

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO**

**PRESENT
THE HONOURABLE SRI JUSTICE A.ABHISHEK REDDY
AND
THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI**

CRIMINAL APPEAL NO: 1093 OF 2014

Criminal Appeal filed Under Section 374 (2) of code of Criminal Procedure aggrieved by the Judgment dated 13.10.2013 passed in S.C.No. 313 of 2013 on the file of the Court of the Sessions, Nizamabad Division, Nizamabad District.

Between:

Chopde Vishal, Nizamabad, S/o. Gangadhar Occ: Skyway Broad Band Technician
R/o: 6-22-2223 Thula Complex Near Dubba Post Office, Nizamabad

...APPELLANT

AND

The Public Prosecutor, High Court for the State of Telangana, Hyderabad

...RESPONDENT

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased May be pleased to suspend the execution of sentence passed in S.C.No. 313 of 2013 on the file of the Sessions Judge, Nizamabad and release the Petitioner on bail, pending in CrI.A.No. 1093 of 2014 before this Court in the interest of Justice.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to extend the interim bail granted in IA.No. 1 of 2018 in CrI.A.No. 1093 of 2014 dated 02-01-2019 for a period of one month in the interest of justice.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the execution of the sentence passed in SC NO 313 of 2013 on the file of the Sessions Judge, Nizamabad dt 13.10.2014 and release the petitioner on bail pending disposal of the Criminal Appeal NO 1093 of 2014 before this Court.

I.A. NO: 1 OF 2014(CRLAMP. NO: 1629 OF 2014)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the sentence and conviction passed by court of the Sessions, Nizamabad Division, Nizamabd District in S.C.No.313 of 2013 dated 13.10.2014 and release the petitioner / accused No.1 on bail pending disposal of the criminal Appeal and be pleased to pass

Counsel for the Appellant(s):SRI T PRADYUMNA KUMAR REDDY

Counsel for the Respondents: PUBLIC PROSECUTOR (TG)

The Court made the following: JUDGMENT

**THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY
AND
THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

CRIMINAL APPEAL No.1093 of 2014

JUDGMENT: (Per Hon'ble Smt. Justice Juvvadi Sridevi)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C'), is filed by the appellant/A1, aggrieved by the judgment, dated 13.10.2014, passed in S.C.No.313 of 2013 by the learned Sessions Judge, Nizamabad, whereby, the Court below convicted the appellant/A1 of the offence under Section 304B of IPC and sentenced him to undergo rigorous imprisonment for life.

2. We have heard the submissions of Sri T.Pradyumna Kumar Reddy, learned senior counsel, appearing for Sri P.Sriharinath, learned counsel for the appellant/A1, Sri C.Pratap Reddy, learned Public Prosecutor appearing for the respondent/State and perused the record.

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

PW1-Surukutla Padma and PW2-Surukutla Shankar are mother and father respectively of Shreya Rani (the deceased) and residents of Rajeevnagar Colony, Dubba. The appellant/A1 and

the deceased fell in love and got married at Hyderabad on 06.05.2011. It was an inter-caste marriage. Accused Nos.2 and 3 are the parents of the appellant/A1. The appellant/A1 and the deceased lived happily for six months along with A2 and A3 at Thula Complex, Dubba, Nizamabad. Thereafter, the appellant/A1, upon the instigation of accused Nos.2 and 3, asked the deceased to bring additional dowry amount from her parents. Therefore, the parents of the deceased gave Rs.1,50,000/- on different occasions and also purchased a motorcycle worth Rs.50,000/- on the demand made by appellant/A1. Dissatisfied with the same, accused Nos.1 to 3 demanded Rs.1,00,000/- more and harassed the deceased. About ten days prior to the subject incident, appellant/A1 beat the deceased when she failed to bring Rs.1,00,000/- and sent her to her parents' house. On 23.12.2012, appellant/A1 went to the house of the parents of the deceased and abused her in filthy language and warned that if she fails to give the amount demanded, he would not take her back to his house. Later, A3 came to the house of the parents' of the deceased and took the deceased back to her marital house. A1 to A3 continued their harassment against the deceased due to which, the deceased, vexed with her life, consumed poison on the intervening

night of 25/26.12.2012. A3 and the appellant/A1 brought the deceased to the house of PWs.1 and 2 and told them that the deceased was suffering from stomach ache and therefore, PW.1 and PW.2 took the deceased to Government Hospital, Nizamabad. While the deceased was being shifted to Shivasai Hospital, she took her last breath and died.

4. On 26.12.2012 at 11.00 hours, PW.1 lodged Ex.P1 report with Police, III Town Nizamabad. Basing on the said report, PW.8-Sub Inspector of Police registered a case in Crime No.314 of 2012 for the offence under Section 304B IPC and issued FIR under Ex.P10 and gave requisition to Tahsildar for conducting inquest over the dead body of the deceased. Since it is a case of death, PW.9-SDPO, Nizamabad, took up investigation of the case. PW.9 visited the scene of offence and got photographed the dead body of deceased. In the meantime, PW6-Tahsildhar, Nizamabad, visited the Government Hospital, Nizamabad, and examined blood relatives of the deceased. He also held inquest over the dead body of deceased in the presence of PW.5, LW.11-Neeradi Rajeshwar and LW.12-Paleti Laxmi. PW.7-doctor and LW.15-Dr.Shailaja, conducted post-mortem examination over the dead body of

deceased and preserved viscera for transmission to Forensic Science Laboratory.

5. On 10.01.2013 at 11.00 hours, the appellant/A1 was arrested and produced before the Court for judicial remand. A2 and A3 obtained anticipatory bail. PW.7 and LW.15-Dr.Shailaja gave their final opinion after receipt of FSL report, mentioning that the cause of death of the deceased is due to 'ingestion of organo phosphorous poison'. After completion of investigation, PW.9 filed charge sheet before the Magistrate concerned against the A1 to A3 for the offence under Section 304B IPC.

6. Learned Magistrate had taken cognizance against the appellant/A1 and A2 and A3 of the offence under Section 304B of IPC, registered the same as P.R.C.No.24 of 2013 and committed the same to the Court of Session, Nizamabad, since the subject case is exclusively triable by a Court of Session. On committal, the Principal Sessions Judge, Nizamabad registered the case as S.C.No.313 of 2013 and proceeded with the case.

7. On appearance of the A1 to A3, the Court below framed charge against them of the offence under Section 304B of IPC,

read over and explained the same to them for which, they pleaded not guilty and claimed to be tried.

8. To prove the guilt of A1 to A3, the prosecution examined PWs.1 to 9 and got marked Exs.P.1 to P.12. PW1-Smt. Surukutla Padma is the complainant/mother of the deceased. PW2-Surukutla Shankar is the father of the deceased. PW3-Karipe Ganesh is the neighbor of the accused. PW4-Bejjaram Rajesh is the owner of the house, where the appellant/A1 and the deceased were residing as tenants. PW5-Konduri Chinnaiah is a panch witness for Ex.P6-inquest panchanama. PW6-Gunnala Rajender is Tahsildar who conducted inquest over the dead body of the deceased. PW7-Dr.Rakesh is the doctor who conducted autopsy over the dead body of the deceased and issued Ex.P7-PME report. PW8-G.Gopi is the SI of Police who received Ex.P1 complaint and registered a case in Crime No.314 of 2012 against A1 to A3 under Section 304B IPC and issued Ex.P10-FIR. PW9-J.Rama Mohan Rao is the Investigating Officer. Ex.P1 is the report. Ex.P2 is marriage photo of appellant/A1 and the deceased. Ex.P3 is the photo of house of PW.1 and PW.2. Ex.P4 is (3) photos of the deceased. Ex.P5 is portion of statement of PW.3 recorded under Section 161 of Cr.P.C. Ex.P6 is Inquest Panchanama. Ex.P7 is PME report.

Ex.P8 is FSL report. Ex.P9 is final opinion. Ex.P10 is FIR. Ex.P11 is Scene of Offence Panchanama. Ex.P12 is attested copy of Marriage Certificate.

9. When the appellants/A1 and A2 and A3 were confronted with the incriminating material appearing against them and were examined under Section 313 of Cr.P.C. they denied the allegations and claimed to be tried. On behalf of the accused, the appellant/A1 was examined as DW.1 and Ex.D1-relevant portion of statement of PW.2 recorded under Section 161 of Cr.P.C. and Ex.D2-relevant portion of PW.4 recorded under Section 161 of Cr.P.C. were marked.

10. The Court below, having considered the submissions made and the evidence available on record, *vide* the impugned judgment, dated 13.10.2014, while acquitting A2 and A3 of the offence under Section 304B IPC, convicted the appellant/A1 of the offence under Section 304B IPC and sentenced him as stated *supra*. Aggrieved by the same, the appellant/A1 has preferred this appeal.

11. Learned senior counsel appearing for the appellant/A1 would contend that the findings recorded and the conclusions reached by

the Court below are erroneous, incorrect and against the material evidence on record. The essential ingredients of Section 304B of IPC are not made out against the appellant/A1. There is no iota of evidence on record to establish that the deceased was subjected to cruelty or harassment by the appellant/A1 soon before her death in connection with demand for dowry. The evidence adduced by the prosecution against the appellant/A1 is vague. There are several omissions and contradictions in the evidence of prosecution witnesses, which is unsafe to act upon. The Court below, while rightly acquitting A2 and A3 of the offence under Section 304B IPC, erroneously convicted and sentenced the appellant/A1 for the said offence. The evidence on record shows that though the deceased took divorce from one Ravinder, said Ravinder was continuously pestering the deceased to join his company. Vexed with the said problem, the deceased took an extreme step of putting an end to her life by consuming poison. The evidence of the appellant/A1 recorded by the Court under Section 315 of Cr.P.C. is consistent, believable and nothing is brought on record to disbelieve the same and as such, the Court below ought to have taken the same into consideration and acquitted the appellant/A1. Even otherwise, PW.3 clearly stated in his cross-examination that

the deceased was suffering with stomach pain due to which, she consumed poison and put an end to her life. The evidence of PWs.1 and 2 in relation to harassing the deceased demanding dowry did not find any corroboration. PWs.1 and 2, being the parents of the deceased, are highly interested witnesses and hence, it is unsafe to act upon their testimony. Prior to the death of the deceased, no panchayaths were held with regard to the alleged demand of dowry or payment of amount. The findings of the Court below are based on assumptions and presumptions. It is not a case of dowry death. There is no cogent and convincing evidence on record to convict the appellant/A1 of the offence under Section 304B IPC. The prosecution miserably failed to prove the guilt of the appellant/A1 beyond all reasonable doubt of the said offence and ultimately prayed to allow the appeal by setting aside the conviction and sentence recorded against the appellant/A1. Learned senior counsel also contended that the Court below is not justified in imposing the maximum punishment of imprisonment for life against the appellant/A1 for the offence under Section 304B of IPC, which is against the law laid down by the Hon'ble Apex Court which is to the effect that extreme punishment of imprisonment of life should be awarded to an

accused of an offence under Section 304B of IPC in rare cases but not in every case.

12. *Per contra*, the learned Public Prosecutor would contend that the deceased is the wife of the appellant/A1. The deceased was harassed demanding dowry by A1 to A3 and due to the harassment meted out to her, she consumed insecticide poison on the intervening night of 25/26.12.2012 and died at 07:00 AM on 26.12.2012. There is evidence of PW.7-doctor and PW.5-panch witness with regard to the same. The investigation conducted by PW.8-SI of Police and PW.9-Investigating Officer reveal that the death of the deceased was unnatural and soon before her death, she was physically and mentally tortured by A1 to A3 demanding dowry. The oral and documentary evidence placed on record clinchingly prove that the deceased was subjected to cruelty and harassment in connection with demand for dowry. All the ingredients of Section 304B IPC are made out against the appellant/A1. The prosecution proved the guilt of the appellant/A1 beyond all reasonable doubt for the offence under Section 304B of IPC. The Court below is justified in convicting the appellant/A1 of the offence under Section 304B IPC. The Court below is also justified in imposing life imprisonment against the appellant/A1

holding that the appellant/A1 deserves no leniency. There are no circumstances to interfere with the impugned judgment of the Court below and ultimately prayed to dismiss the appeal by confirming the judgment under challenge.

13. In view of the above submissions made by both sides, the points that arise for determination in this appeal are as follows:-

- 1) Whether the death of the deceased-Shreya Rani is unnatural?***
- 2) Whether the death of the deceased-Shreya Rani was caused due to the harassment and cruelty caused by the appellant/A1 in connection with demand for dowry, to attract the ingredients of Section 304B IPC?***
- 3) Whether the Court below is justified in sentencing the appellant/A1 to undergo imprisonment for life for the offence under Section 304B IPC?***
- 4) Whether the conviction and sentence recorded against the appellant/A1 of the offence punishable under Section 304B of IPC vide impugned judgment, dated 13.10.2014 passed in S.C.No.313 of 2013 by the Sessions Judge, Nizamabad, is liable to be set aside?***
- 5) To what result?***

POINTS:-

14. There is evidence of PW7-Doctor coupled with Ex.P7-PME report and Ex.P8-FSL report to prove that the subject death of the

deceased was unnatural and was caused on the intervening night of 25/26.12.2012. PW7-Doctor deposed in his evidence that the cause of the death was due to ingestion of organo phosphorous poison. The same is mentioned in the Ex.P9-Final Opinion also. There is consistency and corroboration in the evidence of PW7-Doctor and Ex.P9-Final Opinion. Further, Ex.P7-PME Report, Ex.P8-FSL Report and Ex.P9-Final Opinion given by LW.15-Dr.M.Shailaja reveal that the deceased died due to Ingestion of organo phosphorous poison. PW.7-doctor, in his cross-examination, stated about collection of viscera and mentioned the same in Ex.P7-PME report issued by him. Nothing was elicited in the cross examination of PW7-Doctor to discredit his testimony in his examination-in-chief. PW7-Doctor is a truthful witness and Exs.P7 to P9 are genuine documents and can be relied upon. In the view of the same, it can be safely concluded the death of the deceased is not natural and she died due to ingestion of Organo Phosphorous poison.

15. Now the point that requires answer is as to whether the death of the deceased was caused due to the cruelty or harassment by the appellant/A1 in connection with demand for dowry, so as to attract the ingredients of Section 304B IPC. To

answer the said question, it is necessary to evaluate the evidence on record.

16. PW.1/mother of the deceased deposed that the marriage of the deceased with the appellant/A1 took place on 06.05.2011 and she lived happily with the appellant/A1 for six months at Hyderabad. Thereafter, the deceased and the appellant/A1 came to Nizamabad and they started visiting their house. Then the appellant/A1 started demanding PW.1 to get some loan for him. She procured Rs.50,000/- loan in favour of the appellant/A1 from one M.Vijaya, her neighbour. A3 also requested to procure loan of Rs.20,000/- upon which, she arranged loan of Rs.20,000/- in favour of A3 from Mahila Group. Now and then, the deceased used to come to their house and state to her that the appellant/A1 was not working and that room rent had become due. Now and then, PW.1 gave Rs.5,000/- and 10,000/- to her daughter. Four months prior to the death of her daughter, the appellant/A1 demanded Rs.50,000/- from PW.1 to purchase motorcycle. So, PW.1 arranged Rs.50,000/- to purchase a motorcycle. Thereafter, the appellant/A1 and the deceased joined A2 and A3 and started living with them at Thula Complex in Dubba locality of Nizamabad Town. For two months, the deceased lived happily there.

Thereafter, the appellant/A1 beat her daughter (deceased) stating that she did not get any dowry and demanded Rs.1,00,000/- and sent her daughter to their house. The appellant/A1 done all this at the instance of A2 and A3. The said incident occurred 15 days prior to the death of the deceased. Since PW.1 did not have money, she wanted to return her daughter to her in-laws place after procuring some amount. After five or ten days, the appellant/A1 came to their house and asked whether Rs.1,00,000/- was ready or not. PW.1 said that she could not pay the amount and further stated that she would send her daughter when the said amount is ready. On that day, in her presence and in the presence of her husband (PW.2) and other persons, the appellant/A1 beat her daughter (the deceased) and left to his house and after one hour, A3 came to their house and stated that the deceased has to stay with them and took the deceased with him. On 25.12.2012, A1 to A3 brought her daughter to her house in an auto and told that her daughter was suffering from stomach pain. Thereafter, they took her daughter to Government Hospital, Nizamabad. The deceased was not talking and she was semi-conscious. After admitting her daughter in hospital, A3 left to his house. As the condition of her daughter became serious in the

morning, they took her to Shivasai Hospital, Nizamabad for treatment. The doctor of Shivasai Hospital came near the auto and after examining the deceased, he pronounced her dead at 07.00 AM on 26.12.2012. Thereafter, A1 to A3 brought her daughter to their house and absconded. Thereafter, she went to police station and lodged report against the A1 to A3. She was examined by the police. Ex.P1 is the report lodged by her. Ex.P1-report corroborates the evidence of PW.1. PW.1 was cross-examined at length, wherein nothing was elicited to discredit her testimony in examination-in-chief.

17. PW2 is the father of the deceased. His evidence corroborates the evidence of PW.1 on all material particulars. He deposed that the deceased died by consuming poison due to harassment meted out to her by the A1 to A3; that the deceased used to inform him that the appellant/A1 used to harass her for money; they paid Rs.10,000/-, Rs.20,000/- and Rs.50,000/- now and then to the appellant/A1; that one week prior to the death of his daughter, the appellant/A1 demanded Rs.1,00,000/- and harassed his daughter for the said amount; that ten days prior to the death of his daughter, the appellant/A1 left the deceased at their house; that on that day, the appellant/A1 beat the deceased

in their presence and asked whether Rs.1,00,000/- was ready or not; that thereafter, his daughter was taken to her in-laws house; that after ten days of the said incident, his daughter consumed poison at the house of A1 to A3 situated at Dubba locality of Nizamabad town; that on the night of 25.12.2012, A1 to A3 brought his daughter to their house by auto and informed them that his daughter was suffering from stomach pain; that he along with his wife (PW.1) and the appellant/A1 to A3 reached Government Hospital, Nizamabad and admitted their daughter there; that since there was no good treatment there, A3 advised them to take their daughter to other hospital; that on the next day morning, they took the deceased to a private hospital where, the doctor pronounced her dead; that after the death of the deceased, A1 to A3 brought dead body of his daughter to their house and absconded. PW.2 specifically stated that his daughter died due to harassment meted out to her at the hands of A1 to A3 in connection of demand of dowry on many occasions. Though PW.2 was cross-examined at length, nothing was elicited to discard his testimony in his examination-in-chief.

18. PW.3 is the neighbour of A1 to A3. Before he was declared as hostile, he deposed that he knew A1. A1 was married to a girl.

It was a love marriage, which took place two year two months back. The wife of A1 is no more and she committed suicide. He does not know why she committed suicide. Ten days prior to death of wife of A1, A1 and his wife joined A2 and A3 at their house situated at Dubba locality. About one and half year back, when he was returning to his house at about 11.30 PM or 12:00 in the mid night, he found A2 standing outside of her house and crying and waiting for an auto. When he asked, A2 informed that wife of the appellant/A1 was suffering from stomach pain and they were taking her to hospital. Then he left to his house. On the next day morning, he came to know that wife of the appellant/A1 died by consuming poison. After declaring hostile, PW.3 was cross-examined, wherein, he denied that he made statement to police as mentioned in Ex.P5 i.e., A1 and his parents repeatedly demanded dowry from the parents of the deceased.

19. PW.4 is the owner of house where the appellant/A1 and the deceased resided as tenants. He deposed about letting the room to the appellant/A1. He further deposed that he came to know that the deceased committed suicide. The evidence of this witness only reveals that A1 and the deceased resided in a rented

room for some time and they vacated the room and joined A2 and A3.

20. Here it is relevant to extract Section 304B IPC which reads as follows:

304B. Dowry Death –

1) Where the death of a woman 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 (28 of 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 of life.

21. In order to convict an accused for offence under Section 304B of IPC, the essential requirements that must be satisfied are (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances; (ii) such death must have occurred within seven years of her marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband; and (iv) such cruelty or harassment be for, or in connection with, demand for dowry.

22. When the above ingredients are established by reliable and acceptable evidence, such death shall be termed as dowry death and the husband or his relatives shall be deemed to have caused her death. Further, if the aforementioned ingredients attracts, the Court shall presume and it shall record such fact, until and unless disproved. However, it is open to the accused to adduce such evidence for disproving such compulsory presumption, as the burden is unmistakably on him to do so and he can discharge such burden by getting the testimony of prosecution witnesses discredited in their cross-examination or by adducing cogent and convincing evidence on his behalf.

23. Further, Section 113 of the Evidence Act speaks about presumption as to dowry death, which reads 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 304-B of the Indian Penal Code (45 of 1860).

24. In the light of the above extracted provisions of law and the essential requirements to establish the offence under Section 304B

of IPC, let us examine whether the appellant/A1 is guilty of the offence under Section 304B of IPC. There is specific evidence of PWs.1 and 2 that the appellant/A1 beat their daughter (the deceased) in their presence demanding Rs.1,00,000/-. There is also evidence of PWs.1 and 2 that the appellant/A1 demanded Rs.50,000/- for the purchase of motorcycle and they paid the same. The evidence of PWs.1 and 2 further discloses that the appellant/A1 beat their daughter stating that they did not pay adequate dowry. As per the evidence of PW1, the alleged demand of dowry was made 15 days prior to the death of their daughter. Even PW.2 deposed that the alleged demand of dowry was made 10 days before the death of their daughter. There is corroboration and consistency in the evidence of PWs.1 and 2. There is also evidence on record to establish that the appellant/A1 beat the deceased and also attempted to beat PW.1, when she intervened. The other harassment with regard to demand of money and payment is clearly narrated in Ex.P1 report. There is also specific evidence of PW.1 that A3 came to their house and took the deceased to their house stating that the deceased has to reside with them. Though the learned senior counsel appearing for the appellant/A1 contended that the deceased died due to consistent

pestering by one Ravinder, there is no such evidence on record. The evidence of the appellant/A1 who deposed as DW.1 is of no help to him as he obviously tries to save himself. The investigation conducted by PW.8-SI of Police and PW.9-Investigating Officer reveal that the deceased was subjected to physical and mental harassment in connection with demand for dowry. Learned senior counsel for the appellant/A1 also contended that the deceased was suffering from stomach pain and vexed with the same, she took poison and put an end to her life. On this aspect, the Court below recorded a finding that had it been true, there would be medical reports and prescriptions substantiating that the deceased was suffering from stomach pain and she took treatment. We are in agreement with the finding recorded by the Court below on this aspect. There is also evidence on record to believe that soon before her death, the deceased was subjected to cruelty and harassment by the appellant/A1 to get Rs.1,00,000/- from her parents. Under these circumstances, the Court below held that the appellant/A1 subjected the deceased to harassment and cruelty in connection with demand for dowry and accordingly convicted him of the offence under Section 304B of IPC. The findings recorded by the

Court below in convicting the appellant/A1 under Section 304B IPC are based on evidence on record. The Court below rightly convicted the appellant/A1 of the offence under Section 304B IPC and there are no circumstances to interfere the same.

25. Learned senior counsel appearing for the appellant/A1 contended that PWs.1 and 2 are highly interested witnesses and it is not safe to act upon their testimony. It is relevant to note that relationship is not a factor to affect the credibility of a witness. Though the evidence of an interested/partisan witness has to be weighed by the Court very carefully, but it would be unreasonable to contend that the evidence given by a witness should be discarded only on the ground that it is evidence of a partisan/interested witness. In any event, mechanical rejection of such evidence on the sole ground that it is partisan, would invariably lead to failure of justice. In the instant case, though PWs.1 and 2 are the parents of the deceased, they are natural witnesses. In our opinion, there is no reason to discard the evidence of the mother and father of the deceased, who are the most natural and material witnesses to speak on such issues. Indeed, in such circumstances, a married girl would always like to first disclose her domestic problems to her mother and father and

then to her close relatives, because they have access to her and are always helpful in solving her problems. We have not been able to notice any kind of omissions and contradiction on any of the material issues in the evidence of PWs.1 and 2 despite they being subjected to lengthy cross-examination by the defense. That apart, why should a mother and a father speak lie with regard to marital life of their daughter unless there are justifiable reasons behind it. We do not find any such reason in this case. Hence, we are of the firm opinion that the evidence of PWs.1 and 2 can be acted upon.

26. Now the point requires answer is whether the Court below is justified in sentencing the appellant/A1 to undergo imprisonment for life for the offence under Section 304B IPC.

27. A plain reading of Section 304B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman, what all that is necessary is that it should be shown that soon before her unnatural death which took place within seven years of the marriage, the deceased had been subjected by such person to cruelty or harassment for or in connection with demand of dowry. If that is shown, then the

Court shall presume that such person has caused the dowry death. Similarly there is a presumption under Section 113-B of Evidence Act as to dowry death. It can therefore be seen that irrespective of the fact that whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned in the section are satisfied.

28. The Hon'ble Apex Court, in **Hari Om Vs. State of Harayana and Another**¹ while interpreting the expression "may" occurring in Section 304B of 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 304B of IPC. 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 further held that in no case, it could be less than seven years and that extreme punishment of life imprisonment should be awarded in "rare cases" but not in every case.

¹ (2014) 10 SCC 577

29. In *Sunil Dutt Sharma Vs. State (Government of NCT of Delhi)*², the Hon'ble Supreme Court held as follows:

10. Are we to understand that the quest and search for a sound jurisprudential basis for imposing a particular sentence on an offender is destined to remain elusive and the sentencing parameters in this country are bound to remain judge centric? The issue though predominantly dealt with in the context of cases involving the death penalty has tremendous significance to the Criminal Jurisprudence of the country inasmuch as in addition to the numerous offences under various special laws in force, hundreds of offences are enumerated in the Penal Code, punishment for which could extend from a single day to 10 years or even for life, a situation made possible by the use of the seemingly same expressions in different provisions of the Penal Code as noticed in the opening part of this order.

11. As noticed, the "net value" of the huge number of in depth exercises performed since Jagmohan Singh (supra) has been effectively and systematically culled out in Sangeet and Shankar Kisanrao Khade (supra). The identified principles could provide a sound objective basis for sentencing thereby minimizing individualized and judge centric perspectives. Such principles bear a fair amount of affinity to the principles applied in foreign jurisdictions, a resume of which is available in the decision of this Court in State of Punjab vs. Prem Sagar and Others[37]. The difference is not in the identity of the principles; it lies in the realm of application thereof to individual situations. While in India application of the principles is left to the judge hearing the case, in certain foreign jurisdictions such principles are formulated under the authority of the statute and are applied on principles of categorization of offences which approach, however, has been found by the Constitution Bench in Bachan Singh (supra) to be inappropriate to our system. The principles being clearly evolved and securely entrenched, perhaps, the answer lies in consistency in approach.

12. To revert to the main stream of the case, we see no reason as to why the principles of sentencing evolved by this Court over the years through largely in the context of the death penalty will not be applicable to all lesser sentences so long as the sentencing judge is vested with the discretion to award a lesser or a higher sentence resembling the swing of the pendulum from the minimum to the maximum. In fact, we are reminded of the age old infallible logic that what is good to one situation would hold to be equally good to another like situation. Beside paragraph 163 (underlined portion) of Bachan Singh (supra), reproduced earlier, bears testimony to the above fact.

² (2014) 4 SCC 375

13. Would the above principles apply to sentencing of an accused found guilty of the offence under Section 304-B inasmuch as the said offence is held to be proved against the accused on basis of a legal presumption? This is the next question that has to be dealt with. So long there is credible evidence of cruelty occasioned by demand(s) for dowry, any unnatural death of a woman within seven years of her marriage makes the husband or a relative of the husband of such woman liable for the offence of "dowry death" under Section 304-B though there may not be any direct involvement of the husband or such relative with the death in question. In a situation where commission of an offence is held to be proved by means of a legal presumption the circumstances surrounding the crime to determine the presence of aggravating circumstances (crime test) may not be readily forthcoming unlike a case where there is evidence of overt criminal acts establishing the direct involvement of the accused with the crime to enable the Court to come to specific conclusions with regard to the barbarous or depraved nature of the crime committed. The necessity to combat the menace of demand for dowry or to prevent atrocities on women and like social evils as well as the necessity to maintain the purity of social conscience cannot be determinative of the quantum of sentence inasmuch as the said parameters would be common to all offences under Section 304-B of the Penal Code. The above, therefore, cannot be elevated to the status of acceptable jurisprudential principles to act as a rational basis for awarding varying degrees of punishment on a case to case basis. The search for principles to satisfy the crime test in an offence under Section 304-B of the Penal Code must, therefore, lie elsewhere. Perhaps, the time spent between marriage and the death of the woman; the attitude and conduct of the accused towards the victim before her death; the extent to which the demand for dowry was persisted with and the manner and circumstances of commission of the cruelty would be a surer basis for determination of the crime test. Coupled with the above, the fact whether the accused was also charged with the offence under Section 302 of the Penal Code and the basis of his acquittal of the said charge would be another very relevant circumstance. As against this the extenuating/mitigating circumstances which would determine the "criminal test" must be allowed to have a full play. The aforesaid two sets of circumstances being mutually irreconcilable cannot be arranged in the form of a balance sheet as observed in *Sangeet* (supra) but it is the cumulative effect of the two sets of different circumstances that has to be kept in mind while rendering the sentencing decision. This, according to us, would be the correct approach while dealing with the question of sentence so far as the offence under Section 304-B of the Penal Code is concerned.

30. In **Hem Chand Vs. State of Haryana**³, the Courts below awarded life imprisonment to the accused therein for the offence under Section 304B read with Section 498A of IPC, but the Hon'ble Apex Court reduced it to 10 years of imprisonment. It was held as follows:

"...the accused-appellant 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 304B 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".

31. Thus, while imposing punishment for an offence under Section 304B of IPC, the Court would have to consider the mitigating and aggravating circumstances before inflicting the maximum sentence of life imprisonment. Moreover, the Court should give reasons for inflicting the maximum sentence of life imprisonment upon an accused while convicting him for the offence under Section 304B IPC. The power and authority conferred by use of different expressions used in different provisions of the Penal Code including the expression *"imprisonment for a term which shall not be less than seven years*

³ (1994) 6 SCC 727

but which may extend to imprisonment for life" used in Section 304B of IPC indicate the enormous discretion vested in the Courts in sentencing an offender who has been found guilty of commission of any particular offence. Nowhere, either in the penal code or in any other law in force, any prescription or norm or even guidelines governing the exercise of the vast discretion in the matter of sentencing, have been laid down. The sentencing principles identified by the Hon'ble Apex Court could provide a sound objective basis for sentencing, thereby minimizing individualized and judge-centric approach. Thus, the principles of sentencing evolved by the Hon'ble Apex Court over the years, though largely in the context of death penalty, will be applicable to all lesser sentences, so long as the sentencing Judge is vested with the discretion to award a lesser or higher sentence, resembling the swing of a pendulum for minimum to maximum.

32. In the instant case, no doubt the prosecution has proved that the deceased died an unnatural death and that the appellant/A1 was responsible for the dowry death of the deceased, but it failed to give reasons, much less cogent and convincing reasons, for awarding the maximum punishment of life imprisonment prescribed under Section 304B of IPC, which is

against the preposition of law laid down by the Hon'ble Apex Court in the aforementioned decisions. While awarding life imprisonment, the Court below simply observed that the appellant/A1 deserves no leniency and that this type of case should be dealt by imposing deterrent punishment. It appears to us that the Court below has gone a bit far in awarding life imprisonment to appellant/A1, which is unjustified. Moreover, it is a fact that appellant/A1 is aged about 25 years as on the date of the subject offence and that his mother was suffering from blood pressure and the father with heart ailment. Furthermore, the Court below acquitted A2 and A3 of the offence under Section 304B of IPC. Considering the evidence placed on record, the facts and circumstances of the case and the law laid down by the Hon'ble Apex Court in the aforementioned decisions, we are of the firm view that sentencing the appellant/A1 to undergo imprisonment for seven years for the offence charged against him i.e., Section 304B of IPC, would meet the ends of justice.

33. Accordingly, while confirming the conviction recorded against the appellant/A1 for the offence under Section 304B of IPC, vide impugned judgment, dated 13.10.2014, passed in S.C.No.313 of 2013 by the learned Sessions Judge, Nizamabad,

the sentence of rigorous imprisonment for life imposed against the appellant/A1 is reduced to imprisonment for a period of seven (7) years, which shall include the period of imprisonment already undergone by the appellant/A1.

34. The Criminal Appeal is allowed in part, to the extent indicated above.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Sessions Judge, Nizamabad Division, Nizamabad.
2. The I Additional Judicial Magistrate of First Class, Nizamabad.
3. The Station House Officer, III Town Police Station, Nizamabad.
4. One CC to Sri. T Pradyumna Kumar Reddy Advocate [OPUC]
5. One CC to the Public Prosecutor (TG), High Court for the State of Telangana, Hyderabad. [OUT]
6. Two CD Copies
7. One spare copy.

CHG
PR

HIGH COURT

DATED:15/12/2022

JUDGMENT

CRLA.No.1093 of 2014



CRIMINAL APPEAL ALLOWED IN PART

9 11/12/23
25/1/23