

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

THE HONOURABLE SRI JUSTICE A. ABHISHEK REDDY

CRIMINAL APPEAL No.850 OF 2014

JUDGMENT: {Per the Hon'ble the Chief Justice Raghvendra Singh Chauhan }

The appellant, Puttoju Chandra Shekar (A-1), has challenged the legality of the judgment dated 24.07.2014, passed by the IX Additional District and Sessions Judge, Wanaparthi, whereby the learned Trial Court has convicted the appellant of offences under Section 304-B IPC and under Section 4 of Dowry Prohibition Act while acquitting A.2 to A.7 for the said offences. For offence under Section 304-B IPC, the appellant has been sentenced to undergo rigorous imprisonment for life, and fined with Rs.5,000/-, and further directed to undergo a simple imprisonment of six months in default thereof. For offence under Section 4 of the Dowry Prohibition Act, he has been sentenced to undergo rigorous imprisonment for six months, and fined with Rs.3,000/-, and further directed to undergo a simple imprisonment of one month in default thereof. Both the sentences were directed to run concurrently.

Briefly, the facts of the case are that on 30.09.2011, around 09:00 a.m., Basavoju Vishnu Murthy (P.W. 4) submitted a report (Ex. P.4) at the Nagarkurnool Police Station wherein he stated that "*he is having five daughters, in which he performed his second daughter, by name Kavyasree*

@ Anitha marriage with Puttoju Chandra Shekar, S/o. Sheshaiah Chary, R/o. Lingal on 27.02.2011 at TTD Kalyanamandapam, Nagarkurnool as per the caste customs and rituals prevailed in their community. At the time of marriage, he gave Rs.2,50,000/- net cash, eight tolas Golden ornaments, twenty tolas of Silver ornaments and house articles. After one week of the marriage, started harassment on his daughter physically and mentally by beating and abusing for additional dowry of Rs.2,00,000/-. Her husband, mother, brother-in-laws, sister-in-laws i.e. 1) Puttoju Chandra Shekar, S/o. Sheshaiah Chary, age 27 years, Occ: Gold business, 2) Puttoju Jagadambha, W/o. Shashaiah Chary, age 60 years, Occ: housewife, 3) Puttoju Srinivasulu, S/o. Shashaiah Chary, age 45 years, Occ: Gold business, 4) Puttoju Laxmana Chary, S/o. Sheshaiah Chary, age 42 years, Occ: Gold business, 5) Puttoju Murali, S/o. Sheshaiah Chary, age 33 years, Occ: Gold business, 6) Eshwaramma, age 37 years, all R/o. Lingal Village, 7) Bhagyamma, W/o. Krishnaiah, age 30 years, R/o. Rakonda, 8) Krishnaiah, R/o. Rakonda, 9) Puttoju Bharathamma, W/o. Srinu, age 40 years, Occ: Housewife, R/o. Lingal, 10) Puttoju Chandrakala, W/o. Laxmana Chary, age: 37 years, R/o. Lingal, 11) Puttoju Anuradha, W/o. Murali, age 34 years, R/o. Lingal were living together in the house. After one week of the marriage, started harassment on his daughter physically and mentally by beating and abusing for additional dowry of Rs.2,00,000/-,

and Passion Plus motor cycle and do the witchcraft with one Krishnamachary on her daughter and threatened and harassed her and made abortion of her three months pregnancy and aforesaid persons confined her in the house. On 28.09.2011, at night 7:00 to 8:30 p.m., Puttoju Chandra Shekar phoned to his son-in-law Karunachary and abused him in filthy language and told to take away her. In the early hours, the aforesaid persons, strangled her and poured kerosene on her and set fire and shifted her to Achampet Hospital, Kamineni Hospital, L.B. Nagar, Omni Hospital, Kothapet. Later they informed them through mediators that they shifted her to Gandhi Hospital, Secunderabad. But, the OP Department declared her as dead at 1:25 p.m. and they abandoned the dead body at Gandhi Hospital, Secunderabad and left from that place”.

On the basis of the said report, the police registered FIR No.44 of 2011 (Ex. P.10) for the offence under Section 304-B read with 34 IPC. The investigation commenced. During the course of investigation, J. Chennaiah, the Sub-Divisional Police Officer (P.W. 13) filed an alteration memo (Ex. P.12) by adding Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. However, the names of A.2, A.6 to A.8 were deleted from the case. While the appellant along with A.3 and A.4 was arrested on 29.10.2011, A.5 and A.9 to A.11 were arrested on 30.04.2012. They were put up for trial.

In order to support its case, the prosecution examined fourteen witnesses, and submitted thirteen documents. 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 24.07.2014, the learned Trial Court convicted and sentenced the appellant-A.1 as aforementioned. Hence, the present appeal before this Court.

Mr. P. Prabhakar Reddy, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, the ingredients required for constituting an offence under Section 304-B IPC are conspicuously missing in the present case. Therefore, the appellant's conviction for the said offence is clearly unsustainable.

Secondly, initially, the case was registered against eleven persons. However, subsequently, the names of A.2, A.6 and A.8 were deleted. This clearly proves that it is the case of over-implication by the complainant, Basavoju Vishnu Murthy (P.W. 4), the father of the deceased.

Thirdly, while lodging the FIR, Basavoju Vishnu Murthy (P.W. 4) does not mention the fact that his daughter, the deceased, made an oral dying declaration to him, and to Vadla Karna Chary (P.W. 5). Therefore, when Basavoju Vishnu Murthy (P.W. 4), and Vadla Karna Chary (P.W. 5) claim, in their testimonies before the learned Trial Court, that

the deceased had made an oral dying declaration, it is an omission amounting to contradiction. This clearly shows that it is an exaggeration by both the witnesses. Hence, their testimonies are unreliable.

Fourthly, both the witnesses, namely Basavoju Vishnu Murthy (P.W. 4), the father of the deceased, and Vadla Karna Chary (P.W. 5), the brother-in-law of the deceased, are close relatives of the deceased. Thus, they are inimical witnesses. Hence, their testimonies should not have been relied upon by the learned Trial Court for convicting the appellant. Moreover, the independent witnesses, namely Chinnaiah (P.W. 1), D. Niranjan (P.W. 2) and K. Niranjan (P.W. 3), who are the neighbours of the deceased, have not supported the case of the prosecution. According to them, at the time of the incident, none of the accused persons were at home. Moreover, according to them, the deceased had committed suicide due to stomach ailment. Although these witnesses may have turned hostile, they speak the truth.

Fifthly, although both Basavoju Vishnu Murthy (P.W. 4) and Vadla Karna Chary (P.W. 5) claim in their testimonies that they saw injuries on the body of the deceased, besides burn injuries, the said factum is not corroborated either by the Inquest Report (Ex. P. 6), or by the Post-Mortem Examination Report (Ex. P. 8). Since it is the case of burns, it fortifies the case of the defense that the deceased had committed suicide. This factum is further corroborated by

independent witnesses, namely Chinnaiah (P.W. 1), D. Niranjan (P.W. 2) and K. Niranjan (P.W. 3).

Lastly, when the complainant, Basavoju Vishnu Murthy (P.W. 4) and his party reached the hospital, they were met by the accused. Thus, it is the accused who had taken the deceased to the hospital. The said conduct clearly reveals his innocence. Hence, the learned Trial Court is unjustified in convicting the appellant for offence under Section 304-B IPC.

On the other hand, Ms. Sridevi, the learned Additional Public Prosecutor has vehemently submitted the following contentions:-

Firstly, the deceased, Kavyasri died within seven months of her marriage. According to the testimony of Basavoju Vishnu Murthy (P.W. 4), his daughter informed him that just after one week of the marriage, she was being harassed for an additional dowry of Rs.2.00 lakhs, and for a new motorcycle by the appellant. She further informed him that while his daughter was pregnant by three months, the accused persons forced her to abort the child. Moreover, According to the testimony of Vadla Karna Chary (P.W. 5), just a day prior to the incident, the appellant had called and told him to inform the parents of the deceased to take her away as their demand for dowry had not been met by her parents. Therefore, just soon before her death, there was a demand for dowry. Moreover, since the deceased has died due to burn injuries, the fact supported by the Post-Mortem

Examination Report (Ex. P. 8), and by the testimony of Dr. Vijaya Sagar (P.W. 10), the prosecution had established all the ingredients for constituting the offence under Section 304-B IPC.

Secondly, since there was a dowry demand, the appellant has legally been convicted for offence under Section 4 of Dowry Prohibition Act.

Thirdly, there is no requirement in law that the FIR has to be an encyclopedic one. Therefore, even if Basavoju Vishnu Murthy (P.W. 4) does not mention the fact that the deceased had made an oral dying declaration to him, it would not be fatal to the prosecution case. Furthermore, one has to keep the human nature in mind. For, Basavoju Vishnu Murthy (P.W. 4) had suddenly lost his daughter. Therefore, for the Court to expect him to give all the detail in the FIR is to expect too much from a person already in grief.

Fourthly, although it may be a case of over-implication by the complainant, but the complainant has narrated a consistent story against the appellant.

Fifthly, at the time of the incident, the appellant was present in the house. Yet, he has not given any explanation in his statement recorded under Section 313 Cr.P.C. as to how his wife had been burned. Moreover, according to Basavoju Vishnu Murthy (P.W. 4) and Vadla Karna Chary (P.W. 5), the deceased had informed them that the accused had beaten her and had burned her.

Sixthly, even if it were to be taken as a case of suicide, considering the fact that the deceased died within seven months of her marriage under suspicious circumstances, and since there was a dowry demand, the case would fall within the ambit of Section 304-B IPC.

Lastly, Basavoju Vishnu Murthy (P.W. 4) clearly states in his testimony that although the appellant had met them at the hospital, but the moment they were informed that the deceased had died, all the accused persons fled from the hospital. In fact, it is the complainant and his relatives, who had carried the dead body to her matrimonial home. Subsequently, it is only after one month, their whereabouts were known, and the appellant was arrested on 29.10.2011. Hence, his absconding for one month is a clear pointer to his guilty mind. Thus, according to the learned counsel, the prosecution has established its case well against the appellant. Hence, she has supported the impugned judgment.

In rejoinder, and by way of an alternative plea, the learned counsel for the appellant has contended that life imprisonment is the harshest punishment, which can be awarded for the offence under Section 304-B IPC. However, the harshest punishment should be meted out only when the case falls under the category of "*rarest of the rare case*". While meting out the harshest punishment, the learned Trial Court has failed to examine the mitigating and the

aggravating circumstances, which could have been read for and against the appellant. Therefore, the learned Trial Court was not justified in imposing the harshest punishment upon the appellant, and in sentencing him to life imprisonment. Therefore, if this Court finds the appellant guilty, at least, the sentence should be reduced from life imprisonment to seven years, the minimum prescribed punishment under Section 304-B IPC.

Per contra, the learned Additional Public Prosecutor has pleaded that a young woman had lost her life within seven months of her marriage. During these seven months, she had been subjected to cruelty, harassment and physical assault. For, consistently an additional dowry was demanded. According to Basavoju Vishnu Murthy (P.W. 4), the appellant had demanded a new motorcycle. Therefore, it is the case of atrocities towards woman. Hence, the appellant deserves the sentence of life imprisonment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record produced before this Court.

Before considering the prosecution case as well as the defense pleaded, it is desirable to extract the relevant provisions of Section 304-B which relates to dowry death:-

304-B. Dowry death.—(1) *Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her*

death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation.— For the purpose of this sub-section, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

In order to convict an accused for the offence punishable under Section 304-B IPC, the following essentials must be satisfied:

- (i) the death of a woman must have been caused by burns or bodily injury;*
- (ii) otherwise than under normal circumstances;*
- (iii) such death must have occurred within seven years of her marriage;*
- (iv) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;*
- (v) such cruelty or harassment must be for, or in connection with, demand for dowry.*

Therefore, once the prosecution lays down the factual foundation that “soon before her death”, the woman was subjected to cruelty, or harassment in connection with demand of dowry, the mandatory presumption under Section 113B of the Evidence Act has to be invoked by the Trial Court. After all, the provision uses the word “*shall*”. Once the said presumption is invoked, the burden of proof shifts to

the accused to prove to the contrary (Ref. to **Maya Devi v. State of Haryana {2015} 17 SCC 405**). According to Section 4 of the Evidence Act, the word “*shall presume*” means that the Court shall regard the fact as proved unless and until it is disproved.

Basavoju Vishnu Murthy (P.W. 4) informs the Court that his daughter, Kavyasri died within seven months of her marriage. Her marriage was performed on 27.02.2011, and she died on 29.09.2011. At the time of the marriage, he gave a dowry of Rs.2.00 lakhs in cash, gold ornaments of seven tolas, and twenty tolas of silver ornaments. His daughter informed him that after one week of the marriage, she was being harassed for additional dowry of Rs.2.00 lakhs, and for a new motorcycle for the appellant. He informs the Court that “*we consoled the deceased that the same will be arranged in due course of time and convey the same to her husband.While the deceased was in third month pregnancy it was got aborted by A.2 through a (sic) Dr. Srinivasulu at Nagarkurnool.L.W. 7 Karunachary is my elder son-in-law and on 28.9.2011 at 9.00 p.m. he informed me on phone that he received a phone call from A.1 asking to take away deceased as his demand for additional dowry was not met*”. He informed Karuna Chary that they will go on the next day and bring the deceased back to their house. But, on 29.09.2011 at about 6:00 a.m. he was informed by Karuna Chary (P.W. 5) that he had received a phone call from A.1

stating that the deceased had sustained burns. Therefore, they immediately proceeded towards Achampet. But, on the way, they were met by the brother-in-law of the appellant, Krishnaiah, who informed them that the deceased was being taken to the hospital at Hyderabad, hence, they should go to Hyderabad. *“Accordingly, we went to Gandhi Hospital at Secunderabad by 1:00 p.m. on the same day. ...We noticed some marks on the throat and neck with burns on the body. When we enquired, the deceased told that all the accused beat her and caused burns. Police present there sent us away from the ward. By the time went to the hospital, all the accused were present there. Five minutes after we came out of the ward we were informed that deceased died. On hearing the said information all the accused fled away from the hospital. On the same day night after post-mortem and other formalities at about 10:00 p.m. the dead body of the deceased was handed over to us by the police. We took the dead body of the deceased to the house of accused at Lingal. On the next day i.e. on 30.9.2011 at about 9:00 a.m. I went to Linal Police Station and presented complaint in Ex.P. 4”.* In his cross-examination, he further informs the Court that *“we informed to the elders who settled the marriage alliance of the deceased with A.1 about the demand for additional dowry by the accused. Sri Pratap Chary L.W.10 is one among the said elders”.*

Similarly, Vadla Karna Chary (P.W. 5), the brother-in-law of the deceased, states before the Court that *“after the marriage, I was informed by P.W. 4 and his wife that about seven to ten days after the marriage, A.1 demanded additional dowry of Rs.2.00 lakhs and a motorcycle. Then, myself, P.W.4 and his wife told A.1 that the same will be arranged after some time as much amount was spent in the marriage. When the deceased was subjected to harassment for the purpose of additional dowry, the same was informed to the elders L.W.9 Janardhanachary, L.W.10 Pratap Chary and others and they agreed to speak with the accused. Five or six days after sending the deceased and convincing by the elders A.1 telephoned to me and asked to adjust the amount as demanded by him at the earliest. I promised to attend it as soon as possible. On 28.9.2011 at 7:30 p.m., I received a phone call from A.1 to inform the parents of deceased to take away her on the ground that we complained to the elders about his demand for additional dowry and by that way insulted them and since the demand was not met. Accordingly, I conveyed the same to P.W. 4 on phone immediately. P.W. 4 told me that on the next day morning he will go to the house of the accused and bring the deceased. On 29.9.2011 at about 6:00 a.m., I received a phone call from A.1 stating that the deceased doused herself with kerosene and lit fire. I asked A.1 to run to a hospital with the deceased and enquired him whether he informed the same to P.W. 4. Without*

giving reply, A.1 switched off the phone. Then I telephoned to P.W. 4 and informed him about the information given by A.1 to me. Then myself and my mother started on a two wheeler to go to Lingal, and when we reached village Gaggalapalli P.W.4 and others met us. Then I kept motorcycle there and went along with P.W. 4 and others in their vehicle to Hyderabad. On hearing about admitting of the deceased in Gandhi Hospital, Secunderabad we reached there by about 1:00 p.m. When we enquired the deceased told us all the accused caused burns to her. I noticed some marks on the throat with burns up to chest. Five or ten minutes later the deceased died. Later police examined me”.

Further, B. Janardhana Chary (P.W. 6) informs the Court that after one and half months after the marriage of the deceased, Basavoju Vishnu Murthy (P.W. 4) and his wife approached him with L.W.8, Laxmana Chary and L.W. 10, Prathap Chary, and informed that deceased Kavyasree was being harassed and tortured at her in-law's place for the purpose of additional dowry, and a motorbike. He further states that “*we tried to convince the deceased Kavyasree and P.W.4 to adjust the issue since P.W.4 got three more daughters to be married. After that deceased was sent to her in-law's place with an advice to adjust herself with the accused. About 2 or 3 months thereafter P.W.4 and his wife again came and informed us that the ill-treatment and torture of the deceased*

at the in-law's place was continuing. Later we too went along with P.W.4 and others to the hospital at Hyderabad”.

Neither of the above three witnesses has been shattered in their cross-examination. However, Basavoju Vishnu Murthy (P.W. 4) does admit in his cross-examination that in the complaint filed by him, he has not mentioned the factum of the oral dying declaration made by the deceased. Even Vadla Karna Chary (P.W. 5) admits in his cross-examination that he did not inform the police that the deceased had made the oral dying declaration. But, in fact, Basavoju Vishnu Murthy (P.W. 4), and Vadla Karna Chary (P.W. 5) testified to the fact that just after seven to ten days, or just after one week of the marriage, the deceased was subjected to harassment for an additional dowry of Rs.2.00 lakhs, and a new motorcycle for the appellant. The fact that the deceased was being harassed by the appellant, and by his parents was brought to the notice of the elders, who advised the appellant to mend his ways. A day before the incident, according to Vadla Karna Chary (P.W. 5), the appellant told him to inform his father-in-law (P.W. 4) to take away the deceased “as their demand for dowry had not been met”. Thus, even a day prior to the incident, a demand for dowry was made and since it could not be met, the appellant asked his in-laws to take away his wife. Admittedly, in the present case, according to Dr. Vijaya Sagar (P.W. 10), the deceased had died due to 90%

burns. Thus, the ingredients required for offence under Section 304-B IPC are clearly made out.

In the case of **Bhupendra v. State of Madhya Pradesh**¹ and in **Kans Raj v. State of Punjab**², the Hon'ble Supreme Court has clearly opined that even a case of suicide would be covered under Section 304-B IPC provided the ingredients of Section 304-B IPC are established by the prosecution. As mentioned hereinabove, the ingredients of Section 304-B IPC have been cogently and convincingly proved by the prosecution. Therefore, even if the oral dying declaration were to be discarded, and even if it is taken that the deceased had committed suicide, even then, the offence would fall within the ambit and scope of Section 304-B IPC. Hence, the learned Trial Court is justified in convicting the appellant for the offence under Section 304-B IPC.

The only issue before this Court is with regard to the sentence to be imposed upon the appellant for the said offence. Section 304-B IPC prescribes the minimum and the maximum sentence, which may be imposed upon an accused. Since the minimum and maximum sentences are prescribed, the maximum sentence should be imposed in the "*rarest of the rare case*", and not at the drop of the hat. Some cogent reasons had to be given by the learned Trial Court for prescribing the harshest punishment for the said offence.

¹ (2014) 2 SCC 106

² (2000) 5 SCC 207

However, a bare perusal of the impugned judgment clearly reveals that no such reasons have been assigned by the learned Trial Court for imposing the harshest punishment of life imprisonment.

However, it is an admitted fact that a young life has been lost just seven months after the marriage of the young lady. The deceased would have hoped that her married life would be a life of bliss and joy. But instead, she was subjected to cruelty and harassment at the hands of the appellant. The appellant was adamant that Rs.2.00 lakhs and a new motorcycle should be given to him as an additional dowry by the parents of the deceased. Initially, he tried to get rid of his wife by informing his in-laws to take her away. The said conversation between the appellant, and Vadla Karna Chary (P.W. 5) took place just a day prior to the incident. Therefore, the learned Trial Court is justified in convicting the appellant for the offence under Section 304-B IPC. However, the learned Trial Court is unjustified in imposing the harshest penalty of life imprisonment upon the appellant.

For the reasons stated above, this Court partly allows the appeal. While this Court upholds the conviction of the appellant for the offence under Section 304-B IPC, but reduces the sentence from life imprisonment to ten years rigorous imprisonment. Fine amount and the default sentence is confirmed. The conviction and sentence recorded by the Trial Court against the appellant for the offence under

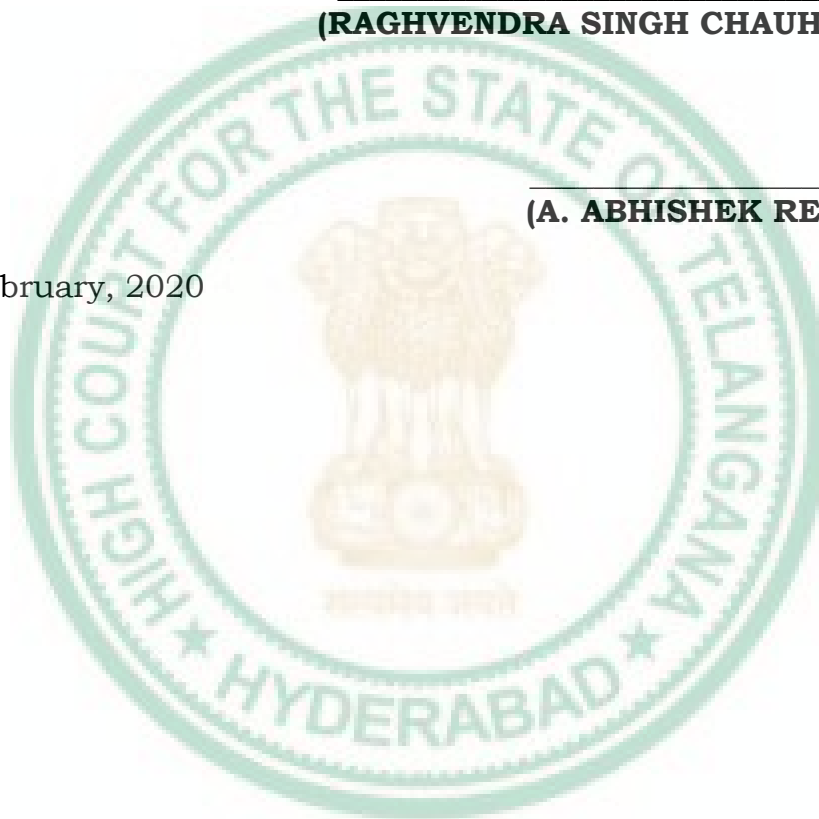
Section 4 of the Dowry Prohibition Act is also confirmed. Since the appellant has already undergone a total period of six years two months and thirteen days as on 12.02.2020, he shall continue to serve the remaining period till he completes the sentence of ten years including the remission.

Miscellaneous petitions, if any, pending shall stand dismissed.

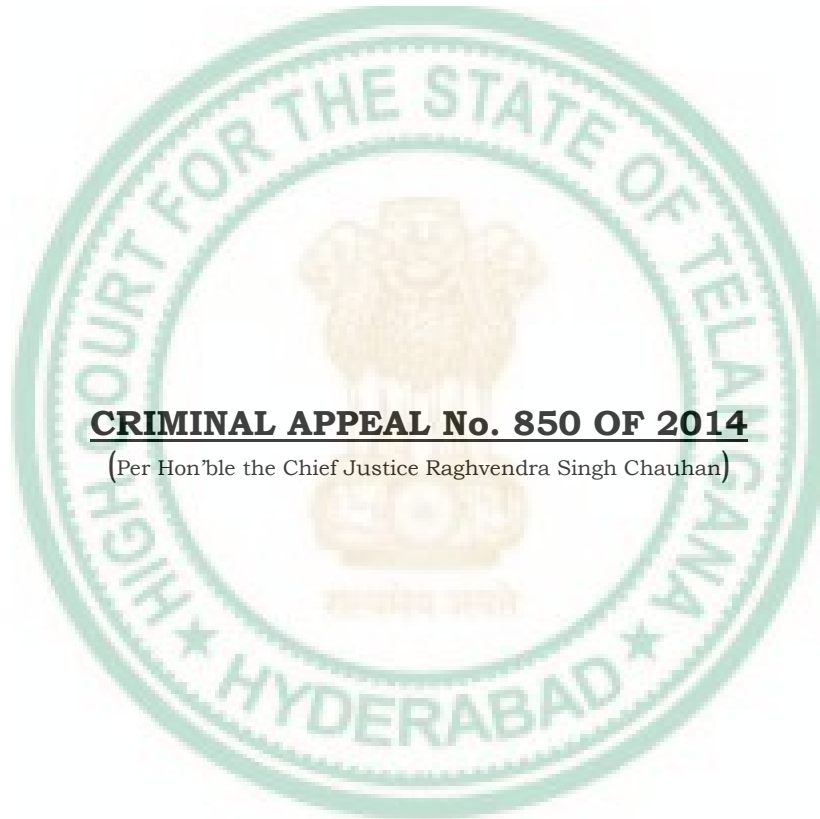
(RAGHVENDRA SINGH CHAUHAN, CJ)

(A. ABHISHEK REDDY, J)

19th February, 2020
Tsr



THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
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CRIMINAL APPEAL No. 850 OF 2014

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

-02-2020

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