

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

Crl.A.No.890 of 2011

Between:

Yerraballi Chinna Subbaiah,
S/o Pedda Subbaiah and five others.

... Petitioners

And

The State of A.P., repled.,
by the Public Prosecutor, Hyderabad.

... Respondent

JUDGMENT PRONOUNCED ON 20.6.2018

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

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

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! Counsel for the Petitioners: Mrs. C.Vasundhara Reddy

^ Counsel for the Respondent: Public Prosecutor for the State of AP

? Cases Referred:

1. (1994) 6 SCC 727
2. (2014) 10 SCC 577
3. (2010) 3 SCC 152

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
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Date:20.06.2018

Between.

Yerraballi Chinna Subbaiah,
S/o Pedda Subbaiah and five others.

.....Appellants

And.

The State of A.P., repled.,
by the Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellants: Mrs. C.Vasundhara Reddy

Counsel for the respondent: Public Prosecutor for the State of AP

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

Accused Nos.1 to 6 in Sessions Case No.99 of 2009 on the file of the learned I Additional Sessions Judge, Kadapa, filed this Criminal Appeal feeling aggrieved by their conviction for the offence under Section-304-B IPC and sentencing them to suffer rigorous imprisonment for life and further sentencing them to suffer simple imprisonment for three months for the offence under Section-4 of the Dowry Prohibition Act, *vide* judgment, dated 25.07.2011.

The case of the prosecution in brief is as follows.

P.W-1 was the mother and P.W-2 was the brother of Y.Eswaramma (hereinafter referred to as "the deceased"). Appellant No.1 was the husband of the deceased, appellant No.2 is the brother and appellant No.3 is the mother of appellant No.1, appellant No.4 is the husband of appellant No.5 and appellant No.6 is the wife of appellant No.2. That about 1 ½ years prior to the date of the incident, the marriage of the deceased was performed with appellant No.1; that the couple led a happy marital life for some time; that appellant No.1 was sanctioned a pucca house under Indiramma scheme; that both appellant Nos.1 and 2 laid basement at the entrance of the

village; that since then on the instigation of appellant Nos.2 to 6, appellant No.1 started harassing the deceased both mentally and physically to bring additional dowry of Rs.20,000/- and an iron almyrah; that on 24.4.2008, when the deceased accompanied by P.W-1 went to the house of the accused, the accused warned P.W-1 that if she does not give the said money, they would not allow the deceased into the house; that P.W-1 expressed her inability and promised to present some amount if the accused give some time to her; that on 25.4.2008, P.W-1 went to her village leaving the deceased there; that on the same day, at about 5 pm., she received the information about the death of the deceased; that she along with her relatives immediately rushed to the house of the appellants and found the dead body of the deceased lying on a cot; that on the next day morning, she lodged the report-Ex.P-1.

That on 25.4.2008, at about 10 am., on receiving Ex.P-1-report from P.W-1, P.W-12-the then Sub-Inspector of Police, B.Kodur Police Station, registered the same as a case in Crime No.20 of 2008 under Section-304-B IPC and issued FIR to all the concerned; that he visited the scene of offence, prepared a rough sketch of the same-Ex.P-12; that on his requisition, P.W-10-Deputy Tahsildar held inquest over the dead body of

the deceased in the presence of P.W-8, L.Ws.14 to 18, observed the scene of offence, and seized MOs.1 to 3 under the cover of Scene of observation panchanama-Ex.P-8; that on 26.4.2008, P.W-11-Civil Assistant Surgeon held autopsy over the dead body of the deceased and opined that the cause of death was due to cardio respiratory arrest due to neurogenic shock caused by burns; that on 27.4.2008, P.W-13 visited the scene of offence, recorded the statements of P.Ws.1 to 6, basing on which, he altered the Section of law from 304-B IPC to Sections 302 and 201 read with 34 IPC; that on 03.5.2008, he arrested appellant Nos.1 to 6 in the presence of P.W-9 and L.W-20-Siddhu Ramakrishnareddy; that on interrogation, they voluntarily confessed about the commission of offence and the same was recorded under the cover of Confession Panchanama-Ex.P-7; and that later they were sent to judicial custody. That after receiving all the relevant documents and on completion of the investigation, the charge sheet was filed.

Based on the charge sheet and the material collected by the Investigation Officer, the Court below framed the following charges:

“That A-1 to A-6 of you on 25.4.2008 at around 4 pm at the baren lands situated on the western side of Sirigiripalli Harijanawada of B.Kodur Mandal,

committed murder intentionally or knowingly causing the death of Y.Eswaramma to wit A.3 of your brought the kerosene tin followed by A.5 of your and A.1, A.2, A.4 and A.6 of you took the deceased to the said place and all of you made the deceased laid on the ground, A.3 of your poured kerosene on her body and other accused of you throw hay upon her and lit fire to her, as a result of which the deceased died due to cardio respiratory arrest due to neurogenic shock, thus A.1 to A.6 of you thereby committed an offence punishable under Section-302 of IPC and within my cognizance.

In (SIC:the) alternative

“1. That A-1 to A-6 of you on 25.4.2008 at around 4 pm at the baren lands situated on the western side of Sirigiripalli Harijanawada of B.Kodur Mandal, caused the death of Y.Eswaramma within seven years of her marriage with A.1 of you and before her death all of you subjected her to cruelty and harassment with a demand for additional dowry and valuables and A.1 to A.6 of you thereby committed an offence punishable under Section-304-B of IPC and within my cognizance.

2. That A-1 to A-6 of you on the above said date time and place knowing or having reason to believe that the offence of murder punishable with imprisonment for life has been committed causing certain evidence connected with the said offence i.e., the dead body of the deceased Y.Eswaramma to disappear shifted it to a cot from the scene of offence with an intention to screen you as the offenders from the legal punishment and A.1 to A.6 of you thereby committed an offence punishable under Section-201 IPC and within my cognizance.

3. That A-1 to A-6 of you about six months prior to 25.5.2008 demanded additional dowry i.e., cash of Rs.20,000/-and one iron almyrah by subjecting

Y.Eswaramma wife of A.1 of you with cruelty and harassment physically and mentally and A.1 to A.6 of you thereby committed an offence punishable under Section-4 of the Dowry Prohibition Act.”

As the plea of the appellants was one of denial, they were subjected to trial, during which, the prosecution has examined P.Ws.1 to 14, got Exs.P-1 to P-14 marked and produced M.Os.1 to 3. On behalf of the defence, no oral evidence was let in, but Ex.D-1, a portion in 161 Cr.P.C. statement of P.W-7 was marked.

On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as indicated above.

We have heard Mrs. C.Vasundhara Reddy, learned counsel for the appellants, and the learned Public Prosecutor for the State of Andhra Pradesh.

Though the appellants have been charged for the offences under Sections-302 and 304-B IPC, the latter being an alternative charge, the Court below has convicted the appellants for the offence under Section-304-B IPC and sentenced them to suffer rigorous imprisonment for life.

As regards appellant No.1/accused No.1, P.W-1-the mother of the deceased, who gave Ex.P-1-report, based on which Ex.P-11-First Information Report was registered,

specifically alleged therein that one week prior to the death of the deceased, appellant No.1 has sent her daughter (the deceased) to their house with a warning to bring Rs.20,000/- and an iron almyrah. This version was substantiated by P.W-1 in her evidence. Significant to notice that in the cross-examination of P.W-1, a suggestion was made that a quarrel took place between the deceased and her sister-in-law, *i.e.* P.W-5, over an assurance given by P.W-1 to give away 0.05 cents of site to the deceased and her failure to fulfill the said promise. From this suggestion itself, a presumption could be drawn that a demand was being made by appellant No.1 to bring money/property from P.W-1.

The evidence of P.W-1 has been corroborated by the evidence of P.W-2-the brother of the deceased as regards the demand of dowry by P.W-1. The Court below has accepted the prosecution version in this regard. In our opinion, the evidence on record placed by the prosecution relating to the demand of dowry by P.W-1 is beyond reasonable doubt. Therefore, we have no reason to differ with the findings of the Court below with respect to the guilt of appellant No.1 to the extent of demand of dowry, thereby, causing mental cruelty to the deceased, which evidently drove her to commit suicide.

As regards appellant Nos.2 to 6, even in Ex.P-1-report, except a vague allegation that the kith and kin of appellant No.1 were also involved in dowry demand and caused cruelty to the deceased, no specific allegations have been made against them. The Court below, therefore, was not justified in finding appellant Nos.2 to 6 guilty of the offences under Section-304-B IPC and Section-4 of the Dowry Prohibition Act. Hence, the judgment of the Court below to the extent of conviction and sentencing of appellant Nos.2 to 6 for the above said offences cannot be sustained and the same is accordingly set aside.

Coming to sentencing of appellant No.1 to rigorous life imprisonment for the offence under Section-304-B IPC, it is to be noted that the Supreme Court in *Hem Chand v. State of Haryana*¹ held as under:

“7. ... the appellant-accused was a police employee and instead of checking the crime, he himself indulged therein and precipitated in it and that bride-killing cases are on the increase and therefore a serious view has to be taken. As mentioned above, Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case.

¹ (1994) 6 SCC 727

8. Hence, we are of the view that a sentence of 10 years' RI would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' RI."

In *Hari Om v. State of Haryana*², in similar circumstances, the Supreme Court has converted the life sentence of the accused therein into ten years rigorous imprisonment while holding as under:

"17. This issue has been the subject-matter of debate before this Court in several cases, which arose out of Section 304-B read with Section 498-A and wherein this Court while interpreting the expression "may" occurring in Section 304-B IPC held that it is not mandatory for the Court in every case to award life imprisonment to the accused once he is found guilty of the offence under Section 304-B. It was held that the Court could award sentence in exercise of its discretion between seven years to life imprisonment depending upon the facts of each case. It was held that in no case it could be less than seven years and that extreme punishment of life term should be awarded in "*rare cases*" but not in every case.

.....

21. Applying the principle of law laid down in the aforementioned cases and having regard to the totality of facts and circumstances of this case, we are of the considered opinion that the ends of justice would meet, if we reduce the sentence of the appellant from life imprisonment to that of 10 years. In our view, this case does not fall in the category of a "*rare case*" as envisaged by this Court so as to

² (2014) 10 SCC 577

award to the appellant the life imprisonment. That apart, we also notice that while awarding life imprisonment, the courts below did not assign any reasons.”

In *G.V.Siddaramesh v. State of Karnataka*³, considering the scope of Section 304-B of IPC, the Supreme Court held as under:

“31. In conclusion, we are satisfied that in the facts and circumstances of the case, the appellant was rightly convicted under Section 304-B IPC. However, his sentence of life imprisonment imposed by the courts below appears to us to be excessive. The appellant is a young man and has already undergone 6 years of imprisonment after being convicted by the Additional Sessions Judge and the High Court. We are of the view, in the facts and circumstances of the case, that a sentence of 10 years' rigorous imprisonment would meet the ends of justice. We, accordingly while confirming the conviction of the appellant under Section 304-B IPC, reduce the sentence of imprisonment for life to 10 years' rigorous imprisonment. The other conviction and sentence passed against the appellant are confirmed.”

The Court below has not termed this case as falling under the category of a “rare case” for imposing the sentence of imprisonment for life on appellant No.1 for the offence under Section-304-B IPC. Therefore, we are of the opinion that the sentence imposed on appellant No.1 is liable to be reduced to

³ (2010) 3 SCC 152

rigorous imprisonment for seven years, while sustaining the sentence imposed on him by the Court below for the offence under Section-4 of the Dowry Prohibition Act.

In the result, the Criminal Appeal is allowed in part to the extent of appellant No.1/accused No.1 and the sentence of life imprisonment imposed on him, *vide* judgment, dated 25.07.2011, in Sessions Case No.99 of 2009 on the file the learned I Additional Sessions Judge, Kadapa, for the offence under Section-304-B IPC is reduced to rigorous imprisonment for seven years, while sustaining the sentence imposed on him by the Court below for the offence under Section-4 of the Dowry Prohibition Act. He shall surrender before the Superintendent, Central Jail, Kadapa, for serving the remaining sentence.

The Criminal Appeal is allowed in *toto* as regards appellant Nos.2 to 6/accused Nos.2 to 6 and the conviction and sentence recorded against them in the impugned judgment for the offences punishable under Section-304-B IPC and Section-4 of the Dowry Prohibition Act are set aside. Appellant Nos.2 to 6/accused Nos.2 to 6 are acquitted of the offences with which they are charged. As appellant Nos.2 to 6/accused Nos.2 to 6 are on bail, they are directed to surrender themselves before the

Superintendent, Central Jail, Kadapa, for completing the required legal formalities for their release.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

20th June, 2018

Note:

LR copies to be marked.

B/o

DR

