

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

CRIMINAL APPEAL No.663 of 2011

DATED:05-03-2018

Between:

Batti China Venkata Rao ... Appellant

And

The State of A.P.,
Rep. by Public Prosecutor
High Court of A.P.,
Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Mr. K. Suresh Reddy

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)



THE COURT MADE THE FOLLOWING:

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

The sole accused in Sessions Cass No.44 of 2009 on the file of the VI Additional District and Sessions Judge (Fast Track Court), Krishna at Machilipatnam, filed this appeal against his conviction for the offences under Sections 498-A and 304-B of the Indian Penal Code (IPC) and sentencing him to undergo rigorous imprisonment for three years and also to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo simple imprisonment for one year for the offence under Section 498-A of IPC, and also sentencing him to undergo imprisonment for life for the offence under Section 304-B IPC. Both the sentences were directed to run concurrently.

2. The case of the prosecution as reflected from the charge sheet filed by it is briefly stated as under. P.W.1, who is a resident of Rajupalem Village of Yerrupalem Mandal, had four daughters. Batti Vara Lakshmi (hereinafter referred to as “deceased No.1”) was the second daughter of P.W.1. The marriage of deceased No.1 and the appellant was performed on 25.5.2002. At the time of the marriage, P.W.1 gave cash of Rs.25,000/- to the appellant as dowry, besides other gifts. The

couple were blessed with two female children – Divya – deceased No.2 (aged 5 years) and Prasanna – deceased No.3 (aged 3 years). Soon after the marriage, they resided at Tholukodu Village by doing cooli works. While they were at the said village, the appellant harassed deceased No.1 both mentally and physically, beat her indiscriminately without any reason and demanded additional dowry from her parents. On the demand of the appellant, deceased No.1 left her matrimonial house, reached her parents' house and informed the harassment by the appellant and his demand for the additional dowry. P.W.1 arranged some amount and sent back deceased No.1 to her matrimonial house. Subsequently, the appellant and deceased No.1 shifted their residence to Gaddamanugu Village and were living in one of the rooms in a old dilapidated society building and there also he used to harass deceased No.1 and suspect her character. Due to the continuous harassment of the appellant, deceased No.1 was being brought by her father P.W.1 to his village from Gaddamanugu village and finally on the request and assurance of P.W.6, deceased No.1 was sent to the appellant. On 29.07.2008 deceased No.1 went to Elaprolu village of Ibrahimpatnam, where her elder sister was residing and asked

her some money, as the appellant was demanding the same, and deceased No.1 stayed there for the night. On 30.07.2008 deceased No.1 returned to Gaddamanugu Village, and the appellant harassed and suspected her character and beat her. On 03.08.2008 at 17.30 Hours due to unbearable harassment by the appellant, deceased No.1 committed suicide by pouring kerosene on herself in the society building, where they were residing, by bolting the door from inside and by the time as her two female children were also with her and kerosene fallen on them, they also sustained injuries and succumbed to the burn injuries. On hearing the cries and smoke coming from the room, the neighbours gathered and opened the door of the room forcibly, found deceased No.1 and deceased No.2 died on the spot, and deceased No.3 with burn injuries. Deceased No.3 was shifted to Government General Hospital, Vijayawada in '108' ambulance and after her admission in the hospital, she also died. On 04.8.2008 at 01.00 Hour, P.W.1 went to the Police Station, G. Konduru, and gave a written report about the death of his daughter and her children to P.W.16 - Sub-Inspector of Police, G. Konduru Police Station, who registered the same as First Information Report (FIR) in Crime No.73/2008 under Section 174 of the Code of Criminal

Procedure, 1973 (CrPC) (suspicious death) and submitted copies of the FIR to all the concerned and took up the investigation.

3. During the course of investigation, P.W.16 submitted a requisition to P.W.13 – Mandal Executive Magistrate, G. Koduru, with a request to conduct inquest over the dead body of deceased No.1. P.W.16 visited the scene of offence and examined the same in the presence of P.Ws.10 and 11 – mediators, got drafted Ex.P.5 - observation report of the scene of offence by P.Ws.10 and 11, seized the material objects, and got photographed the scene of offence by P.W.14 – photographer. P.W.13 – Tahsildar and Mandal Executive Magistrate, G. Konduru, conducted the inquest over the dead body of deceased No.1, while P.W.16 conducted the inquest over the dead body of deceased No.2 simultaneously. During the course of inquest, P.Ws.13 and 16 examined ten witnesses and sent the dead bodies for post-mortem examination to P.W.15 – Medical Officer, Government Hospital, Mylavaram. On the same day, P.W.16, on receipt of the death intimation of deceased No.3 from the Government General Hospital, Vijayawada, visited the hospital and conducted the inquest over the dead body of deceased No.3 and sent the dead body to

P.W.15 for autopsy. P.W.16, basing on the statement of P.W.1 recorded by P.W.13, altered section of the offence from Section 174 CrPC to one under Sections 498-A and 304-B IPC in Crime No.73/2008 and issued copies of express FIR to all the concerned. P.W.16 conveyed the information about the facts of the case to P.W.17 – Sub-Divisional Police Officer, Nuzvid, who visited the scene of offence, examined the same and also examined fourteen witnesses, and recorded their statements. P.W.15, who conducted the autopsy over the dead bodies of deceased Nos.1 and 2 issued Exs.P.10 and P.11 - post-mortem certificates respectively, opined that they appeared to have died of primary shock with respiratory failure due to burns caused by heat flames. P.W.18 – Assistant Professor, Government General Hospital, Vijayawada, who conducted autopsy over the dead body of deceased No.3 and issued Ex.P.15 - post-mortem certificate, opined that the cause of the death was due to burns. P.W.17 accordingly filed the charge sheet.

4. On the basis of the charge sheet filed and the material produced by the prosecution, the lower Court has framed the following charges.

FIRSTLY:

That you, on 03.08.2008 at 17.30 hours in Old Society Building at Gaddamanugu Village of G.Konduru Mandal being the husband of Batti China Venkata Rao (D-1) and

father of D-2 and D-3 subjected her or her relative to cruelty due to unbearable harassment made by you and deceased Varalakshmi committed suicide by pouring kerosene by bolting the doors from inside, by the time as her (deceased) two female children were also with her and kerosene fallen on them (D-2 and D-3) and they also sustained injuries and succumbed to the burn injuries and that you thereby committed an offence punishable under section 498-A IPC and within my cognizance.

SECONDLY:

That you, on the same date and time and the same place during the course of the same transaction being the husband you caused the death of your wife Batti Vara Lakshmi and your daughters viz., Batti Divya and Batti Prasanna within seven years of her marriage before her death by subjecting her to cruelty or harassing her by you by suspected her character either in connection with any demand of dowry or otherwise and that you thereby committed an offence punishable u/s.304-B of IPC, and within my cognizance.”

5. As the plea of the appellant was one of denial, he was made to stand the trial during which the prosecution examined P.Ws.1 to 18, got Exs.P.1 to P.15 marked and produced M.Os.1 and 2. On behalf of the defence, D.Ws.1 and 2 were examined and Exs.D.1 to D.10 were got marked. On appreciation of the oral and documentary evidence, the trial Court has convicted he appellant and sentenced him in the manner as noted hereinbefore.

6. At the hearing, Mr. K. Suresh Reddy, learned counsel for the appellant, submitted that to attract the offence under Section 304-B IPC, three ingredients are required to be satisfied, namely (i) that the death has taken place within seven

years of the marriage; (ii) that soon before her death, she was subjected to cruelty or harassment by her husband or any of his relatives; and (iii) such harassment was for or in connection with any demand of dowry. He has invited our attention to the contents of Ex.P.1 – report given by P.W.1, father of deceased No.1, a perusal of which shows that he did not raise any whisper about the alleged dowry harassment. He also took us through the evidence on record and submitted that the prosecution failed to make out a case for the offence under Section 304-B IPC. The learned counsel alternatively submitted that in more than one case, the Supreme Court has held that only in rare cases the accused for the offence under Section 304-B IPC should be awarded life sentence and that the reasoning of the lower Court for awarding life sentence runs contrary to the settled legal principles.

7. The learned Public Prosecutor (AP) has tried to sustain the conviction of the appellant for the offences under Section 304-B and 498-A IPC. On the sentencing, the learned Public Prosecutor, however, fairly agreed that the Supreme Court has felt that only in rare cases the accused under Section 304-B IPC should be awarded life sentence.

8. In the view we are proposing to take, we feel it not necessary to deal with the aspect of conviction of the appellant for the offences under Sections 304-B and 498-A IPC. However, as regards the sentencing, in **Hem Chand v. State of Haryana**¹, the Supreme Court 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.

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.”

9. 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

¹ (1994) 6 SCC 727

² (2014) 10 SCC 577

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 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.”

10. 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.”

11. We find from the judgment of the lower Court that none of the above judgments have been referred and it has given the following reasons for imposing of life sentence against the appellant:

“It is settled law by the Honourable Supreme Court of India that in cases of dowry harassment and dowry deaths, the punishment to the culprits of the same, shall not be lenient

³ (2010) 3 SCC 152

and the same should be deterrent. It is a fact that to curb the increasing menace of dowry deaths and the harassment of married women by the husbands and in-laws, Section 498-A & 304-B IPC along with Sections 113-A and 113-B were introduced in the Indian Penal Code and the Indian Evidence Act respectively, yet the harassment of the husbands and in-laws over the married women for their greed of dowry and additional dowry; and which harassment driving the innocent brides to commit suicide forcefully ending their lives at the threshold of marital life, is not decreased and the same is striding at alarming rate in the society more particularly in the State of A.P. as it is hard to read a daily News Paper without the news of dowry harassment or dowry death, so in view of the alarming increase of the cases of dowry harassment and dowry deaths of the innocent women, I am of the opinion that the accused in this case on hand shall be punished without any lenient view.”

In our opinion, the reasoning of the Court below runs contrary to the judgments of the Supreme Court referred to above. While in Ex.P.1, which was the genesis of the prosecution case, did not raise a whisper about the dowry harassment, the case on hand cannot be treated as a rare case falling under Section 304-B IPC. Moreover, the appellant is fairly young as he was 26 years of age at the time of the alleged offence and presently aged about 35 years. With so much of future ahead for him, we are of the opinion that awarding of life sentence is contrary to the spirit of the ratio laid down in the above discussed judgments of the Supreme Court. In the facts and circumstances of the case, we feel that the ends of justice would be met if the conviction in both the offences is confirmed, and the sentence for the offence under Section 304-B IPC is

reduced to seven years of rigorous imprisonment with permissible remissions, while confirming the sentence for the offence under Section 498-A IPC, which, as directed by the Court below shall run concurrently.

12. In the result, the criminal appeal is partly allowed. The conviction recorded against the appellant under the impugned judgment for the offences under Sections 498-A and 304-B IPC is confirmed. However, the sentence of imprisonment for life imposed against the appellant for the offence under Section 304-B IPC is reduced to seven years of rigorous imprisonment with permissible remissions, while confirming the sentence of rigorous imprisonment for three years for the offence under Section 498-A IPC, which, as directed by the Court below shall run concurrently. The sentence of fine for the offence under Section 498-A IPC is confirmed.

13. A perusal of the record shows that by order dt.22.11.2016 this Court has granted bail to the appellant as he has served more than five years of the sentence, following the order of this Court in **Batchu Ranga Rao v. State of A.P.**⁴ Hence, he shall surrender before the Superintendent, Open Air Jail, Rajahmundry, for completing the remaining period of sentence,

⁴ 2016 (3) ALT (CrI.) 505 (DB)(AP)

if any. However, if he has undergone the sentence of imprisonment for seven years as directed above, he shall be set at liberty forthwith, if he is not required in any other case or crime, and the bail bonds stand cancelled.

C.V. NAGARJUNA REDDY, J

M. GANGA RAO, J

05-3-2018

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