

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND

THE HON'BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.37 of 2011

Dt: 27.06.2016

Between:

Shaik Jani Pasha and another

..Appellants

And

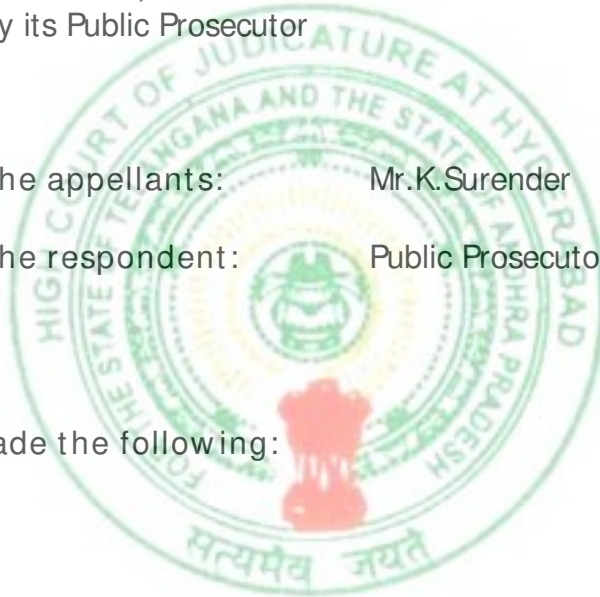
State of Andhra Pradesh,
Represented by its Public Prosecutor

..Respondent

Counsel for the appellants: Mr.K.Surender

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:



Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The husband and the mother-in-law of one Shaik Sameena (hereafter referred to as 'the deceased') having been convicted by the V Additional Sessions Judge (III Fast Tract Court), Nalgonda at Miryalguda, vide judgment dt.12.01.2011 in S.C. No.218 of 2009, for the offences punishable under Section 302 read with Section 34 and Sections 304-B and 498-A I.P.C., and Section 4 of the Dowry Prohibition Act, 1961 (for short 'the Act') and sentenced, *inter alia*, to suffer life imprisonment for the offence punishable under Section 302 read with Section 34 I.P.C., besides other lesser punishments for the offences punishable under Section 498-A I.P.C., and Section 4 of the Act, which were directed to run concurrently, the convicts, have filed this appeal.

2. Appellant No.1 is the son of appellant No.2. The deceased was the wife of appellant No.1. As per the version of the prosecution as reflected from the charge-sheet filed by it, the marriage of appellant No.1 with the deceased took place about three years prior to the occurrence of the alleged offence; that at the time of the marriage, the parents of the deceased gave Rs.64,000/-, apart from gold and other household articles; that since the time of the marriage, the appellants started harassing the deceased for bringing additional dowry; that the couple was blessed with a female child aged 1 ½ years; that about six months prior to the incident, the appellants beat the deceased and necked her out of their house, that since the morning of 17.12.2007 the appellants were beating the deceased and that at about 5.00 p.m., both of them killed the deceased by setting fire to her and also to the house.

3. On Ex.P-1 report given by P.W.1, the maternal uncle of the deceased, P.W.13 registered F.I.R. and commenced the investigation. He

sent a requisition to P.W.12, the Tahsildar, Miryalguda, with a request to hold inquest over the dead body of the deceased. Subsequently, P.W.15 took over the investigation. Both P.Ws.13 and 15, visited the scene of offence, examined L.W.2 – Shaik Hussain Miya and P.Ws.2 to 6 and recorded their statements. P.W.12 held inquest over the dead body of the deceased in the presence of the mediators - P.Ws.9, 10 and 14 and shifted the dead body of the deceased to the Government Area Hospital, Miryalguda for autopsy. P.W.11 and L.W.18 – Dr.G.Sudheer Kumar conducted autopsy over the dead body of the deceased. P.W.15 conducted the scene of offence panchanama in the presence of the mediators - P.Ws.9 and 10, seized one partly burnt snuff coloured blanket, partly burnt shirt of the accused and two silver toe rings of the deceased lying at the scene in the presence of the said mediators under the cover of Ex.P-6 Panchanama. P.W.15 also examined P.Ws.7 and 8, the caste elders, who were acquainted with the facts and recorded their statements in detail. That on 31.12.2007 at 6.30 a.m., P.W.13 along with his staff arrested the appellants at Utlapally and produced them before P.W.15 at Miryalguda Rural Police Station at 7.45 a.m. P.W.15 recorded the confessional statement of appellant No.1 in the presence of panchas - L.Ws.14 and 15 – Potla Venkateshwarlu and Thippana Malla Reddy and sent the appellants for judicial remand on the same day. The Doctors, who held autopsy over the deadbody of the deceased, preserved viscera for chemical analysis, furnished Ex.P-8 post mortem report and opined that the cause of the death of the deceased is “burns”. That the viscera of the deceased was sent to the Forensic Science Laboratory, Hyderabad, for chemical analysis and report. P.W.15 examined and recorded the statement of L.W.10 – Shaik Masood.

4. It is alleged in the charge sheet that as per the evidence collected during the course of investigation, a *prima facie* case was made out against the appellants for the offences punishable under Sections 498-A, 302 read with 34 I.P.C. and Sections 3 and 4 of the Act. It is further alleged in the charge sheet that from the time of the marriage, the appellants not being satisfied with the dowry, gold and other household articles given to them, started harassing the deceased to bring an additional dowry of Rs.50,000/- from her parents; that the deceased tried to convince the appellants by explaining the poor financial status of her parents; that the appellants used to beat the deceased and also necked her away from their house with a demand to bring additional dowry on several occasions; that about six months prior to the occurrence, the appellants beat the deceased indiscriminately for her failure to fulfil their demand of additional dowry and sent her to her parents' house saying that if she fails to bring the additional dowry, they will not allow her to lead matrimonial life; that on coming to know about the continuous harassment of the deceased by the appellants, L.W.2 – Shaik Hussain Miya and P.W.2 along with their caste elders - P.Ws.7 and 8 went to Utlapally Village and requested the appellants not to harass the deceased, but they did not change their attitude and continued their harassment towards the deceased with the same demand; that finally, on 17.12.2007 at about 10.00 a.m., both the appellants asked the deceased to bring additional dowry of Rs.50,000/-; that when the deceased refused their demand in view of poor economical position of her parents, both the appellants got annoyed over the deceased for her failure to bring additional dowry even after their demand for several times and beat her indiscriminately; that they decided to eliminate the deceased; that at

about 2.00 p.m., when appellant No.1 sprinkled kerosene over the deceased with an intention to kill her with the instigation of appellant No.2, the deceased raised hue and cry; that on hearing the same, P.W.3 rushed to the house of the deceased, rescued her from the clutches of the appellants by admonishing them, took the deceased out of the house and made her bathe; that after that P.W.3 took the deceased to the house of the appellants and left her by advising them not to harass the deceased; that after the said incident, both the appellants thought that the deceased may file a case against them for their assault on her in the morning and hatched a plan to do away with her life; that according to their plan at 17.00 hours, when the deceased sat in the front room of their hut, appellant No.1 poured kerosene over her and set fire with a match box brought by appellant No.2; that when the flames raised all of a sudden from the body of the deceased, she caught the hands and legs of appellant No.1, who also received burn injuries to his hands and legs and that when the deceased, unable to bear the burn injuries, tried to come out of the hut in an attempt to save herself, appellant No.1 pushed her into the hut and set fire to it, due to which, the deceased was completely burnt in the flames along with the hut. That later, appellant No.2 extinguished the flames of appellant No.1 with a blanket and relieved him of his shirt and in that process, the blanket and shirt of appellant No.1 were also partly burnt and that subsequently after the incident, the appellants fled away from the scene and went to the house of appellant No.2's daughter at Anantharam Village of Penpahad Mandal.

5. After completion of the investigation, the prosecution has filed the charge sheet. Based on the charge sheet, the lower Court has framed the following charges:

“Charge No.1:

That you, A-1 and A-2 on or about 17-12-2007 at 5.00 P.M., at Utlapally Village in furtherance of common intention, committed murder intentionally causing the death of the deceased Sameena by you A-1 poured kerosene over the deceased and set fire with a matchbox, which was brought by you A-2 in support of you A-1 and when the deceased tried to come outside of their hut in an attempt to save herself from burning, you A-1 pushed her in to the hut and set fire to the hut and thereby you committed an offence punishable under Sec.302 r/w 34 of I.P.C., and within my cognizance.

Charge No.2:

That on the same date, time and place mentioned in the charge No.1 you A-1 and A-2 harassed the deceased Sameena both mentally and physically to bring additional dowry and thereby committed an offence punishable under Sec.498-A I.P.C., and within my cognizance.

Charge No.3:

That on the same date, time and place mentioned in the Charge No.1, you A-1 and A-2 at the time marriage received Rs.64,000/-, other household articles and gold as dowry from the patients of deceased and that you thereby committed an offence punishable under Section 3 of Dowry Prohibition Act and within my cognizance.

Charge No.4:

That on the same date, time and place mentioned in the Charge No.1, you A-1 and A-2 after the marriage demanded the deceased to bring additional dowry of Rs.50,000/- from her parents and that you thereby committed an offence punishable Under Section 4 of Dowry Prohibition Act and within my cognizance.”

On being questioned under Section 228 (2) of Cr.P.C., both the appellants have pleaded not guilty. Hence, they were tried. During the trial, the Prosecution has examined PWs.1 to 15, marked Exs.P.1 to P.9 and produced MOs.1 to 3. On behalf of the appellants, they have examined DW.1 and marked Ex.B.1- Medical Certificate issued by DW.1.

On appreciation of the oral and documentary evidence, the trial Court has rendered judgment in the manner as noted hereinbefore.

6. At the hearing, Mr.K.Surender, learned Counsel for the appellants, has made the following submissions:

(1) That the lower Court has committed a grave error in holding the appellants guilty of the offences with which they were charged, in the absence of any reliable evidence and incriminating circumstances proving their guilt beyond all reasonable doubt; (2) That the charge against the appellants that they caused the death of the deceased by pouring kerosene and setting fire has not been established by either direct evidence or through circumstantial evidence and that in the absence of any such evidence, the lower Court has convicted the appellants by drawing inferences and conjectures; (3) That the medical evidence did not support the case of the Prosecution regarding the cause of death viz., burns by pouring Kerosene and that regardless of the same, the lower Court has erroneously held that charge No.1 was proved against the appellants; (4) That the lower Court has erred in convicting the appellants both for the offence punishable under Section 302 IPC and also for the offence punishable under Section 304-B IPC, which are mutually exclusive, without application of mind; (5) That Charge Nos.2, 3 and 4 pertaining to harassment of the deceased for additional dowry, the alleged payment of Rs.64,000/- and giving of household articles as dowry by the parents of the deceased to the appellants and the demand to bring additional dowry of Rs.50,000/- are wholly unsupported by evidence and that in the absence of any such evidence, the lower Court has convicted the appellants completely swayed away by baseless inferences; (6) That, while there was no evidence whatsoever proving that the death of the

deceased was homicidal and that the appellants have caused the death of the deceased, equally, the prosecution miserably failed to prove the ingredients of Section 304-B IPC.

7. The learned Public Prosecutor for the State of Telangana resisted the above submissions and tried to support the judgment of the lower Court.

8. Having regard to the respective submissions of the learned Counsel for the parties, the point that arises for consideration is, whether the conviction and sentence of the appellants imposed by the Court below are sustainable.

9. This case is based on circumstantial evidence. None of the prosecution witnesses has witnessed the occurrence. PWs.3 to 6, who are the neighbours of the appellants and the deceased, have turned hostile. Therefore, their evidence was not of much relevance. To recapitulate, the prosecution has alleged the failure of the deceased to meet the demand for additional dowry as the motive for commission of offence by the appellants. Therefore, we need to first examine as to whether it has succeeded in proving motive.

10. PW.1, who is also the *de facto* complainant, deposed that at the time of marriage of the deceased with appellant No.1, her parents have given cash of Rs.64,000/-, two tolas of gold and some other articles as dowry; that after the marriage, the appellants used to beat the deceased demanding her to bring additional dowry; that the deceased informed him about the harassment by the appellants for additional dowry six months prior to her death; and that the deceased further informed him that she suspects that the appellants may kill her. In his cross-examination, PW.1 admitted that as per the muslim custom, a list of articles and cash given

at the time of marriage would be prepared; that the amount given at the time of marriage is called 'Jodiki Rakham'; that the articles given at the time of marriage are known as 'Jahaz'; that the amount given as 'Jodiki Rakham' will be fixed as 'Mehar'; that two Nikhanamas will be prepared in the muslim marriage; that one Nikhanama will be kept with the elders of the bridegroom; that the other Nikhanama will be kept with the bride; that in the Nikhanama, the mehar amount will be prescribed; and that he holds a copy of Nikhanama of the deceased with him. He has further deposed that two years prior to the death of the deceased, he along with her and appellant No.1 went to the Bank and deposited the dowry amount in the bank account of the deceased. He feigned ignorance whether the appellants have bank accounts or not. The witness further stated that he has visited the house of the appellants and the deceased several times; that the hut of the deceased was made with Palmyra leaves and Jammu; that by the date of the death of the deceased, they have put up a kottam (thatched hut) at a distance of about 20 or 30 feet to their main hut; that they used to cook food in the old hut; and that the deceased used to look after all the cooking. The witness could not recollect the exact date on which the appellants have beaten and driven away the deceased. He further added that the said incident happened about six months prior to her death. A suggestion was put to PW.1 that no dowry or other household articles were given to the appellants by the parents of the deceased at the time of the marriage; that the appellants never demanded any dowry from the deceased; that they never harassed her for her failure to meet the demand of additional dowry; that the deceased never complained about the same at any point of time; and that the appellants never beat and drove away the deceased demanding additional

dowry six months prior to the occurrence. It was further suggested to this witness that on the date of occurrence at about 4.00 p.m., when the deceased was attending to her cooking, the hut got burnt accidentally; that she was also burnt in that process; that at that time, the appellants and the father of appellant No.1 were in the fields doing coolie work; that after coming to know about the fire accident, when appellant No.1 rushed and attempted to save the deceased, he received some burn injuries on his legs and fingers of both the hands; that by 6.00 p.m., the appellants have reached the place of occurrence; and that PW.1 and others have forced the Police to detain the dead body of the deceased and that a report was given in the night with false allegations. It was also suggested to PW.1 that by the time himself and other family members of the deceased have reached the place of occurrence, the appellants were present at the dead body but he has mentioned in Ex.P.1- report that he has seen appellant No.1 in the Police Station two days after the death of the deceased; that PW.1 and others have demanded the appellants to transfer their land to them; and that when they have refused to do so, they have foisted a false case. It was also suggested that there were no disputes between the appellants and the deceased; that they used to live amicably; that the appellants are no way connected with the death of the deceased; and that she died due to accident. All these suggestions of course were denied by PW.1.

11. PW.2- mother of the deceased in her evidence reiterated the same allegations as spoken to by PW.1 regarding payment of dowry to the appellants and their demand of additional dowry. Suggestions similar to those put to PW.1 were also put to PW.2 by the defence to the effect that

no such demands were made and that the deceased and appellant No.1 lived amicably.

12. The Prosecution examined PWs.7 and 8- the alleged elders to support the stand taken by PWs.1 and 2 regarding payment of dowry and demand of additional dowry made by the appellants. PW.8 deposed that several times PW.2 informed him that the appellants were harassing the deceased demanding money. PW.7, who is a resident of Miryalguda town, deposed that six months prior to the death of the deceased, her father (LW.2) informed him that the appellants were beating and harassing her for bringing additional dowry; that he along with PW.8, Shaik Masood, PW.1, deceased and her parents went to the house of the appellants; that they chastised them for the ill treatment they are meting out to the deceased; that they asked them to look after the deceased properly; that they have convinced the appellants by stating that if any amount is to be given by the parents of the deceased, they will give the same later; that they left the deceased at their house and came away; and that after six months, on telephonic information, he went and saw the dead body of the deceased and the burnt hut at about 5.00 p.m. In his cross-examination, the witness admitted that he is a distant relation to PW.1. He has further stated that he is unable to state as to how many days prior to the death of the deceased, PW.1 informed him that the appellants were harassing the deceased, when she was at the house of PW.1; that when they went to the house of the appellants, they did not call any elder of Utlapalli village to represent the appellants; and that no document was prepared at the house of the appellants. The witness admitted that the appellants did not demand particular quantum of amount as additional dowry, but they demanded some money. He has

denied the suggestion that the parents of the deceased never requested him to mediate or that they have never left the deceased at the house of the appellants and that she deposed falsely, due to his intimacy with PW.1. PW.8, who also allegedly accompanied PW.7 six months prior to the death to the house of the appellants and left the deceased, also spoke on similar lines.

13. On a close perusal of the evidence of these witnesses, we feel that their stand lacks credibility and is wholly unconvincing. Except their *ipsi dixit* that the appellants have received Rs.64,000/- as dowry at the time of marriage of the deceased and that they harassed her for not bringing additional dowry, no material was placed in support thereof. Though PW.1 has stated that he had a copy of Nikhanama containing the details of the cash fixed as Mehar, for unexplained reasons, he has not produced the same before the Court to prove that at the time of marriage, the appellants have received the sum of Rs.64,000/- as Mehar. Though he has admitted that a list containing the details of the cash called 'Jodi Ki Rakhm' and also the articles called 'Jahez' is prepared as per Muslim custom, such a list has not been produced either by PW.1 or by PW.2- mother of the deceased. For the reasons best known to the prosecution, LW.2- father of the deceased was not even examined. Thus, while the prosecution failed to produce any evidence to show that the appellants have received dowry of Rs.64,000/- apart from the gold and household articles at the time of the marriage, the evidence of PWs.1, 2, 7 and 8 that the appellants have demanded additional dowry of Rs.50,000/- or any other sum remained unsubstantiated. Had the appellants been harassing the deceased on a continuous basis to bring additional dowry, there was no reason why PWs.1 and 2 and the father of the deceased have not

given complaint to the Police even once. Even according to PWs.7 and 8, six months prior to the death of the deceased, they have taken her to the house of the appellants and left her there, after convincing them that they would not harass the deceased. It is not their case that at that time, the parents of the deceased have paid any part of the amount allegedly demanded by the appellants towards additional dowry. Thus, according to the prosecution witnesses, the appellants have allowed the deceased to live with them for six months prior to the death. No whisper has been made by any of these witnesses that during the said six months period before the death of the deceased, any incident of harassment by the appellants has taken place. We have, therefore, no hesitation to hold that the prosecution has failed to establish the motive of the appellants for committing any offence against the deceased.

14. The next crucial question that requires to be considered is whether the prosecution has driven home its charge that the death is homicidal one and that the appellants are guilty of causing the death.

As per the case of the prosecution, none of the witnesses have witnessed the alleged offence. P.Ws.3 to 6, the neighbours, were examined to speak to the incident preceding the actual occurrence and also to speak about what they have noticed immediately after the hut and the deceased have caught fire and were in flames. Section 161 CrPC statements of P.Ws.3, 5 and 6 were marked to contradict their evidence given before the Court. P.W.3 in Ex.P.2 – Section 161 CrPC statement purportedly stated that on 17.12.2007 afternoon at about 2.00 p.m. she went into her cattle shed and removed cattle dung, that meanwhile she heard a quarrel taking place between the deceased and her mother-in-law, at the house of appellant No.1; that when she went to the spot she

noticed that the appellants were beating the deceased with hands; that meanwhile appellant No.2 caught hold of the deceased and appellant No.1 poured kerosene on her and that on seeing the same the witness intervened and stopped them from proceeding further and brought the deceased out, given bath and sent her into her house, while advising them not to quarrel. It was further stated that at about 5.00 p.m. on the same day when she was present in her house, the villagers were proceeding towards the house of appellant No.1 saying that the same was burnt and the deceased also died in the house and that on hearing the same she has also gone to the house of appellant No.1 and found that the same was completely burnt along with the deceased. It was further mentioned that it seems that the appellants have beaten the deceased, poured kerosene, set her on fire and later they have also burnt their house along with the deceased. The only suggestion put to the witness was that she had deposed before the Police as in Ex.P.2 and that she is deposing falsely to help the appellants. The witness has denied this suggestion. This witness has not supported the case of the prosecution and hence she was accordingly declared hostile.

15. In Ex.P.3 statement of P.W.5 she has referred to the alleged incident relating to the quarrel between the appellants on one side and the deceased on the other side taken place at 2.00 p.m. on 17.12.2007 and the alleged intervention of P.W.3 etc. It is not recorded in the statement that P.W.5 has witnessed the said event or that she witnessed the commission of offence. It was mentioned in the statement that in the evening of 17.12.2007 all of a sudden she heard cries and on her coming out of the house she has noticed the deceased burning in flames and falling on the ground and that the appellants have escaped from the

scene. Interestingly, in her chief-examination she has stated that she does not know about the disputes between the appellants and the deceased. She however admitted that the Police examined her. This witness was treated hostile by the prosecution. In her cross-examination she denied the suggestion that she had stated to the Police as in Ex.P.3 and she is deposing falsely to help the appellants. At any rate, her evidence, even if accepted, is only hearsay regarding the incident allegedly taken place at 2.00 p.m. and even if the part of her evidence regarding her noticing the deceased and the hut being in flames is accepted, it does not prove the involvement of the appellants in the commission of the offence.

16. P.W.6 was also treated hostile by the prosecution. In her Section 161 CrPC statement marked as Ex.P.4 she spoke about the appellants quarrelling with the deceased regularly and the plea that the latter has not brought sufficient dowry and that appellant No.1 used to beat and harass the deceased. As regards the occurrence, she stated that she went to coolie work and returned home in the evening at 6.00 p.m. and noticed that the house of appellant No.1 was completely burnt along with the deceased, and that she came to know that the appellants have caused the death of the deceased by pouring kerosene. In her cross-examination by the prosecution, she denied her stating to the Police as mentioned in Ex.P.4. In view of this denial, the contents of Ex.P.4 cannot be relied upon. In any event, in Ex.P.4 she did not even claim to have witnessed the occurrence.

17. The evidence of P.Ws.1 and 2 is not of any help to the prosecution to prove the commission of the alleged offence as they were not present at the scene of offence at the time of the alleged occurrence and theirs is

a hearsay evidence. Thus, the evidence available on record does not support the case of the prosecution that the death is homicidal and that there was no scope for the deceased catching the fire accidentally.

18. To recapitulate, the specific charge against the appellants is that appellant No.1 has poured kerosene over the deceased and set fire to her with match box given by appellant No.2 and that when the deceased tried to come out of the hut in an attempt to save herself from the burns, appellant No.1 pushed her into the hut and set fire to the hut. As discussed earlier, there is no direct witness to the manner in which the alleged occurrence has taken place. Even the circumstantial witnesses, namely, P.Ws.2 to 5 did not support the case of the prosecution.

19. Coming to the medical evidence, Ex.P.8 – post-mortem report reveals that the body was totally burnt and charred with pugilistic appearance involving deep muscles soft organs and skeletal bones. P.W.11, who conducted autopsy along with one Dr. G. Sudheerkumar, opined that the cause of the death was burns. Neither in Ex.P.8, nor in the evidence of P.W.11 presence of kerosene smell or soot marks over the body of the deceased, has been mentioned. In the absence of any traces of use of kerosene, the charge that appellant No.1 poured kerosene over the deceased and set fire to her remained totally baseless. Added to this, in Ex.P.6, scene of offence panchanama, or the sketch drawn on it, presence of kerosene container has not been shown. The Police have seized half burnt blanket, on which burnt hair was found, half burnt shirt of appellant No.1, and two silver toe rings. Had the appellants used kerosene for causing burns, it would not have been possible for them to do so without using any tin, vessel or container for carrying kerosene. In the light of the above facts, it is not possible to accept the charge that the

appellants have caused the death of the deceased by pouring kerosene and setting fire on her.

20. When the prosecution failed to produce evidence proving that the appellants have burnt the deceased, the only cause of death must inevitable be an accidental one. It was suggested to P.W.1 that at about 4.00 p.m. when the deceased was attending to cooking, the hut was burnt accidentally and in that process she was also burnt, that at that time the appellants and husband of appellant No.2 were in the fields doing coolie work and that on coming to know about the fire accident, when appellant No.1 rushed to the house and attempted to save the deceased, he has received some burns on his legs and fingers of the hands. It was also suggested to the witness that they have forced the Police to register FIR by detaining the dead body after giving police report late in the night. All these suggestions were denied by the witness.

21. Evidently, to establish that appellant No.1 has also received burns while trying to rescue his wife, the defence has examined the Civil Assistant Surgeon, Area Hospital, Miryalaguda, as D.W.1. His evidence makes an interesting revelation. He has stated that on 18.2.2007 he has examined appellant No.1 who was brought by the Sub-Inspector of Police, Miryalaguda Rural Police Station, and found 15% burns over the left leg below knee, 5% on right leg lower knee, and 4% on both hands. He has further deposed that he has issued Ex.D.1 - medical certificate. In his cross-examination, it was not suggested to him that the Police have not brought appellant No.1 to him or that he has not examined appellant No.1. The only relevant suggestion that was put to the witness was that the injuries in Ex.D.1 are possible by a scuffle which was admitted by him. It is the specific case of the prosecution as reflected in the charge sheet

that on 31.12.2007 at 6.30 hours P.W.13 along with his staff arrested the appellants and produced them before P.W.15 in Miryalaguda Rural Police Station. The evidence of D.W.1 however exposes the falsity of this claim. There is no whisper in the charge sheet that appellant No.1 was produced before D.W.1, the Civil Assistant Surgeon, on 18.12.2007, before arresting him. Indeed, the Police would not have taken him to the hospital without arresting him. It is also not known as to why the investigation agency has not obtained the wound certificate of appellant No.1 and produced the same before the Court. These facts would strongly support the plea of the defence that appellant No.1 was taken into custody on the day of occurrence itself and produced before D.W.1 for medical examination on 18.12.2007. Evidently, the appellants were in illegal custody of Police till 31.12.2007 on which date they were shown to have been arrested. This shoddy conduct of the Police suggests that they have not come out with truth before the Court and it also raises a serious suspicion that they have falsely implicated the appellants obviously at the instance of the family members of the deceased.

22. In the charge sheet it is specifically alleged that when the flames have engulfed suddenly after appellant No.1 has set the deceased on fire, the latter, not being able to tolerate the burns caused by the heavy flames, caught the hands and legs of appellant No.1, who has also received burn injuries on his hands and legs. Since no one has witnessed the occurrence, the manner in which the incident has taken place was within the knowledge of the appellants and the deceased. The incident having resulted in death of the deceased, it is beyond one's comprehension as to how the investigation agency was able to know the manner of occurrence. This part of the prosecution version has not been

spoken to by any of its witnesses. The prosecution has obviously come out with this version only to explain away the burns suffered by appellant No.1 also. As noted above, the prosecution has totally suppressed the fact of appellant No.1 having been taken to the hospital on the day following the occurrence. If appellant No.1 had suffered burns in the manner as alleged by the prosecution, we do not find any reason as to why they have not produced D.W.1 as their own witness. Evidently, the prosecution has not anticipated that the defence will produce the Civil Assistant Surgeon and examine him as their own witness. Therefore, we have no hesitation to hold that the whole prosecution case lacks transparency and is shrouded in suspicion. It is sad that the false version of the prosecution has found acceptance by the lower Court.

23. Admittedly, the Police have seized the half burnt blanket and the half burnt shirt belonging to appellant No.1. In the charge sheet it was alleged that in the process of appellant No.2 rescuing appellant No.1 by extinguishing the flames on his body with the aid of the blanket, the blanket and the shirt were half burnt. This again appears to be the prosecution's own imagination without there being an iota of evidence supporting this version. In the absence of supporting evidence, it is not possible to believe such a version. On the flipside, there is also a possibility of the blanket being half burnt if appellant No.1 had tried to extinguish the flames from the body of the deceased. When there exist two different possibilities, the Court must accept the possibility which favours the accused rather than accepting unsubstantiated version of the prosecution, for, it is the fundamental principle of criminal jurisprudence that guilt of the accused must be proved beyond all reasonable doubt. When the facts and circumstances suggest distinct possibility of appellant

No.1 trying to extinguish the fire, the version of the prosecution that the blanket was half burnt when appellant No.2 was trying to extinguish the flames on appellant No.1, falls in the realm of conjecture. Unfortunately the Court below has completely failed in putting the prosecution version on various aspects discussed above to stern test and it has readily agreed the imaginary theory of the prosecution.

24. The observation of the lower Court that it is not possible to believe that a person will cook food at 4.00 p.m., which was an odd time is wholly presumptuous. We do not see any warrant for such a baseless inference, as the Court cannot presume things by applying its own perception and imagination. By any standard, 4.00 p.m., is not such an odd hour ruling out the possibility of cooking food by a housewife. Similarly, the lower Court has got carried away by a statement in the charge sheet that appellant No.1 has suffered burns on his hands and legs when the deceased caught the hands and legs of accused No.1 after she was set on fire. It has not discussed any basis for arriving at this conclusion and has erroneously observed that if appellant No.1 had really tried to save the deceased he would have taken a gunny bag or blanket or a cloth to extinguish fire, ignoring the fact that M.O.1 – half burnt blanket was seized and produced before the Court. It has not discussed the prosecution story on the cause of the burning of the blanket, and rendered a finding ruling out the possibility of appellant No.1 using the blanket for extinguishing the fire on the body of the deceased. Indeed, the lower Court has completely overlooked the existence of half burnt blanket and rendered an erroneous finding that appellant No.1 should have used blanket, which exactly was the defence version.

25. The prosecution has alleged that appellant No.1 has poured kerosene on the deceased and set fire with a match box. The Court below has not discussed whether there is any such possibility in the absence of traces of kerosene or soot particles over the body of the deceased or at least a kerosene tin or container at the scene of offence.

26. Ironically, the lower Court having very correctly summarized the law governing direct or circumstantial evidence, the necessity to avoid conjectures or suspicion in holding the accused guilty and the criminal jurisprudential principle that suspicion will never take the place of proof, has committed the same errors, as pointed out by it, by drawing conjectures and inferences and placing suspicion in place of proof.

27. There is yet another aspect to be considered. The trial Court has convicted the appellants both for the offences under Section 302 IPC and also under Section 304-B IPC while not imposing a separate sentence for the latter offence. In this context, we feel it imperative to refer to a Division Bench judgment of this Court in *The State of Andhra Pradesh v. Vaggu Tarabia and another*¹. In that case, the accused were charged for the offences under Sections 498-A and 302 IPC read with Section 34 IPC. The trial Court has acquitted the accused of all the charges. On the State filing appeal, this Court observed that the trial Court ought to have charged the accused under Section 304-B IPC also. In that connection, it has relied upon a Division Bench judgment of the Delhi High Court in *Prakash Chander v. The State*² and extracted the following portion from the said judgment.

“We also find that Sections 302 and 304-B IPC are not mutually exclusive. If in a case material on record suggest commission of offence under Section 302 IPC and also commission of offence under Section 304-B IPC, the proper course

¹ Crl. A. No.95 of 2008, dt.18.2.2011 (DB) : MANU/AP/0150/2011

² 1995 CrLJ 368

would be to frame charges under both these sections and if the case is established then accused can be convicted under both the sections but no separate sentence need be awarded under Section 304-B, in view of substantive sentence being awarded for the higher offence under Section 302 IPC. In the present case though court rightly framed charge also under Section 304-B IPC and also in the course of judgment came to the conclusion that cruelty, demand of dowry and death within seven years of marriage had been established but ultimately proceeded to cancel the challan on the wrong assumption that the two offences are mutually exclusive. In the facts and circumstances of the case we do not think that any prejudice would be caused to the accused by examination of the case from the point of view of offence under Section 304-B IPC. In our view the learned Additional Sessions Judge, for the conclusion reached by him, after holding Prakash Chander guilty of offence under Section 304-B need not have awarded any separate sentence in respect of the said offence.

In view of aforesaid discussion our answer to the second question is that cancellation of charge for offence under Section 304-B IPC does not amount to an order of acquittal and the setting aside of the order of conviction for the offence under Section 302 IPC is not an impediment in this Court examining whether commission of offence under Section 304-B IPC stands established or not. The State not having filed any appeal against the order cancelling charge is of no effect.”

We may note that in paragraph 37 of the judgment in *Vaggu Tarabia* (1 supra), the Division Bench referred to the judgment in *Prakash Chander* (2 supra) as of the ‘Apex Court’, which appears to be an inadvertent mistake.

28. In *Rajbir v. State of Haryana*³ a two-Judge Bench of the Supreme Court directed all the trial Courts in India to ordinarily add Section 302 IPC to the charge under Section 304-B IPC so that death sentences could be imposed in heinous and barbaric crimes against women. While considering the said direction, another two-Judge Bench in *Jasvinder Saini v. State (Government of NCT of Delhi)*⁴ clarified that the said direction was not meant to be followed mechanically and without due regard to the

³ (2010) 15 SCC 116

⁴ (2013) 7 SCC 256

nature of the evidence available in the case and that what the Supreme Court in *Rajbir* (3 supra) meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 IPC can also be framed if the evidence otherwise permits. It has further held that the question whether it is a murder punishable under Section 302 IPC or dowry death punishable under Section 304-B IPC depends upon the fact situation and the evidence in the case; that if there is evidence whether direct or circumstantial to *prima facie* support a charge under Section 302 IPC, the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters and that if the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304-B IPC is established. The Court further observed that the ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. In the light of the above noted views expressed by the Apex Court in *Jasvinder Saini* (4 supra), the judgment in *Prakash Chander* (2 supra) may not be considered as laying down correct law.

29. While a person can be charged for both the offences under Sections 302 and 304-B IPC, if the facts *prima facie* attract the ingredients of both these Sections, he cannot be convicted for both the said offences falling under these provisions. The reason for this is not far to seek. Section 304-B IPC, which deals with dowry death, is attracted 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. Section 113-B of the Indian Evidence Act raises a presumption as to dowry death. Under this provision, 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 has 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. In contrast, under Section 302 IPC, causing of death by a person is established either by direct or circumstantial evidence.

30. Dealing with Section 304-B IPC, the Supreme Court in *Bakshish Ram and another vs. State of Punjab*⁵ held as under:

“This section will apply whenever the occurrence of death is preceded by cruelty or harassment by the husband or in-laws for dowry and death occurs in unnatural circumstances. The intention behind this section is to fasten guilt on the husband or in-laws though they did not in fact caused the death.”

It therefore necessarily follows that once the guilt of a person under Section 302 IPC is established, Section 304-B IPC disappears from the scene. In other words, while Section 302 IPC and Section 304-B IPC can co-exist till the end of trial, they are mutually exclusive at the stage of adjudication of the guilt or otherwise of the accused. On the analysis as above, we hold that the lower Court ought to have dropped the charge under Section 304-B IPC on its finding the appellants guilty of committing the offence under Section 302 IPC.

31. Since we have acquitted the appellants for the offence under Section 302 IPC, we need to consider whether the appellants are liable for

⁵(2013) 4 SCC 131

the offence under Section 304-B IPC. On a careful analysis of the provisions of Section 304-B IPC and Section 113-B of the Indian Evidence Act and as explained by the Supreme Court in *Bakshish Ram* (5 supra), it is evident that in order to convict a person for the offence under Section 304-B IPC, the prosecution must prove that there was cruelty or harassment of the victim "soon before the occurrence". The phrase "soon" must be construed as proximate in point of time to the death. Even if any occurrence has taken place in a distant past, the same cannot be brought under the expression 'soon before the occurrence'. While there is no credible evidence to show that there was any harassment of the deceased by the appellants at any point of time, in our opinion, the prosecution has singularly failed to establish that such harassment even if taken place earlier was not caused by the appellants 'soon' before the death of the deceased. In our opinion, the Court below has erroneously held the appellants guilty of the offence under Section 304-B IPC. For the very same reasons and the findings, the convictions and sentences imposed against the appellants for the offences under Section 498-A IPC and Section 4 of the Act, are also not sustainable.

32. As the prosecution has failed to establish the guilt of the accused – appellants for all the offences with which they are charged, the judgment of the lower Court cannot be sustained and the same is accordingly set aside. The criminal appeal is accordingly allowed. The appellants shall be set at liberty forthwith, if they are not required in any other case or crime. The amount of fine, if any, paid by the appellants shall be returned to them.

A perusal of the record shows that by order dt.22.11.2016 this Court has granted bail to the appellants as they have served more than

five years of the sentence, following the order of this Court in *Batchu Ranga Rao v. State of A.P.*⁶ Therefore, the appellants shall surrender themselves before the Superintendents of the concerned Jails where they have earlier served their sentences of imprisonment, for completing the necessary formalities as per law.

C.V. NAGARJUNA REDDY, J

J. UMA DEVI, J

27-06-2017

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⁶ 2016 (3) ALT (Crl.) 505 (DB)(AP)