

BAIL SLIP : The Petitioner/ Accused 2 and 3 and Petitioner No. 1-Accused were directed to be released on bail by order of the Hon'ble High Court vide Orders dated 07-09-2010 and 08-09-2010 in CrI. A. M. P. No. 1556 of 2010 and CrI. A. M. P. No. 1583 of 2010 respectively in CrI. A. No. 945 of 2010.

IN HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

**WEDNESDAY THE FIFTH DAY OF JULY
TWO THOUSAND AND TWENTY THREE**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 945 OF 2010

Criminal Appeal under Section 374(2) of CrI.P.C against the Judgment Dated 03-08-2010 in S.C.No. 187 / 2008 on the file of the Court of the Principal Sessions Judge- Nalgonda.

Between:

1. Bujunuru Indra Reddy, S/o. Malla Reddy R/o. Gatlamallepally Village, Nalgonda District.
2. Bujunuru Malla Reddy, S/o. Venkat Reddy R/o. Gatlamallepally Village, Nalgonda District.
3. Bujunuru Mangamma, W/o. Malla Reddy R/o. Gatlamallepally Village, Nalgonda District. **...APPELLANTS/ACCUSED No. 1 to 3**

AND

The State of A.P., Rep. by its Public Prosecutor High Court of Andhra Pradesh, Hyderabad. **...RESPONDENT/COMPLAINANT**

Counsel for the Appellants :SRI. P. NAGENDRA REDDY

Counsel for the Respondents: PUBLIC PROSECUTOR

The Court made the following: ORDER

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.945 OF 2010

JUDGMENT:

The appellants-accused Nos.1 to 3 were convicted for the offences under Section 304-B of IPC and sentenced to undergo Rigorous Imprisonment for seven years and also sentenced under Section 498-A of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961.

2. Briefly, the case of the prosecution is that the deceased who is the wife of accused No.1, got married 15 months prior to her death. The dead body of the deceased was found on 03.07.2007 and Ex.P-1 complaint was lodged on 04.07.2007. In the said complaint of the VRO i.e. PW-1, it is mentioned that the death of the deceased had taken place on 03.07.2007 and requested the Police to conduct investigation. The said complaint was registered on the very same day under Section 174 of Cr.P.C for the reason of the death being suspicious.

3. Having investigated the case, the police filed charge sheet for the offences under Sections 302 and 498-A of IPC and Sections 3 and 4 of DP Act.

4. According to the investigation, at the time of marriage, 1st appellant/husband had taken dowry of Rs.3,00,000/- from the

parents of the deceased and thereafter, all the three appellants were harassing her physically and mentally to get additional amount of Rs.2,00,000/-. The said marriage was performed on 20.04.2007. However, on 03.07.2007, the deceased was found dead. According to the version of the Investigating Officer, accused No.1 picked up a quarrel with his deceased wife stating that she was not bringing the demanded amount, and beat her with hands in her stomach, chest and throttled her neck, for which reasons she died.

5. The charges under Sections 302, 498-A of IPC and Section 4 of DP Act were framed against the appellants.

6. The learned Sessions judge having examined the witnesses PW-1 to 12 on the behalf of the prosecution, found that the prosecution failed to establish any of the ingredients under Section 302 of IPC. However, since the deceased died within seven years of their marriage and it was stated by the witness that there was a demand for additional dowry of Rs.2,00,000/-, the learned Sessions Judge came to a conclusion that the appellants are guilty for the offence under Section 304-B of IPC. As seen from the complaint, which was given by VRO i.e. PW-1, there was no allegation of any kind of harassment to his knowledge. However, since the death was suspicious, he requested the police

to investigate the case. No separate complaint was given by the parents of the deceased. However, during the course of examination by the police, they stated about additional dowry demand of Rs.2,00,000/- made by the appellants. The marriage was performed on 20.04.2007 and the death occurred on 03.07.2007 i.e. within 70 days of the marriage.

7. It is the specific case of the prosecution that the deceased was murdered and the cause of her death according to the PW.1's report is on account of throttling.

8. The respondent-State has not preferred any appeal against the acquittal of the accused No.1 for the offence under Section 302 of IPC. The charge under Section 302 of IPC was framed against accused No.1 only and against accused Nos.2 and 3, the charges under Section 498-A and Section 4 of DP Act were framed.

9. It is the specific case of the prosecution that the deceased was murdered, however, there is no evidence of who committed the murder, except the confessional statement in the case. There was no other evidence supporting the case of the prosecution that the 1st appellant i.e., Accused No.1 committed the murder of the deceased.

10. The evidence of the alleged murder is circumstantial in nature, however, the prosecution failed to substantiate any such circumstances for which reason the 1st appellant was acquitted for the offence under Section 302 of IPC.

11. Only on the basis of an allegation that there was demand of Rs.2,00,000/-, it cannot be inferred that the appellants are liable to be convicted under Section 304-B of IPC. Section 304-B of IPC is not a lesser offence to Section 302 of IPC. If the death occurs under unnatural circumstances within seven years of her marriage and there is an allegation of dowry harassment soon before the death, on the basis of such evidence, a person can be convicted under Section 304-B of IPC.

12. It is the specific case of the prosecution that the husband murdered the deceased. According to the postmortem report Ex.P3, the death was due to throttling. Not believing the version that the husband murdered the deceased, the Court cannot convict only on the basis of the death and conclude that an offence under Section 304-B of IPC is attracted.

13. There is a specific allegation that there was harassment was for additional dowry. Irrespective of the death being homicidal, the evidence of harassment during the lifetime of the deceased

cannot be ignored only for the reason of the prosecution not proving as to who caused the death by throttling.

14. This Court deems it appropriate to set aside the conviction under Section 304-B of IPC. However, conviction under Section 498-A of IPC and Section 4 of DP Act are maintained in view of the consistent evidence of harassment for additional dowry.

15. In so far as the accused Nos.2 and 3 are concerned, the imprisonment is reduced to the period already undergone. However, imprisonment one year is maintained against accused No.1 under both counts which shall run concurrently.

16. The bail bonds of accused Nos.2 and 3 shall stand discharged. The learned Magistrate shall take steps to cause appearance of accused No.1 and send him to the jail for serving out the remaining part of the sentence.

17. Accordingly, the Criminal Appeal is partly allowed.

Miscellaneous Petitions, pending if any, shall stand closed.

Sd/- C.V. MALLIKARJUNA VARMA
JOINT REGISTRAR

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SECTION OFFICER

To,

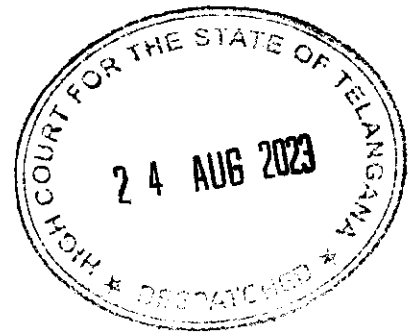
1. The Principal Sessions Judge- Nalgonda, Nalgonda District. (with records if any)
2. The Judicial Magistrate of First Class, Devarakonda, Nalgonda District.
3. The Superintendent, Central Prison, Cherlapally, Ranga Reddy District.
4. The Superintendent, Women Prison, Chenchalguda, Hyderabad.
5. The Station House Officer Nampally Mandal, Nalgonda District.
6. Two CCs to the Public Prosecutor, High Court for the State of Telangana, at Hyderabad(OUT).
7. One CC to SRI. P. NAGENDRA REDDY Advocate [OPUC]
8. Two CD Copies
DL

HIGH COURT

DATED:05/07/2023

ORDER

CRLA.No.945 of 2010



CrI. A IS PARLTY ALLOWED

⑪ VLV
4/8/23