

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND**

THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY

CRIMINAL APPEAL No. 203 OF 2013

JUDGMENT: (Per Hon'ble the Chief Justice Raghvendra Singh Chauhan)

Aggrieved by the judgment of acquittal, dated 23.01.2013, passed by the III Additional District and Sessions Judge (Fast Track Court) at Medak, whereby the learned Trial Court has acquitted the respondent Nos. 2 to 4, namely, Duddala Santhosh (A-1), Duddala Balamani (A-2), and Duddala Narsimulu (A-3), for the offences under Sections 302 and 304-B read with Section 34 IPC, the complainant, Mr. Talari Krishna, has filed the present appeal before this Court.

Briefly, the facts of the case are that on 15.09.2011 at 8:15 p.m., Mr. Talari Krishna (P.W. 1) submitted a report (Ex. P.1) at Narsapur Police Station wherein he stated that "*his sister Bhagyalaxmi, aged 20 years (hereinafter referred to as 'the deceased'), was given in marriage to Duddala Santhosh, S/o. Narsimlu and marriage was performed on 16.05.2010. At the time of marriage, gave 1.20 acres land as dowry, and also presented 8 tolas gold, Rs.50,000/- for Hero Honda Motor cycle, Rs.1.00 lakh for purchasing other articles as dowry and spent Rs.1.00 lakh for marriage expenditure and performed the marriage in Anand Gardens Narsapur. After the marriage, his sister's husband Santhosh, mother-in-law Balamani (sic), mother-in-law (sic) Narsimlu harassed his sister mentally and*

physically demanding to get additional dowry from parents house. Un-bearable to the tortures, his sister Bhagyalaxmi informed the harassments of her husband and in-laws and their demand of additional dowry, for which his mother Narsamma went to the in-laws house about one month back and appealed the husband and in-laws not to harass Bhagyalaxmi as she was pregnant one and discussed about performing "Srimantham" and also promised to give one tola gold at the time of coming Deepavali festival. But they did not satisfy and tried to beat his mother Narsamma, then the matter was informed to his maternal uncle J. Kistaiah who told the husband and in-laws several times and pacified them. Even though they did not change and further increased harassments on his sister. On 15.09.2011 evening at about 4:00 p.m., his brother-in-law Santhosh's brother, Yadagiri, telephoned to his land phone and informed his brother Raju that his sister burnt and died. On the information, he along with his family members went to the house of his sister at Narsapur and found his sister Bhagyalaxmi died under suspicious circumstances. He expressed that his brother-in-law Santhosh and his parents Balamani (sic) and Narsimlu harassed his sister Bhagyalaxmi for additional dowry and killed and burnt her and requested to take action against them".

On the basis of the said report, the police chalked out a formal FIR, namely FIR No. 126 of 2011 (Ex. P.10) for the offences under Sections 302 and 304-B r/w 34 IPC. The

investigation commenced. The accused persons were arrested on 18.09.2011 and they were put up for trial.

In order to support its case, the prosecution examined twelve witnesses, submitted eleven documents, and four material objects. On the other hand, the defense neither examined any witnesses, nor submitted any documents to buttress its case. After appreciating the evidence, by judgment dated 23.01.2013, the learned Trial Court acquitted all the three accused for offences under Sections 302 and 304-B r/w 34 IPC. Hence, the present appeal before this Court by the complainant.

Mr. Ravulapati Sreenivasa Rao, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, in a case under Section 304-B IPC, the prosecution is required to establish four essential ingredients, namely (i) the death of a woman should be caused by burns or bodily injury; (ii) caused otherwise than under a “normal circumstance”; (iii) such a death should have occurred within seven years of her marriage; and (iv) she must have been subjected to cruelty or harassment by her husband or any relative of her husband, or in connection with, any demand for dowry “soon before her death”. Despite the fact that these four ingredients do exist in the present case, the learned Trial Court has still acquitted the husband and the in-laws of the deceased.

Secondly, the learned Trial Court has accepted minor contradictions as major ones, and has disbelieved the testimony of P.Ws. 1 to 3.

Thirdly, the learned Trial Court is unjustified in claiming that the testimonies of P.Ws. 1 to 3 are vague in nature, hence unreliable.

Fourthly, the learned Trial Court has erred in observing that the witnesses do not testify about the demand of dowry as made by the accused persons.

Fifthly, once the prosecution has succeeded in laying down the factual foundation, the learned Trial Court is required to draw the mandatory presumption under Section 113-B of the Evidence Act. However, the learned Trial Court has failed to draw the said presumption. Hence, the learned Trial Court has ignored a mandatory provision of law.

Sixthly, once the presumption is drawn, it is for the accused to rebut the presumption. Although the prosecution had established its case, the accused-respondents have to discharge the burden of proof imposed upon them.

Lastly, in case the learned Trial Court misdirects itself, or mis-assesses the evidence, or ignores an evidence which is on record, or ignores a provision of law, and acquits the accused persons, the appellate Court would be justified in interfering with an acquittal order. In order to buttress this plea, the learned counsel has relied on **Sidhartha Vashisht @**

Manu Sharma vs State (Nct Of Delhi)¹. Therefore, the acquittal order passed by the learned Trial Court deserves to be set aside, and the accused persons deserve to be convicted for offence under Section 304-B IPC.

On the other hand, Ms. Shalini, the learned counsel for the respondents-accused Nos. 1 to 3, has raised the following counter-contentions:-

Firstly, the scope of interference, with an acquittal order, by the appellate court is extremely limited. For, once an acquittal has been recorded by the learned Trial Court, the presumption of innocence is further strengthened. Moreover, if two views of the evidence are possible, and if the Trial Court has taken a reasonable view of the evidence produced by the prosecution, and acquitted the accused, ordinarily, such a reasonable view should not be interfered with by the appellate court. Therefore, the learned counsel for the respondents has supported the acquittal order. In order to buttress this plea, the learned counsel has relied on the case of **Mohd. Akhtar vs. State of Bihar**².

Secondly, the testimonies of Talari Krishna (P.W. 1), Talari Narsamma (P.W. 2), and Jilla Kistaiah (P.W. 3) are general and vague in their contents. Although they claim that the deceased was subjected to harassment for additional

¹ (2010) 6 SCC 1

² (2019) 2 SCC 513

dowry, they have not narrated a single instance of how, when and by whom she was subjected to physical and mental cruelties. Therefore, a vague statement cannot form the basis of a conviction.

Lastly, Talari Krishna (P.W. 1), Talari Narsamma (P.W. 2), and Jilla Kistaiah (P.W. 3) do not claim that “soon before her death”, the deceased was subjected to any physical or mental cruelty. Hence, one of the essential ingredients for establishing the offence under Section 304-B IPC is missing. Hence, the learned counsel for the accused-respondents has supported the impugned judgment

Heard the learned counsel for the parties, and perused the impugned judgment, and examined the record.

While dealing with the scope of the appellate Court in reversing the order of the acquittal by the Trial Court, the Hon’ble Supreme Court in the case of **Sidhartha Vashisht @ Manu Sharma** (supra), at para 27, held as under:-

27. The following principles have to be kept in mind by the appellate court while dealing with appeals, particularly against an order of acquittal:

(i) There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is founded.

(ii) The appellate court in an appeal against acquittal can review the entire evidence and come to its own conclusions.

(iii) The appellate court can also review the trial court's conclusion with respect to both facts and law.

(iv) While dealing with the appeal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and by giving cogent and adequate reasons set aside the judgment of acquittal.

(v) An order of acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference.

(vi) While sitting in judgment over an acquittal the appellate court is first required to seek an answer to the question whether findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities, it can reappraise the evidence to arrive at its own conclusion.

(vii) When the trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declaration/report of ballistic experts, etc. the appellate court is competent to reverse the decision of the trial court depending on the materials placed.

Therefore, the issue before this Court is whether the learned Trial Court has ignored an evidence readily available on the record? Or has mis-assessed the evidence? Or has mis-applied the law or not?

Talari Krishna (P.W. 1) informs the Court that he is the brother of the deceased. A.1 is his brother-in-law, and A.2 and A.3 are the parents of A.1. According to him, “*after 5 or 6 months of the marriage accused started harassing the deceased for additional dowry. As such we have informed to our paternal uncle, Jella Kistaiah, L.W. 5, and he went to the house of the accused and convinced them not to harass the*

deceased. Subsequently, my mother went and informed the accused that she will give 1 ½ tolas gold at the time of Srimantham. One month thereafter, we received phone call stating that the deceased died. On that we went to the accused house and saw the dead body in a room with burn injuries. Accused is responsible for the death of the deceased. Then, I filed complaint report. It is Ex.P.1”.

In his cross-examination, he states that “I went to the house of the deceased about one month prior to her death and my mother also went one month prior to the incident for the purpose of inviting for Srimantham”. He further states that “my junior paternal uncle son’s name is Venkatesh and his marriage was performed about 5 or 6 months prior to the death and A.1 and deceased attended the marriage and they stayed in our house for 1 week”.

T. Narsamma (P.W. 2), the mother of the deceased, corroborates the testimony of Talari Krishna (P.W. 1). She informs the Court that “one month prior to the incident, I went to the house of the accused to invite them for Srimantham and at that time also accused demanded gold and I promised them to give 1 tola gold. 1 month thereafter we were informed about the death of the deceased”. In her cross-examination, she denies the suggestion that the accused never harassed the deceased for additional dowry, and that the accused never demanded 1 tola gold when she went to their house.

Likewise, Jilla Kistaiah (P.W. 3) informs the Court that the deceased was his niece. He further corroborates the testimony of P.Ws. 1 and 2, and informs the Court that *“the couple lived happily for five to six months and thereafter, the accused started harassing the deceased for additional dowry”*. According to him, *“I went to their house about 5 to 10 times and convinced not to harass the deceased. P.W.2 also convinced them and promised to give 1 tola gold. Subsequently, we were informed about the death of the deceased...”*

In his cross-examination, he further claims that *“I went to the house of the accused 1st time one month prior to his death. I alone went to their house. It is not true to suggest that accused did not demand 1 tola gold when P.W. 2 went to their house to invite them for ‘Srimantham’ and we did not give 8 tolas gold, 50,000/- cash, 1 acre 20 guntas land at the time of marriage”*. He further denies the suggestion that *“I did not go to their house 5 to 10 times to convince them and deceased died due to stomach pain and accused are not responsible for the death of the deceased and I am deposing false”*.

A bare perusal of the testimony clearly reveals that at the time of the marriage, dowry was given to A.1. A.1 and the deceased lived happily for the first five or six months of their marriage life. Thereafter, the accused started demanding an additional dowry. They demanded that 1 ½ tolas gold should be given to them. T. Narsamma (P.W. 2)

promised them that she will give them one tola gold when they attend for 'Srimantham'. One month thereafter, P.Ws. 1 to 3 were informed that the deceased had died due to burn injuries.

Therefore, the deceased has died within seven months of her marriage, that too "*not in normal circumstances*". Moreover, there was a demand for 1 ½ tolas of gold. The demand was made one month prior to the death of the deceased. Hence, the ingredients required for offence under Section 304-B IPC have been established by the prosecution in the present case.

Once the factual foundation was laid by the prosecution, the learned Trial Court was required to invoke the presumption under Section 113-B of the Evidence Act. However, the learned Trial Court has failed to do so.

A bare perusal of the impugned judgment clearly reveals that the Trial Court has been persuaded by the minor contradictions in the testimony of Talari Krishna (P.W. 1) and T. Narsamma (P.W. 2) with regard to the amount of dowry paid at the time of marriage. According to Talari Krishna (P.W. 1), they had given articles worth Rs.1.00 lakh, whereas, according to T. Narsamma (P.W. 2), they had given articles worth Rs.50,000/-. Since the worth of an article is a relative assessment, the learned Trial Court is not justified in claiming that there is a major contradiction between the

testimony of Talari Krishna (P.W. 1) and T. Narsamma (P.W. 2). The learned Trial Court should have realized that minor contradictions with regard to “the value of an article” are part of human nature. Such contradictions are so minor that they can never be fatal to the case of the prosecution.

The learned Trial Court has also disbelieved the testimony of P.W. 1 and P.W. 3 *inter alia* on the ground that according to P.W. 1, P.W. 3 had gone to the matrimonial house of the deceased ten to twenty times. Moreover, while P.W. 3 does claim in his examination-in-chief that he did go to the matrimonial house of the deceased five to ten times, he admits in his cross-examination that he failed to mention the said fact to the police in his statement recorded under Section 161 of Cr.P.C. However, it is not the number of times that Jilla Kistaiah (P.W. 3) went to the house of the deceased which matters. What is material is the fact that he did go to the matrimonial house of the deceased, and tried to convince the accused not to harass the deceased. The learned Trial Court should have appreciated the fact that the substratum of the prosecution case has been proved by the prosecution. Therefore, minor contradictions do not dislodge the case of the prosecution.

Furthermore, the learned Trial Court has observed that there is no evidence to show the dowry demand by the accused persons. However, according to Talari Krishna (P.W.1), the accused persons have demanded that one and

half tolas of gold should be given at the time of *Srimantham*. According to T. Narsamma (P.W.2), she had promised that she will give one tola of gold at the time of *Srimantham*. Thus, the dowry demand has been quantified between one tola to one and half tola of gold. Hence, the observation made by the learned Trial Court is against the testimonies of Talari Krishna (P.W.1) and T. Narsamma (P.W. 2). Therefore, the learned Trial Court has ignored the evidence readily available on record. Thus, the learned Trial Court has erred in not applying the well settled principles for assessing the evidence in a proper perspective.

Of-course, the learned counsel for the accused-respondents has vehemently contended that since the dowry demand was made one month prior to the death of the deceased, it is not “*soon before the death*”.

But, in the case of **Satvir Singh v. State of Punjab**³, the Hon’ble Supreme Court has observed that *the phrase “soon before her death”, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words “soon before her death” is to emphasise the idea that her death should, in all probabilities, have been*

³ (2001) 8 SCC 633

the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept “soon before her death”.

In the present case, Talari Krishna (P.W. 1), T. Narsamma (P.W. 2) and Jilla Kistaiah (P.W. 3), all close relatives of the deceased, consistently claimed that the demand for additional dowry i.e. for gold, was made one month prior to the death of the deceased. Therefore, in the given circumstances of the case, this Court is of the opinion that the death was closely related to the demand of dowry, and to the alleged harassment meted out to the deceased. Therefore, even the element of “soon before death” does exist in the present case. Hence, the prosecution has succeeded in establishing all the three relevant factors for constituting an offence under Section 304-B IPC.

Once the prosecution succeeded in laying down the foundation of its case, for offence under Section 304-B of IPC, the learned Trial Court was duty bound to invoke the

presumption under Section 113B of the Evidence Act.

Section 113B of the Evidence Act is as under:-

113B. Presumption as to dowry death.—*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.*

Explanation.—*For the purposes of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code.*

In the case of **Maya Devi v. State of Haryana**⁴ the Hon’ble Supreme Court has discussed the relevancy of presumption under Section 113B of the Evidence Act. Section 113B of the Evidence Act uses the word “*shall presume*”. According to Section 4 of the Evidence Act, whenever the word “*shall presume*” is employed, the Court shall regard that such a fact is proved unless and until it is disproved. Therefore, Section 113B of the Evidence Act shifts the burden of proof upon the accused to disprove the existence of the fact. In the present case, the learned Trial Court has erred in not invoking the said presumption against the accused. Moreover, it has failed to appreciate the fact that the accused have not disproved the facts established by the prosecution. Therefore, the learned Trial Court has failed to draw a mandatory presumption under the law.

⁴ (2015) 17 SCC 405

For the reasons stated above, this appeal is hereby allowed; the judgment dated 23.01.2013, passed by the III Additional District and Sessions Judge (Fast Track Court) at Medak is hereby set aside. The accused persons, namely Duddala Santhosh (A-1), Duddala Balamani (A-2), and Duddala Narsimulu (A-3) are hereby convicted for offence under Section 304-B r/w 34 IPC. They are sentenced to seven years of rigorous imprisonment. They are directed to pay a fine of Rs.20,000/- each, and in default thereof, they are further directed to undergo a simple imprisonment of one year. The accused persons are further directed to pay a compensation of Rs.50,000/- to T. Narsamma (P.W. 2), the mother of the deceased, and in case she is no longer alive, the compensation shall be paid to Talari Krishna (P.W. 1), or his legal representatives, in case of his death. The other part of the judgment of the Trial Court is not interfered with.

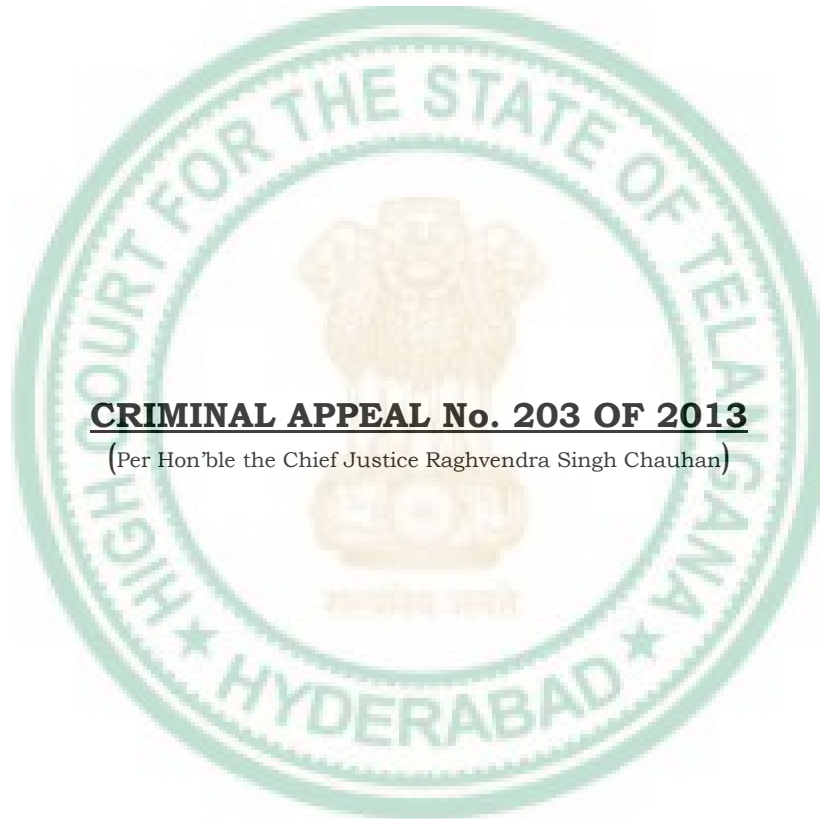
Miscellaneous petitions, if any, pending shall stand dismissed.

RAGHVENDRA SINGH CHAUHAN, CJ

A. ABHISHEK REDDY, J

19th February, 2020.
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THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
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