E N T

(per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 19.04.2011 of the learned V Additional Sessions Judge (III Fast Track Court), Nalgonda at Miryalguda, in Sessions Case No.534 of 2009, whereby the appellant/accused was convicted under Section 304-B IPC for the 'dowry death' of his wife, Dheeravath Kalyani, and sentenced to life imprisonment apart from paying a fine of Rs.10,000/-, in default of which he had to suffer simple imprisonment for six months.

The charge framed by the Sessions Court against the accused reads as under:

That on or about 27-01-2009 at about 3.45 A.M. at Hathya Thanda H/o Kothagudem village you being the husband of the deceased Dheeravath Kalyani harassed the deceased both physically and mentally to bring the remaining dowry of Rs.1,00,000/- and unable to bear the same the deceased committed suicide by pouring kerosene and set ablaze herself, and as the death of the deceased was within seven years of her marriage, you committed an offence punishable Under Sec.304-B of IPC and within my cognizance.'

He however denied the charge and claimed to be tried. During the trial, the prosecution examined 17 witnesses and marked in evidence 18 exhibits. The accused did not choose to lead any evidence. No case properties were marked.

This is a case of 'dowry death' under Section 304-B IPC. In **BAKSHISH RAM V/s. STATE OF PUNJAB¹**, the ingredients of Section 304-B IPC were summed up thus:

- (a) that a married woman had died otherwise than under normal circumstances;
- (b) such death was within seven years of her marriage; and

¹ (2013) 4 SCC 131

- (c) the prosecution has established that there was cruelty and harassment in connection with demand for dowry soon before her death.'

It is an admitted fact that the marriage of the deceased with the accused was solemnized in the year 2005. She committed suicide in his presence by dousing kerosene and setting herself ablaze on 27.01.2009. Her death therefore occurred within seven years of their marriage. As it was a case of suicide, her death was otherwise than under normal circumstances. Therefore, the only other requirement left to be satisfied in terms of the ingredients of the offence detailed *supra* is as to whether she was subjected to cruelty or harassment in connection with a demand for dowry soon before her death.

Perusal of the record reflects that the brother of the deceased (P.W.1), her mother (P.W.3) and her uncle (P.W.4) turned hostile and did not support the prosecution's case. Their statements under Section 161CrPC, being Exs.P1, 3 and 4 respectively, however spoke otherwise and detailed the cruelty and harassment suffered by the deceased at the hands of the accused for dowry. The circumstantial witnesses, P.W.2 and P.W.5, also turned hostile. P.W.6, the panch witness to the scene of the offence panchanama also turned hostile. In his cross-examination, he however stated that the police seized the plastic can found at the scene of the offence in his presence and that he signed in the panchanama after they reduced it into writing. He identified Ex.P6 as the scene of the offence panchanama and Ex.P7 as the rough sketch. P.W.7, another panch witness to Ex.P6, admitted his signature therein. P.W.8, the Doctor at a Private Hospital at Miryalguda, spoke of the deceased being brought to his hospital on 16.03.2009 and her treatment there for two days. He stated that she died while undergoing treatment. P.W.9 also turned hostile. He denied having acted as an elder in the marital disputes of the accused and the deceased at any time. P.W.10, a witness

to the inquest proceedings, identified Ex.P9 as the inquest panchanama. P.W.11 was the photographer who took pictures of the deceased and identified Ex.P10 as the three photos along with negatives.

P.W.12, the Tahsildar, Miryalguda Mandal, spoke of conducting the inquest over the body of the deceased at the Government Hospital, Miryalguda, at 01.00 PM on 20.03.2009. P.W.13, a Civil Assistant Surgeon at the Government Hospital, Miryalguda, conducted the autopsy over the body of the deceased on 20.03.2009. He said that they noticed burn injuries on the body and that there were 50 percent burns. He said that the cause of death was due to the burns and identified Ex.P11 as the post-mortem examination report. P.W.14 was the Sub-Inspector of Police, Miryalguda, who received intimation from the Government Hospital, Miryalguda, and registered Crime No.18 of 2009 under the head 'woman burns'. Ex.P18 is the FIR. He visited the hospital and examined P.W.16, a Civil Assistant Surgeon at the Government Area Hospital, Miryalguda, and recorded her statement. He visited the scene of the offence at Hathya Thanda and noted the features in the presence of panchas, P.W.6 and P.W.7. He seized a two-litre kerosene can at the scene. P.W.1, the brother of the deceased, presented a complaint to him on 01.02.2009 at 9.00 AM about the harassment of the deceased by the accused for dowry, upon which P.W.14 altered the provision from 'woman burns' to Section 498-A IPC and Sections 4 & 6 of the Dowry Prohibition Act, 1961. On 19.03.2009 at 4.00 PM, he received intimation of the death of the deceased. He prepared an alteration Memo changing the provision from Section 498-A IPC to Section 304-B IPC and sent the same to the Court.

P.W.15, the Principal Junior Civil Judge, Miryalguda, stated that she received a requisition from the police at 9.50 AM on 27.01.2009 to record the statement of the deceased. She immediately rushed to the

Area Government Hospital, Miryalguda, and reached there at 10.00 AM. She identified the deceased with the aid of the duty Doctor. At the time of recording of the statement of the deceased, P.W.15 stated that that only she, her Attender, and the duty Doctor were present. P.W.15 requested the duty Doctor to certify the mental status of the injured person to give a statement. Upon certification by the Doctor as to the patient being conscious, coherent and in a fit state of mind to give a statement, P.W.15 put preliminary questions to ascertain whether the patient was in a fit state of mind to give a statement. Upon satisfying herself in this regard, P.W.15 disclosed her identity and asked the deceased as to how she had sustained burn injuries. Ex.P16 is the dying declaration of the deceased recorded by P.W.15. P.W.15 then read over the statement to the deceased and she admitted the same to be true and correct. The left toe impression of the deceased was obtained thereon as the skin on both her thumbs had peeled off. P.W.15 asserted that the deceased was conscious and coherent throughout the recording of the statement and she confirmed that no police or attendants were present at the time of such recording. P.W.16, a Civil Assistant Surgeon at the Area Hospital, Miryalguda, stated that she knew the deceased and that on 27.01.2009, while she was on duty as a Medical Officer, the deceased came to the hospital with burn injuries in a 108 Ambulance. P.W.16 then admitted her and shifted her to the burns ward as an inpatient. She stated that the percentage of the injuries was 40 to 50. She confirmed that she intimated the police of the case through Ex.P17.

P.W.17, the Investigating Officer, spoke of the various steps taken by him after receiving the alteration Memo from the Sub-Inspector of Police, Miryalguda (P.W.14). He stated that his investigation revealed that the accused harassed the deceased to bring additional dowry of Rs.1,00,000/- and as she could not bear the harassment meted out to

her by the accused, she committed suicide. Nothing of use was elicited during his cross-examination.

Upon considering the aforesaid evidence and material on record, the Sessions Court held that the prosecution had clearly established the guilt of the accused for the offence under Section 304-B IPC and accordingly sentenced him.

Heard Sri P.Prabhakar Reddy, learned counsel for the appellant/accused, and the learned Public Prosecutor, State of Telangana.

At the outset, it may be noted that a dying declaration which is found to be wholly truthful and reliable can be the sole basis for a conviction. (See **KHUSHAL RAO V/s. STATE OF BOMBAY**², **P.MANI V/s. STATE OF T.N.**³, **RAJU DEVADE V/s. STATE OF MAHARASHTRA**⁴ and **DEEPAK VERMA V/s. STATE OF U.P.**⁵).

P.W.15 conscientiously adhered to the procedure prescribed under Rule 33 of the Criminal Rules of Practice and Circular Orders, 1990, while recording Ex.P16 dying declaration. She not only obtained medical certification as to the mental status of the deceased but also satisfied herself about the same before proceeding to record Ex.P16. The various preliminary questions put by her to the deceased bear out this fact. She thereafter asked the deceased as to what happened. The reply given by the deceased was noted down in Telugu in verbatim. Then, she read out the said statement to the deceased and upon her confirming that it was true and correct, she obtained her left toe impression thereon as her thumb impression could not be taken owing to burns. The duty Doctor certified before and after the recording of Ex.P16 as to the mental status of the patient and her competence to give a statement.

² AIR 1958 SC 22

³ (2006) 3 SCC 161

⁴ (2014) 14 SCC 646

⁵ (2015) 8 SCC 299

Perusal of Ex.P16 dying declaration reflects that the deceased spoke with absolute clarity and precision as to what had happened. She disclosed that her husband asked her to bring Rupees One Lakh and she informed him that she would bring the money when it was available with her mother and her family. Thereupon, he abused her saying when would her mother have the money and when would she bring it. She then told him that she could not bear his abuses and she would rather die. He then said that she should die. She thereupon poured kerosene on herself from out of the two-litre kerosene can in the house and her husband told her that the match box was in the suit-case and that she should burn herself and die. She then took out the match box from the suit-case and set fire to herself. She said that she did not know what happened thereafter. She also said that her marriage took place four years earlier and she had a two year old daughter, Gajalakshmi. She said that when she set fire to herself, her husband and her daughter were both there. Thereupon, P.W.15 asked her whether she wanted to say anything else. In reply, the deceased stated that after setting fire to herself, she came out and the people nearby put out the flames by pouring water. She further stated that she was nine months pregnant at that time.

It may be noticed that the incident occurred on 27.01.2009 but the deceased succumbed nearly two months later, on 19.03.2009. However, this fact has no impact on the prosecution's case under Section 304-B IPC. We are informed that the infant *in utero* survived. The appellant/accused was released on bail pending the disposal of this appeal and the children of the deceased and the accused are stated to be with him at present. We are also informed that he remarried even before his conviction and has a child through his second wife. Be that as it may.

The categorical assertion of the deceased in her dying declaration was that the accused asked her to bring money and when she told him

that she would get it when her parents have money, he abused her. It is therefore clear that the incident on the fateful day was the proverbial last straw on the camel's back and it cannot be construed that it was a simple demand for dowry by the accused for the first time which drove the deceased to take her own life.

BHOLA RAM V/s. STATE OF PUNJAB⁶, relied upon by Sri P.Prabhakar Reddy, learned counsel, is of no avail as that was a case where a mere demand for dowry was held to be insufficient to sustain a conviction under Section 304-B IPC. Earlier, in **KANS RAJ V/s. STATE OF PUNJAB**⁷, the Supreme Court pointed out that a dowry death victim should have been treated with cruelty or harassment for dowry either by her husband or any of his relatives.

In the present case, though the family members of the deceased turned hostile, perhaps for obvious reasons, as the deceased left behind two children, the declaration of the deceased in Ex.P16 that she could not bear his abuses clearly demonstrates that the demands of the accused for dowry and the accompanying cruelty and harassment were not infrequent. Further, his complete apathy and indifference while the deceased went about setting fire to herself and, on the other hand, his encouragement by telling her that the match box was in the suit-case and that she could set fire to herself with the same clearly demonstrate the degree of cruelty on his part which ultimately led to the deceased taking the fatal step. He did not even evince any interest in saving her and it was the people nearby who extinguished the flames, when the deceased rushed out. We are therefore unimpressed by the claim of Sri P.Prabhakar Reddy, learned counsel, that this is not a case of cruelty or harassment but one where a mere demand was made for dowry. In

⁶ (2013) 16 SCC 421

⁷ (2000) 5 SCC 207

SURESH KUMAR V/s. STATE OF HARYANA⁸, the Supreme Court pointed out that once the ingredients of Section 304B IPC stand proved, the onus would shift upon the accused to establish that the accidental death of his wife occurred under normal circumstances. The accused took no steps to discharge this onus after it shifted onto him.

Sri P.Prabhakar Reddy, learned counsel, would lastly rely upon **RANJIT SINGH V/s. STATE OF PUNJAB**⁹ in support of his contention that this Court should take into account the attending circumstances while dealing with the sentence imposed upon the appellant/accused. In **RANJIT SINGH**⁸, the Supreme Court took note of the fact that the appellant therein got married a second time and had three children from his second wife, apart from the fact that his mother was paralyzed and one of his three children was handicapped, and reduced the sentence imposed under Section 304-B IPC.

In the case on hand, the maximum punishment of life imprisonment was imposed upon the accused but no specific reasons were recorded by the Sessions Court as to why it was felt that punishment in full measure was commensurate to the case. Be it noted that the Supreme Court, in **HARI OM V/s. STATE OF HARYANA**¹⁰, observed that the extreme punishment of a life term for an offence under Section 304-B IPC should be resorted to only in rare cases and not in every case. Applying this principle, we are not convinced that this is a case of such rarity so as to attract the maximum punishment of life imprisonment pursuant to the conviction under Section 304-B IPC. The sentence imposed upon the appellant-accused is therefore reduced to rigorous imprisonment for a period of ten years. The sentence as regards payment of the fine amount along with the imprisonment in default shall remain unaltered.

⁸ (2013) 16 SCC 353

⁹ (2013) 12 SCC 333

¹⁰ (2015) 1 SCC (CrL.) 141

The appeal is accordingly allowed in part to the extent indicated above. Bail granted to the appellant/accused shall stand cancelled. He shall forthwith surrender before the learned Judicial Magistrate of First Class, Miryalguda, for serving out the rest of his sentence. In the event, he fails to do so within one week from today, the learned Judicial Magistrate of First Class, Miryalguda, shall take steps in accordance with law for his apprehension and incarceration.

SANJAY KUMAR,J

10th NOVEMBER, 2017
PGS

T.AMARNATH GOUD,J

