

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL No. 217 OF 2011

JUDGMENT: (*Per Hon'ble Dr. Justice Shameem Akther*)

This Criminal Appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.') questioning the judgment dated 19.08.2010, passed by the learned IV Additional Sessions Judge (Fast Track Court), Tanuku, West Godavari District (for brevity, 'the trial Court') in Sessions Case No.406 of 2007, whereby the trial Court convicted the appellant-accused under Section 235(2) Cr.P.C. for the offence punishable under Sections 302, 304-B and 201 of the Indian Penal Code, 1860 (for brevity, 'I.P.C.') and sentenced him to undergo imprisonment for life and to pay fine of Rs.3,000/- (Rupees three thousand only) with a default sentence of simple imprisonment for a period of three (3) years for the offence under Section 302 I.P.C.; to undergo imprisonment for life for the offence under Section 304-B I.P.C.; and to undergo simple imprisonment for a period of three (3) years and to pay fine of Rs.1,000/- (Rupees one thousand only) with a default sentence of simple imprisonment for one month for the offence under Section 201 I.P.C.; giving liberty to the appellant to set off the period of remand already undergone by him. The trial Court further directed that all the sentences imposed against the appellant for the aforesaid offences shall run concurrently.

2. Heard Smt. A.Gayatri Reddy, the learned counsel appearing for the appellant, and the learned Public Prosecutor appearing for the State.

3. The case of the prosecution, in brief, is as follows:

Smt. Kodamanchili Bhramaramba was the deceased in this case. P.W.1-Sannidhi Annapurna, mother of deceased performed the marriage of the deceased with the appellant on 05.10.2001 at Bhimavaram and gave Rs.50,000/- cash, ten sovereigns of gold and Ac.1-00 of land as dowry. The appellant and the deceased resided at Palivela village for two years, thereafter shifted to Sajjapuram of Tanuku. The appellant started harassing the deceased to sell away Ac.1-00 of land and give cash to him. While so, the deceased gave birth to a son on 22.09.2004. Due to harassment made by the appellant, P.W.1-mother of the deceased meted his demands three times by paying Rs.50,000/- to purchase a computer, Rs.50,000/- to purchase a motorcycle and Rs.25,000/- at the time of opening of an Astrology Office at Khammam by the appellant. The appellant resided with the deceased at Tanuku after that, left Palivela and there also he repeated the dowry harassment and from there, the deceased was taken back to the house of her mother-P.W.1 at Yanamaduru and stayed there for five months. After birth of a son, the appellant and the deceased took a house at Alamuru, which is the native place of the appellant, and thereafter the appellant alone left Khammam for some time and kept the deceased at Alamuru. Later the deceased was taken

back to Bhimavaram and again, on 10.11.2006, the appellant took the deceased to Alamuru and resided there in a rented house. The appellant was harassing the deceased demanding additional dowry and necked her out. The deceased was returned back to her mother's house with injuries on her body and she told her mother about the harassment made by the appellant. On 30.11.2006, the mother of the deceased dropped the deceased with samans at the house of the appellant situated at Alamuru. On 02.12.2006 at about 6-00 p.m., the deceased telephoned to her mother-P.W.1 by weeping and told that the appellant was torturing and she cannot bear the harassment and requested to take back her to her house. P.W.1 replied that she will raise a dispute through her elder brother-P.W.3 and thereafter she went to the house of her brother-P.W.3 and informed the same to him, who in turn, promised to raise the dispute on the next day. On the night of 02.12.2006, the appellant killed the deceased and tried to screen away the evidence, he burnt the dead body of the deceased with kerosene, 100% burns were caused. Later, the appellant informed about the death of the deceased to the neighbours at about 3-00 a.m. on 03.12.2006. The appellant also made a phone call to P.W.4-junior maternal uncle of the deceased. P.W.4 informed P.W.1-mother about the death of deceased and all of them reached Alamuru at 5-00 a.m. on 03.12.2006 and they found the dead body completely burnt. Thereafter, P.W.1 went to Penumantra Police Station and presented Ex.P.1-report

to P.W.16-the Assistant Sub Inspector of Police, who in turn, registered a case in Crime No.92 of 2006 for the offences punishable under Sections 498-A and 306 I.P.C., issued Ex.P.7-F.I.R. to all the concerned, requested Mandal Revenue Officer to conduct inquest over the dead body of the deceased, proceeded to the scene of offence, conducted scene of offence panchanama in the presence of panchas, prepared Ex.P.4-scene observation report, Ex.P.5-inquest and Ex.P.8-rough sketch of scene of offence, seized material objects, recorded statements of the witnesses and sent the dead body to post-mortem examination. P.W.9-Civil Assistant Surgeon conducted autopsy over the dead body along with P.W.13-Dr.K.Satyavathi and issued Ex.P.3-post-mortem examination report and opined that the deceased died due to asphyxia and due to pressure over the neck. P.W.17-Deputy Superintendent of Police on completion of investigation, filed charge sheet against the appellant for the offences punishable under Sections 302, 304-B, 201 I.P.C. and Section 4 of the Dowry Prohibition Act, 1961.

4. On committal, the case was made over to IV Additional Sessions Judge (Fast Track Court), Tanuku, West Godavari District. During trial, P.Ws.1 to 17 were examined and Exs.P.1 to P.10 and M.Os.1 to 9 were marked. No evidence was adduced by the appellant. The trial Court, basing on the entire evidence on record, convicted and sentenced the appellant as stated above.

5. Learned counsel for the appellant would submit that the appellant is not responsible for the death of his wife; the offences under Sections 302 and 304-B I.P.C. are distinct, one excludes the other and no sentence can be imposed for both the offences; there is no evidence to prove the offence under Section 4 of the Dowry Prohibition Act; the trial Court ought not have convicted the appellant for the offence under Section 304-B I.P.C.; the evidence placed on record leads only to the suspicion, it will not prove the guilt of the appellant for any offences; P.Ws.1 to 4 are not truthful witnesses; there is no F.S.L. Report and no attempt was made to detect the bloodstains found on walls, floor and on the body of the child; as per the medical evidence, no bleeding injury was found on the body of the deceased; there is inconsistency in the evidence of P.Ws.1 to 4 and inquest witnesses; the bad antecedents of the appellant are not relevant; the conduct of the appellant in informing the neighbours soon after seeing the dead body disproves his guilt; and ultimately, prayed to set aside the conviction and sentences recorded against the appellant.

6. Learned Public Prosecutor would submit that there is no reason for P.Ws.1 to 4 to depose falsely against the appellant; the deceased was mentally and physically harassed in connection with the demand of dowry after marriage and soon before her death; P.W.1-mother of the deceased gave substantial amounts to the appellant on several occasions and in spite of that, the appellant did not stop dowry harassment,

physically and mental torture and later committed murder of the deceased and burnt the dead body thus caused disappearance of evidence; the trial Court had rightly convicted and sentenced the appellant of the charges framed against him; the prosecution proved the guilt of the appellant beyond all reasonable doubt; and ultimately, prayed to dismiss the appeal confirming the conviction and sentence recorded against the appellant by the trial Court.

7. In view of the contentions putforth by both sides, the following points have come up for determination:

- (1) Whether the death of the deceased is homicidal?**
- (2) Whether the appellant caused disappearance of the evidence?**
- (3) Whether the deceased was subjected dowry harassment soon before her death?**
- (4) Whether the conviction and sentences recorded by the trial Court of the offences under Sections 302, 304-B and 201 I.P.C. are sustainable?**

8. POINT No.1: The evidence of P.W.9-Dr. T.Gopala Krishna reveals that he along with P.W.13-Dr. K.Satyavathi conducted joint post-mortem examination over the dead body of the deceased-Bramarambha on 04.12.2006 between 11-00 a.m. and 1-00 p.m., on examination they found superficial burns over whole body i.e., face, neck, thorax, abdomen, back, both upper and lower limbs, 100% burns, no vital reaction, no soot in the larynx and burns were post-mortem in nature. On internal

examination, they found skull normal, brain and meninges congested, left side fracture of hyoid present, ribs normal and time of death was 30 to 32 hours prior to the post-mortem examination. They opined that the deceased died due to asphyxia, i.e., she appeared to have died due to pressure over the neck, which is ante-mortem and the burns sustained by the deceased are post-mortem in nature. Ex.P.3 is the post-mortem certificate issued by them. The evidence of P.W.13-Dr. K.Satyavathi reveals that she along with P.W.9-Dr. T. Gopala Krishna conducted autopsy over the dead body of the deceased in this case, by name, K.Bramarambha. She corroborated with the evidence of P.W.9 in all material particulars. P.W.13 specifically stated that the deceased died due to use of pressure over the neck, which is ante-mortem and the burns sustained by the deceased are post-mortem. P.W.13 further stated that there was fracture of hyoid bone. Ex.P.3-post-mortem examination report corroborates with the evidence of P.W.9 and P.W.13. In cross-examination, P.W.13 denied that there was improper dissection of the dead body. In cross-examination, both the witnesses deposed that they were deposing false. Nothing is brought in the cross-examination of these witnesses to discard their testimony.

9. The evidence of P.W.14-Satti Venkata Suryanarayana Reddy is that the scene of offence panchanama and inquest panchanama were conducted over the dead body, laying in rented house of the appellant. The dead body was

found therein. Ex.P.4 is the scene of offence panchanama and Ex.P.5 is the inquest panchanama for seizure of clothes from the dead body of the deceased. P.W.12-Ramesh Chowdary drafted panchanamas. They opined that the deceased was throttled to death by the appellant and later the appellant burnt the dead body. P.W.16-D.Suryanarayana, Assistant Sub Inspector of Police, also corroborated with the evidence of P.W.14 and also deposed about the receipt of Ex.P.1-report from P.W.1, issue of Ex.P.7-F.I.R., conduct of scene of offence and inquest panchanamas over the dead body of the deceased and seizure of clothes and other material objects, i.e., M.Os.1 to 9. As per the evidence of these witnesses, the scene of offence is at the rented house of appellant, situated at Alamuru. There is no reason for this witness to depose false. There is consistency in the medical evidence and the evidence of other witnesses. There is also the evidence that there were bloodstains on the child and also on the wall of the rented house of the appellant. There is cogent and convincing evidence, both oral and documentary, on record to believe that the death of the deceased was homicidal and the place of offence is rented house of the appellant, situated at Alamuru village. The point No.1 is answered accordingly.

10. **POINT Nos.2 TO 3:** P.W.1 is the mother of the deceased. Her evidence reveals that the deceased was her daughter, the appellant is her son-in-law, on 10.05.2001, the marriage of the deceased was performed with the appellant, she

gave lot of dowry at the time of marriage, after marriage the deceased and the appellant lived together in her house at Palivela for three years, the appellant harassed her daughter demanding additional dowry, i.e., to give Acs.9-00 of land and used to threaten the deceased to kill, the deceased became pregnant, as there were no facilities, they shifted to Tanuku, the deceased was being continuously harassed by the appellant for additional dowry, she gave Rs.50,000/- to purchase a computer, another Rs.50,000/- to purchase motorcycle and also Rs.25,000/- at the time of opening of an astrology office by the appellant at Khammam. P.W.1 further deposed that even after receipt of the said amounts, the appellant did not stop harassment against the deceased and was demanding additional dowry, he continued to do so, always the appellant used to pick up quarrels with the deceased, several times the deceased informed the same to her (P.W.1), the appellant used to drink and harass her daughter for additional dowry and the appellant also necked out the deceased from his house, scratches were found on the body of the deceased, due to beating by the appellant, the deceased used to weep and inform the same to her and P.W.1 used to console and send back to the company of the appellant and ultimately she sent back the deceased on 30.11.2006 to the house of the appellant situated at Alamuru with samans and household articles. P.W.1 further deposed that on 02.12.2006, the deceased telephoned her and informed that the appellant tortured and harassed her and requested her to

take her back to her house, at that time deceased was weeping, and also informed that the appellant beat the deceased and asked her to sleep outside the room, the appellant was alone sleeping inside the room by locking the doors, she consoled the deceased by saying that she would tell the same to her brother, thereafter the deceased went to the house of brother of P.W.1 and told about the happenings, her brother promised her that he would come next day and question the appellant, and on the next day, at 3-00 a.m., her younger brother-K.Koppeswara Rao (P.W.4) received a phone message that her daughter died, in turn, he telephoned to his elder brother-K.Venkata Subrahmanyam (P.W.3), thereafter she went to Alamuru at 5-00 a.m., she found the dead body of the deceased completely burnt lying without any dress, she noticed bloodstains on the walls and also on the son of the deceased and she made Ex.P.1-report to the police. In cross-examination, P.W.1 reiterated what she stated in her chief-examination and also stated that the appellant asked to sell away the land. The evidence of P.W.2-Sannidiraju Veerabhadra Sarma reveals that P.W.1 is his mother of the deceased, the deceased was his sister, the appellant is his brother-in-law. P.W.2 also deposed about the performance of the marriage of the deceased with the appellant, demand of additional dowry by the appellant and the appellant harassing the deceased. He corroborated with the evidence of P.W.1 in all other material particulars, such as, the appellant demanding additional dowry on several occasions. P.W.2 also stated that

the appellant used to demand the deceased to sell her gold ornaments and give cash to him. On 03.12.2006, he was informed that his sister (deceased) died, then he along with others went to the house of the appellant at Alamuru at 5-00 a.m., they found the dead body of the deceased and he drafted Ex.P.1-report. In cross-examination, P.W.2 reiterated what he stated in his chief-examination. The evidence of P.W.3-Kodamanchili Venkata Subrahmanyam reveals that P.W.1 is his elder sister. He deposed about the marriage between the appellant and the deceased. He also deposed about money and the property given to the appellant at the time of marriage, the appellant addicted to bad habits, such as, drinking, etc., and also harassing the deceased for additional dowry. Further, he deposed that P.W.1 gave the appellant Rs.50,000/- to purchase a computer, Rs.50,000/- to purchase a motorcycle and Rs.25,000/- at the time of opening of astrology office by the appellant at Khammam, the appellant and the deceased begot a child, the deceased used to tell him that the appellant demanding additional dowry and harassing her, the appellant was also demanding the deceased to sell away the land and give cash to him. On 03.12.2006 at about 3-15 a.m., his younger brother telephoned him and informed him that the deceased died, he went along with others to the house of the appellant and found the dead body of the deceased with burn injuries, P.Ws.2 and 3 stated that when they questioned the appellant, he pleaded ignorance with regard to cause of death. In cross-examination,

P.W.3 denied that he was deposing false and stated that three days prior to the death, the deceased made him a phone call and informed him that the appellant demanded her to sell away the land and to give cash to him. The evidence of P.W.4-Konamanchili Koppeswara Rao reveals that P.W.1 is his elder sister and P.W.3 is his elder brother. He also corroborated with the evidence of P.Ws.1 to 3 with regard to the dowry harassment and P.W.1 giving money to the appellant. There is also specific evidence of P.W.4 that on 03.12.2006 at about 3-00 a.m., the appellant made a phone call to him and could not give details properly, the person who is said to be the neighbour of the appellant told him that the deceased died due to burns, then he informed his sister-P.W.1 about the death of the deceased and he reached the house of the appellant and found the dead body of the deceased completely burnt. In cross-examination, he reiterated the same. The evidence of P.W.5-Kotta Baburao reveals that he knew the appellant and the deceased, the appellant was an Archaka in Alamuru temple, 20 days prior to the death of the deceased, the appellant took a rented house at Alamuru, which is opposite to his house, the house belongs to P.W.10-Kovvuri Srirama Reddy, on 03.12.2006 at about 3-00 a.m., the appellant came to his house and wake him up saying that the deceased committed suicide and asked him to help, then he went and found the dead body of the deceased burnt and lying on the floor and he was examined by the police. This witness was declared hostile and the statement given by him to

the police was marked as Ex.P.2, wherein it was mentioned that he suspected the appellant in the death of the deceased. The evidence of P.W.6-Kovvuri Rama Krishna Reddy reveals that he is the Trust Board Member of Sivalayam temple of Alamuru, the elder brother of the appellant worked as Archaka in the temple, he saw the wife of the appellant, he also saw the dead body of the deceased, the appellant addicted to vices and he came to know that the appellant demanded the deceased for additional dowry and harassed her. He was examined by the police. The evidence of P.W.7-Karri Nagireddy reveals that he is an agriculturist, the appellant is his neighbour, he knew the deceased in this case, about three years back, when he was sleeping in his house at night, the appellant came to him and woke up him by saying that his wife lit fire by herself, on previous day, the appellant beat his wife, he heard those cries, he also witnessed when the appellant beating his wife, he saw the dead body of the deceased, which was burnt, he noticed blood on the boy i.e., son of the deceased aged 4 or 5 years. The evidence of P.W.8-Nallamalli Rajasekhar reveals that he did not take photographs in this case. The evidence of P.W.10-Kovvuri Sri Ramareddy reveals that he saw the dead body of the deceased and found that it was burnt, he also found blood on the walls, floor and on the body of the deceased. P.W.11-Satti Atchireddy deposed about the death incident on that day and he informed the death to relatives of deceased, he saw the dead body in a burnt condition. P.W.15-G.Chandra Sekhar, photographer,

deposed about taking of eight photographs of the dead body and the scene of offence, marked as Ex.P.6. P.W.17 is the Inspector of Police. His evidence reveals that he verified the investigation conducted by P.W.16-Assistant Sub Inspector of Police and found it correct, he arrested the appellant, brought him to the police station and sent him to the Court for judicial remand. He further deposed that he sent the material objects to R.F.S.L., Vijayawada, on 28.02.2007, he received Ex.P.10-R.F.S.L. Report, after completion of investigation, he filed charge sheet against the appellant for the offences punishable under Sections 302, 304-B and 201 I.P.C. and Section 4 of the Dowry Prohibition Act.

11. P.W.1 is none other than the mother of the deceased. She has categorically deposed that there was continuous physical and mental harassment meted out to the deceased by the appellant in connection of demand of additional dowry, in spite of P.W.1 giving money on several occasions, i.e., Rs.50,000/- to purchase computer, another Rs.50,000/- to purchase motorcycle and Rs.25,000/- to establish astrology office at Khammam. The same has been corroborated with the evidence of P.Ws.3 and 4, who are brothers of P.W.1 and they are the natural persons to know about the happenings in the family. They also deposed about the continuous physical and mental torture meted out to the deceased by the appellant, the same is mentioned in Ex.P.1-report. On 30.11.2006, the deceased was left at the house of the appellant with samans and

household articles, the deceased several times informed her mother and others with regard to the harassment meted out by the appellant. The death was caused on the intervening night of 2/3.12.2006. On 02.12.2006, at about 6-00 p.m., the deceased telephoned to P.W.1 and informed her that the appellant tortured her and she cannot bear the harassment and asked her mother to take back. On the next day early hours, P.W.1 and another received a phone call that the deceased died. The appellant was the person who informed the death of the deceased to his neighbours, i.e., P.Ws.5 to 7, and all these witnesses went to the house of the deceased and found the dead body of the deceased totally burnt. The appellant was the person who woke up P.Ws.5 to 7 and informed them about the death of the deceased. P.W.6 specifically stated that the appellant addicted to bad vices. P.W.7 specifically stated that he saw the appellant beating his wife. P.Ws.1, 2, 3 and 7 also saw the blood on the walls. Blood was also found on the child. There is specific evidence of P.Ws.9 and 13 doctors that there was a fracture of hyoid bone, the deceased died due to use of pressure on neck and the fracture of hyoid bone is ante-mortem, the burn injuries found over the dead body are post-mortem. Ex.P.3 is the post-mortem examination report given by the doctors-P.Ws.9 and 13. There is no reason for the doctors to depose false. While answering point No.1, whether the death is homicidal or otherwise, it is held that the death was homicidal. Admittedly, the deceased and her son were in the company of the appellant

and it is not the case of the appellant that the deceased was not with him on the intervening night of 2/3.12.2006. Moreover, the appellant is the person who informed the neighbours about the death of the deceased. All the neighbours deposed that they were informed the death of the deceased by the appellant and they found the dead body of the deceased totally burnt and the appellant was there at that time. P.Ws.1 to 4 have also stated that the deceased was present when they went and saw the dead body of the deceased at his rented house. When some of the witnesses questioned the appellant with regard to the cause of death, he did not state anything. When the entire incriminating evidence appearing against the appellant is put to him under Section 313 Cr.P.C., he simply denied the same and stated that a false case was foisted against him and he is not responsible for the death of his wife. The appellant did not lead any rebuttal evidence. He did not establish that he was not present with the deceased on that night in their house and he was somewhere else or some unknown persons have caused the death of the deceased. As per Section 106 of the Indian Evidence Act, the appellant is required to explain the facts within his knowledge. Section 106 of the Evidence Act reads as follows:

"106. Burden of proving fact especially with knowledge
– When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him
illustrations:

(a) When a person does an act with some intention other than that which the character and

circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with traveling on a railway without a ticket. The burden of proving that he had a ticket is on him."

12. In the case of **State of M.P. v. Ratan Lal**¹, the Hon'ble Supreme Court held that in a case where various links have been satisfactorily made out and the accused did not offer any explanation consistent with their innocence, the absence of such explanation itself is an additional link which completes the chain. Similar are the circumstances in the case on hand.

13. The answers given by the appellant would go a long way in completing the chain of circumstances in establishing the guilt. The evidence of P.Ws.1 to 7 is consistent, cogent and no hypothesis or accusation is possible with regard to the innocence of the appellant. The appellant was very much present in the company of the deceased on the intervening night of 2/3.12.2006. One day before her death, the deceased telephoned to her mother with regard to the continuous dowry harassment. P.W.7 also found the deceased crying and beaten by the appellant. On 03.12.2006 at about 3-00 a.m., the appellant informed his neighbours about the death of the deceased. He alleged that the deceased committed suicide. As per the medical evidence and oral evidence, it is not a case of suicide. It goes to show that the appellant tried to mislead the people that the deceased had committed suicide. The dead

¹ AIR 1994 SC 458

body was totally burnt and the burn injuries are post-mortem. The appellant was only person in the company of the deceased. There was no possibility or reason for any other persons to burn the dead body. Therefore, it clearly establishes that the appellant strangled the deceased to death and thereafter, he burnt the dead body. There is also evidence to establish that there was blood on the walls, scene of offence and over the dead body. It also clinchingly establishes that the appellant caused simple injuries, thereafter he throttled the deceased to death and burnt the dead body. Though there are no direct witnesses, but the circumstances placed on record would clearly establish an inference of guilt of the appellant in causing the death of his wife. The evidence on record is of definite tendency and un-erringly pointing towards the guilt of the appellant in causing death of the deceased. The cumulative effect of the circumstances on record is so complete that there is no escape from the conclusion that with all human probability, the death was caused by the appellant and none else. The circumstantial evidence is complete and incapable of explanation of any other hypothesis than that of the guilt of the appellant. The evidence on record is consistent and fairly establishes that the appellant throttled his wife to death, having tortured her mentally and physically for want of dowry and when she did not sell her land and pay sale proceeds to him.

14. Learned counsel for the appellant would submit that the appellant cannot be convicted for the offences under

Sections 302 and 304-B I.P.C., as they are distinct offences. In support of her contention, she relied on a decision of the Hon'ble Supreme Court in **Bajnath and others v. State of Madhya Pradesh**².

"To the contrary, the evidence of the defence witnesses is consistent to the effect that no demand as imputed had ever been made as the family of the husband was adequately well-off and further Appellant 1 Bajnath had been living separately from before the marriage. According to them there was no occasion for any quarrel/confrontation or unpleasantness in the family qua this issue. Significant is also the testimony of DW 3, the sister-in-law of the deceased who indicated abandonment of the matrimonial home by her with the son of Thoran Singh, the Sarpanch of the village for which she understandably had incurred the displeasure of the in-laws. DW 4, the father of DW 3 who had given his daughter in marriage in the same family had deposed that he did not ever encounter any demand for dowry. The testimony of the prosecution witnesses PW 3 and PW 7 fully consolidate the defence version.

A cumulative consideration of the overall evidence on the facet of dowry, leaves us unconvinced about the truthfulness of the charge qua the accused persons. The prosecution in our estimate, has failed to prove this indispensable component of the two offences beyond reasonable doubt. The factum of unnatural death in the matrimonial home and that too within seven years of marriage therefore is thus ipso facto not sufficient to bring home the charge under Sections 304-B and 498-A of the Code against them."

² (2017) 1 SCC (Crl.) 225

15. Under these circumstances, it is appropriate to refer the decision of Hon'ble Supreme Court in **Smt. Shanti and another v. State of Haryana**³, which was referred in many other subsequent decisions. The Hon'ble Supreme Court stated the law on the point relating to an offence under Section 304-B I.P.C.

"4..... A careful analysis of Section 304-B shows that this section has the following essentials:

- (1) The death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (2) Such death should have occurred within seven years of her marriage;
- (3) She must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (4) Such cruelty or harassment should be for or in connection with demand for dowry.

Section 113-B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, then the court shall presume that such person has committed the dowry death. The meaning of "cruelty" for the purposes of these sections has to be gathered from the language as found in Section 498-A and as per that section "cruelty" means "any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life etc. or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand". As per the definition of "dowry" any property or valuable security given or agreed to be given either at or

³ (1991) 1 SCC 371

before or any time after the marriage, comes within the meaning of “dowry”.....”

16. Unto the latest decision available on this point, in **Baljinder Kaur v. State of Punjab**⁴, except for the required thrust with respect to the factual situation available in each case, the law has been consistent as to the requirements for constituting the offence under Section 304-B of I.P.C.

17. As per the evidence on record, the death of the deceased in this case is homicidal, it includes death “otherwise than under normal circumstances”. As per the evidence on record, the date of marriage is 10.05.2001 and the death of the deceased was on the intervening night of 2/3.12.2006, i.e., within seven years of marriage. There is ample evidence on record to show that lot of dowry was given at the time of marriage, even then the appellant continuously demanded and harassed the deceased for want of additional dowry. The appellant was continuously harassing and beating the deceased to sell one acre of land and give him the sale proceeds. The deceased just before her death, i.e., on 02.12.2006 at 6-00 p.m., telephoned to her mother-P.W.1, weeping and informed her that appellant torturing, beating and harassing her and making her sleep outside and he was sleeping in a room. There is clear and unimpeachable evidence on record to believe the same. The entire harassment and cruelty meted out to the deceased by the appellant was in connection of demand of additional dowry. As

⁴ (2014) 13 SCALE 96

per Section 113-B of the Indian Evidence Act, soon after the death, such a woman has been subjected to cruelty or harassment for or in connection with any demands for dowry, then the Court shall presume that such person had committed dowry death. The cruelty for the purpose of this section has been gathered from the language as found in Section 498-A I.P.C. and as per that section, "cruelty" means any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or cause injury or damage to life, etc., or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. As per the definition of "dowry", any property or valuable security given or agreed to be given either at or before or any time after the marriage, comes within the meaning of "dowry". The evidence of P.Ws.1 to 5 clearly establishes that the deceased was continuously harassed and tortured by the appellant in connection with dowry. There is nothing to doubt the same. Admittedly, the ingredients of Section 302 I.P.C. and Section 304-B I.P.C. are distinct. In **Bajnath's** case (supra 2) on which reliance is placed by the learned counsel for the appellant, there is no dowry harassment soon before death of the deceased. But in the case on hand, the deceased was continuously harassed mentally and physically and there are innumerable instances of harassment meted out to the deceased in connection of demand of dowry including the

sale of land and pay the sale consideration to the appellant soon before her death. Therefore, the decision referred by the learned counsel for the appellant cannot be relied on. In view of the oral and documentary evidence on record, the prosecution had proved the guilt of the appellant beyond all reasonable doubt for the offences under Sections 302 and 304-B I.P.C., though they are distinct offences.

18. It is also the evidence on record that the appellant made an attempt to cause disappearance of the evidence by burning the dead body. He tried to depict it as a suicidal death, but failed in his attempt to establish. Therefore, the appellant is guilty of committing an offence under Section 201 I.P.C. also. The trial Court, while analyzing the entire evidence on record, came to a correct conclusion and there is no infirmity in the impugned judgment. Therefore, it is not appropriate to take a different view. The conviction and sentences recorded against the appellant for the offences punishable under Sections 302, 304-B and 201 I.P.C. are liable to be confirmed. All the defences set up by the appellant have no merit to consider. The appeal is devoid of merits and is liable to be dismissed.

19. In the result, the appeal is dismissed and the conviction and sentence recorded against the appellant by the trial Court in Sessions Case No.406 of f2007, vide the judgment dated 19.08.2010, is confirmed.

20. A perusal of the record shows that by order dated 28.11.2016 in Crl.A.M.P. No.1900 of 2016, this Court granted bail to the appellant following the order of this Court in **Batchu Ranga Rao v. State of A.P.**⁵. Therefore, the appellant shall surrender himself before the Superintendent, Central Prison, Rajahmundry, East Godavari, forthwith, to serve the remaining sentence. In default, the trial Court shall take appropriate steps against the appellant to implement the impugned judgment.

20. As a sequel, miscellaneous petitions, if any pending in this appeal, shall stand closed.

SANJAY KUMAR, J

Dr. SHAMEEM AKTHER, J

Date: 01-09-2017
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⁵ (Crl.A.M.P. No.1687 of 2016 in Crl.A. No.607 of 2011)