

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.217 of 2017

ORDER:

The petitioners are A3 to A8 of Sessions Case No.246 of 2013 among other accused of Crime No.30 of 2011, dated 07.02.2011 of Station House Officer, Alipiri Police Station of Chittoor District, registered for the offences punishable under Section 304 B read with Section 34 of IPC. On the report of Smt.D.Hemalatha of Madanapalli, against the accused persons, stating that marriage of her deceased daughter Radhika with A1 took place on 19.08.2004 and they lived for three months at Chittoor and later shifted to Tirupathi where they lived since 2005. On 07.02.2011, the defacto complainant reported suspecting that her daughter might have been killed by the husband of the deceased (A1), at the instance of other accused Nos.2 to 8 of whom, A3 to A7 are the sisters of A1 and A8 is husband of A6 and A2 is mother of A1. The FIR address of A1 shows Swarna Residency, Thirumala Bi-Pass Road, Tirupathi and native of Rajampet, A2 also of same address, the address of A3 to A8 shown as not available in the FIR and as per their version, A3 is resident of Rajampet of Kadapa District, A4, Kothapeta of East Godavari District, A5, Kolathuru of Chennai, A6 and A8 are also of Chennai and A7 also of Chennai city. As per the report of the defacto complainant - the mother of the deceased supra, at the time of marriage, Ac.1.00 of land, gold and cash given towards dowry and other presentations and for one year the married life of deceased with A1 went on well and they were blessed with a female child in their wedlock by name baby Varsha. A1 addicted to vices and also sold away 15 sovereigns of gold presented by the defacto complainant to the deceased for his vices

and also started to sell away Ac.1.00 of land given by the defacto complainant to the deceased towards pasupu kumkuma to meet his vices and was ill treating her including by causing injuries with burning cigars and cigar buds; his mother and sisters and one of the sister's husband by name Vishnu (A8) were even supporting and instigating him to harass the deceased and the deceased was so saying weeping before her. Even there were settlement of disputes through elders, but, A1 did not change his conduct and he was threatening the deceased saying if she dies he can marry another. For the past one week there from he was harassing for money for sale of land or otherwise for his starting a new business and many a times she was beaten for Rs.10,000/- or Rs.20,000/- to meet his demands, to save the ill-treatment of her daughter in the hands of A1. It was while so, on that day i.e., on 07.02.2011 at about 10.00 a.m., the defacto complainant telephoned to her daughter, then her daughter while weeping told that her husband A1 was beating her and he may kill her, hence to come to her rescue and to take her to the house of defacto complainant and while the conversation was going on the phone was cut off and while so at about 12 noon, A8 Vishnu telephoned to her saying the daughter of the defacto complainant is in serious condition and to start immediately and with anxiety, she rushed to the house of A1 and deceased at Tirumala Bi-pass road, Swarna Residency and noticed the dead body of her daughter in the bed room lying on ground with injury to her face and with scars on the neck with contusion and there is a saree hanging to the ceiling fan. When she inquired, the neighbours stated that A1 informed them that he cut the saree when the deceased body was hanging to the ceiling fan and put the body on to the ground. She is suspecting that she was

killed and A1 is instigated by others or unable to bear with their ill treatment, she was succumbed by committing suicide. Hence report.

2. The defacto complainant in her statement before police reiterated the same. There is nothing specifically from her to point out any specific overt acts of A3 to A8, but for a sentence saying prior to the marriage, A1's mother and sisters demanded for dowry and the land which she has given and at best any whisper against the mother of A1 only and mainly against husband A1. LW2-Dommalapati Bala Krishna of Madanapalli, no other than brother of deceased and son of LW1 defacto complainant reiterated the same by suspecting she was killed. LW3-Paravali Krishna Kumari, no other than brother's wife of defacto complainant, whose version no way improves much less to point out anything against A3 to A8 and what she further stated is A1 used to beat the deceased demanding for additional amounts and Vishnu i.e., A8 – husband of A6 joined as a partner in lemon leaf restaurant with A1, deceased did not agree to sell the lodge and to run business and A1 was harassing and ill treated his wife Radhika by demanding money. What she further stated is at the time when they went there and noticed the dead body, A6 and A8 were at the house and she entertained a doubt that A1 killed the deceased and picturized as if it is a suicide. LW4-Pamuparthi Subhadra resident of Swarna Residency, Flat No.506 stated that opposite to her flat No.505, Radhika and her husband Prasad with minor child joined and they were residing there. She stated that on 07.02.2010 morning at about 08.00 a.m., she saw Radhika (deceased) cleaning her house since opposite to their house and at about 01.00 p.m., when she was preparing tiffin, A1 knocked the door and rung the calling bell and when opened the door stated that Radhika had tied saree to her

throat and when he tried to remove it, it was cut and since then she was not speaking and the neighbouring flat occupant also came out and went along with Prasad to the bed room and found Radhika lying on ground and noticed as already dead and she called neighbouring apartment occupants. In the meantime, ambulance came and the doctor who came in the ambulance noticed that she was already dead and they noticed to the ceiling fan one saree lying and she does not know how Radhika died, though Prasad, husband of the deceased stated that she hanged herself by committing suicide. LW5- Abhishek Singh working as Chat Master under A1 and deceased in the hotel and one Suresh is assistant to him and on 07.02.2011 morning at about 11.00 a.m., he went to the house of A1 and Radhika, when knocked the doors, one Suresh came out and opened the door. A1 and the deceased were not in the house and the door of the bed room appeared to be closed. While so, at about 12.30 in noon, Prasad came inside and asked for water and drank about two glasses of water and went to the bed room. Again came out and asked for knife and taken the knife and went to the bed room and in the bed room there is a sound, Prasad came out from bed room and asked Suresh, the other worker to call the neighbours and neighbouring aunty came and went along with Prasad to the bed room and declared Radhika dead. Lw6-Suresh Naik, who is a Chinese cook master of Prudhviraaj Mutt in Tirumala, joined as assistant cook in the lemon leaf restaurant of A1 Prasad under the main cook Abhishek LW5 and with same version of LW5. LW7 one TUMMALA Krishnareddygar Mahidhar Reddy, working in Swarna Residency Apartments as watchman by stating that his wife and family stated that on 06.02.2011, A1 Prasad came in auto in drunken stage and

auto driver informed of Prasad took liquor in Chinnangari Wines and taken cigar packet and at about 07.30 p.m., Radhika went to town on foot walk with daughter and Radhika asked if vehicle keys are traced to give and at about 08.00 p.m., Prasad in Auto went to town and the next day at about 08.30 a.m., when he was sweeping 5th floor, Radhika gave their dustbin and at about 09.00 a.m., the child of Radhika was taken to school in an auto and at about 10.00 a.m., Telugu cook came for work in the house and at about 11.00 a.m., Hindi Cook also came and in the after noon at about 01.00 p.m., 108 ambulance came and he came to know when doctor found Radhika already died. LW8 – Dammalapati Dwarakanath of Madanapalle, the junior paternal uncle of deceased's statement nowhere improves what defacto complainant and her son LWs.1 and 2 stated. LW9 Smt.Hima Sudha, Railway Engineer of Renigunta stated of receiving a phone call about Radhika died, she along with her mother Krishna Kumari came to Swarna Apartments by 2.00 p.m. At that time, A1, A6 and A8 were present there and dead body of Radhika was lying in the house of A1 and she notice injury on the forehead of the deceased. A1 told her that Radhika hanged herself to the ceiling fan and on receiving phone call from A1, they reached there. LW10- Dammalapati Rajendra Prasad, who is Radhika's another junior paternal uncle whose version is also nowhere improved, much less, with additional facts. LW11-Tammalavada Ramamurthy Manjula of Nellore residing at Sivajyothinagar, Tirupathi, stated they gave first floor for rent to Radhika and her husband Prasad in November, 2008. They resided there for one year and they vacated eight months back and about four months prior to their vacating the house one day at 10.00 p.m., when Radhika was crying by standing on the road, the

neighbour Sadhana came out and since LW11 is with Arthirities, she couldn't stand or walk and thought that there were family disputes between Radhika and her husband. LW12-Sri Sukh Rajan Shill of Sivajyothinagar, Tirupathi, whose house is two houses away to the house of Radhika and her husband Prasad with their daughter Varsha is also a circumstantial witness. So also LW13-Smt.Sadhana Shill, LW14-Kalapati Anasuya of Postal Colony, Tirupathi saying for some time Radhika and her husband are in ground floor house stayed on rent. LW-15, Vijayalakshmi is no other than wife of T.K.Mahidhar Reddy, working in Swarna Residency Apartments, whose statement is already recorded referred supra and LW16 Kommineni Subbarama Naidu of Amrutha Residency Apartments, Tirupathi stating in 2006 in one of their flats Radhika and her husband were staying for three years. Prasad used to come in a drunken stage during nights and quarrel with his wife, though Radhika never told anything. LW17-E.Suresh stated that A1 was running business in a Central Park, Tirupathi in the name of S.S.Associates and arranging loans for cars and he availed car loan in 2007 from A1 whereby he got acquaintance and his evidence is of no help to the crime. LW18-Gaddam Mahesh of Tirupathi stated that A1 family resided in the first floor in their apartments. In 2009, Radhika and her husband shifted their family to Sivajyothinagar. LW19-Kondari Sudhakar of Tirupathi stated that about four months Radhika and her husband stayed in first floor of their house, he came to know on 08.02.2011 of Radhika's death and went to see her dead body. LW20-Kummarapalli Sudhakar, watchman of Amrutha Residency, stated that Radhika and her husband resided two years past there.

3. Even from these, there is nothing to say, leave about A2, A3 to A8 even came to the house of deceased and A1 or instigated A1. From the material in the police final report and there is nothing to show the role of A3 to A8 in particular, it is simply stated there is no evidence of involvement of A2 to A8, but for of A1 in filing the charge sheet against A1 for the offences punishable under Section 498 A and 304 B read with Sections 3 and 4 of Dowry Prohibition Act. It is from the final report dated 22.08.2011, the defacto complainant filed a protest petition and the learned Magistrate there from taken cognizance against A2 to A8 also. In seeking their discharge after committal and taken cognizance by the Court of Sessions, during the hearing before charges. Therefrom it is the observation of the learned Sessions Judge in dismissing the discharge application that against the taking of cognizance against A2 to A8 by the committal Magistrate and in committing the case under Section 209 of Cr.P.C., A3 to A8 in particular did not challenge and in the protest petition, the mother of the deceased stated that all the accused demanded for additional dowry and when deceased refused, they beat her and son of brother of deceased PW2-P.Balakrishna from the protest petition evidence also stated the version and PW3 Krishna Kumar, who also deposed the accused demanding the deceased for disposing of land in favour of A1 and they all beat and harassed the deceased and PW4 Hima Sudha and PW5 Dwarakanath also deposed about A1 to A8 demanded the deceased to sell away the land and these statements from the inquiry and protest petition reveals acts of A2 to A8 also thereby no grounds to discharge.

4. From the contentions in the grounds of revision, it is the submission there is no basis there from to dismiss the discharge

application or to frame charge against A3 to A8 in particular, leave about A2.

5. Heard learned counsel for the petitioners A3 to A8 also learned Public Prosecutor and perused the material on record to decide the legality and correctness of the impugned discharge dismissal order of the Court of Sessions.

6. Even from the first report of the defacto complainant, her statements during investigation and also of her son, no other than brother of deceased examined during investigation, there is no whisper about any specific overt acts of A3 to A8 in particular. Nothing even to show A3 to A8, the sisters and one of the sister's husband of A1, instigated A1 and as stated already they are residing at different places. There is nothing even to say there were any acts of cruelty or harassment, much less, seen before her death in driving her to commit suicide or in driving to the unnatural death of the deceased in the hands of A1, if any. Once such is the case, dismissal of the discharge application by the learned Sessions Judge and framing of charges is no way sustainable for even taken of the allegations on the face of averments, there is no basis that to as held by this Court in ***S.Balakrishna Vs. State of Telangana and another***¹ and in ***Sun Pharmaceuticals Limited Vs. State of Telangana and another***² referring to ***Dharmapal and others Vs. State of Haryana and another***³ that once police final report deletes the names of the accused of no role, for the learned committal Magistrate to take cognizance against those is by referring to the

¹ 2016 (2) ALT CrI.428

² 2016 (2) ALT CrI.165

³ 2014 (3) SCC 306

material left open and otherwise from any protest raised to final report by defacto complainant, the taking of cognizance is by referring to the police final report-investigation material and statements of those witnesses from the protest petition examined. As PWs1 to 5, in the enquiry on protest petition even made no whisper of any of the accused stayed with A1, much less even on the day of unnatural death of the deceased and even with reference to police final report (investigation material) when taken into consideration, there is nothing to take cognizance by Magistrate for committing the case to the Court of Sessions or for the Sessions Judge to take cognizance on committal, if any. Once in the pre-charge hearing accused sought for discharge from the said material saying there is no sustainable accusation, it is the duty of the Court to consider and discuss the material as a whole and without which the discharge petition dismissal is unsustainable thereby and is liable to be set aside.

7. Accordingly and in the result, the revision is allowed by setting aside the dismissal of the discharge petition of A3 to A8, and by allowing their discharge petition for no grounds to frame charges against them.

Consequently, miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:13.02.2017
vhb