

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

THURSDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE SRI JUSTICE M.LAXMAN
AND
THE HON'BLE SMT JUSTICE G.ANUPAMA CHAKRAVARTHY

CRIMINAL APPEAL NO: 999 OF 2013

Cr.Appeal Under Section 378 (4) of Cr.P.C. against the Judgment dated 22-02-2012 in S.C.No. 175 of 2011 on the file of the Court of the Sessions Judge, Adilabad.

Between:

Sinde Nago Rao, S/o Sambaji, Occ: Line Men in Electricity Departments R/o Bhainsa Proper and Mandal, Adilabad District

...APPELLANT/ Defacto Complainant

AND

1. The State of Andhra Pradesh, Through Sub Divisional Police Officer, Bhainsa Division, Adilabad District Rep. by Public Prosecutor High Court of AP., Hyderabad .. Respondent / Respondent
2. Jadhav Bharath Kumar, S/o. Murali, Age : 26 years, Occ: Agriculture
3. Jadhav Murali, S/o Gangadher, age 59 years
4. Jadhav Mamatha, W/o Murali

All are R/o Burgupally (K) village of Kuntala Mandal, Adilabad district

...RESPONDENTS/ Accused

Counsel for the Appellant: SRI. S. SURENDER REDDY

Counsel for the Respondent No. 1: SMT. SHALINI SAXENA , ADDITIONAL PUBLIC PROSEUCTOR

Counsel for the Respondent No. 2 & 4 : SRI G. VASANTHA RAYUDU

The Court delivered following: Judgment

HON'BLE SRI JUSTICE M. LAXMAN
AND
HON'BLE SMT. JUSTICE G. ANUPAMA CHAKRAVARTHY

CRIMINAL APPEAL No.999 of 2013

JUDGMENT : (*Per Justice G.Anupama Chakravarthy*)

This appeal is filed by the *de facto* complainant, challenging the judgment dated 22.02.2012 passed in S.C.No.175 of 2011 on the file of Principal Sessions Judge, Adilabad, acquitting respondent Nos.2 to 4 herein, who are Accused Nos.1 to 3 and who were charged with the offences punishable under Sections 302 r/w. 34 and 302-B r/w.34 of IPC.

2. Heard learned counsel for the appellant, learned Public Prosecutor appearing for the 1st respondent-State and the learned counsel appearing for respondent Nos.2 to 4/Accused Nos.1 to 3. Perused the record.

3. The case of the appellant is that he performed the marriage of his daughter (deceased) with Accused No.1 on 23.11.2009 by agreeing to pay dowry of Rs.1,50,000/- and paid an amount of Rs.1,00,000/- and also given a motorcycle to accused No.1 apart from jewelry items and other house hold articles. He also

promised to pay the balance dowry amount of Rs.50,000/- at the time of Diwali festival of 2010. The deceased and Accused No.1 lived happily for some time and thereafter, all the accused harassed the deceased with a demand for additional dowry and due to their unbearable harassment, the deceased went to her parents' house and stayed there for three months. On 10.11.2010, respondent Nos.2 and 3 along with their tenant, went to the house of appellant and took his daughter to the matrimonial house assuring that they will take care of her. On 14.11.2010 in the evening, the deceased telephoned to the appellant and informed about the harassment made by Accused Nos.1 to 3 (Respondent Nos.2 to 4) with a demand for additional dowry and that she was tortured by them and requested the appellant to take her back. As the appellant was on duty, he informed that he would come on the next day. But, on 15.11.2010 at 9 a.m., one Kadam Sanjay, the nephew of the appellant, informed over phone about the death of his daughter at the in-laws' place. Immediately, the appellant along with others went to the house of the accused and thereafter, he preferred report to the Police at Kuntala P.S., Adilabad District on 15.11.2010.

Basing on the said complaint, a case was registered against A-1 to A-3 vide Crime No.52 of 2010 for the offence punishable under Section 304-B of IPC. After completion of investigation, charge sheet was filed against all the accused for the offences punishable under Sections 498-A and 304-B of IPC.

4. It is the contention of the appellant that inspite of substantial evidence on record, the trial Court has acquitted Accused Nos.1 to 3 and the said judgment is illegal, arbitrary and against law, and therefore, prayed to re-appreciate the entire evidence on record and to convict Accused Nos.1 to 3 i.e. respondent Nos.2 to 4 herein either for the offence under Section 304-B or 302 of IPC.

5. It is the specific contention of the learned counsel for the appellant that the trial Court ought not to have acquitted the accused and benefit of doubt cannot be extended to the accused when there is substantial material on record against them. It is contended that the evidence of PWs.1 to 4 categorically disclose that the accused have harassed the deceased, for additional dowry and killed her by throttling, which is corroborated by the evidence

of the Doctor. The Court below ought to have drawn presumption under Section 113-B of the Indian Evidence Act and ought to have convicted the accused for the offence punishable under Section 304-B of IPC as there is sufficient evidence on record. Therefore, the learned counsel for appellant has prayed to set aside the judgment of the trial Court.

6. On the other hand, the learned counsel for respondent Nos.2 to 4 has contended that the trial Court has properly appreciated the evidence on record and extended benefit of doubt to the accused and therefore, there is no irregularity in the orders of the Sessions Judge and it needs no interference. Accordingly, he prayed to dismiss the appeal.

7. The learned Public Prosecutor appearing for the 1st respondent-State has fairly conceded that the prosecution has not preferred any appeal against the acquittal of respondent Nos.2 to 4.

8. Now, the points for determination in this appeal are:

1. Whether the trial Court is proper in acquitting the accused for the alleged charges ?

2. Whether the prosecution has miserably failed to prove the guilt of accused beyond reasonable doubt?

9. In this case, it can be seen that the prosecution has examined P.Ws.1 to 13 and got marked Exs.P-1 to P-8. PWs.1 and 2 are the parents of the deceased/Archana; PW-3 is an Advocate; PW-4 is the person who acted as elder for the marriage of the deceased with Accused No.1 and he was also present while the deceased was taken back to the matrimonial house of Accused No.1; PW-5 is the Doctor who conducted postmortem examination over the dead body of the deceased; PW-6 is the Tahsildar who conducted inquest over the dead body of the deceased; PW-7 is the scribe of Ex.P-1/report; PW-8 is the panch witness for inquest; PW-9 is the person who informed PW-1 about the death of the deceased; PW-10 is the Sub-Inspector of Police who registered case after receiving Ex.P-1/report; PW-11 is the Photographer who took photographs of the dead body of the deceased at the instance of the Police; PWs.12 and 13 are the investigating officers who conducted investigation and laid charge sheet against the accused

for the offences punishable under Sections 498-A and 304-B of IPC.

10. It is relevant to mention that the trial Court has framed charges against Accused Nos.1 to 3 for the offence punishable under Section 302 r/w. 34 of IPC, and an alternative charge is also framed for the offence punishable under Section 304-B r/w. 34 of IPC. The accused denied the charges and claimed to be tried.

11. PWs.1 and 2, who are the parents of the deceased, testified before the Court about the marriage which took place between the deceased and accused No.1 i.e. on 23.11.2009 and at the time of marriage, they agreed to give an amount of Rs.2,00,000/- as dowry, two tulas of gold and one motor bike in addition to the household articles worth Rs.1,00,000/- and that they have paid only Rs.1,50,000/- and the balance of Rs.50,000/- was agreed to be paid at the time of Diwali festival. Their evidence further disclose that Accused No.1 and deceased lived happily for a period of three months and later, the deceased visited their house and informed about the harassment made by the accused and that Accused Nos.1

and 3 and the mother of Accused No.3 came to their house and took back the deceased, assuring them that they would take care of the deceased very well. It is specifically testified by PWs.1 and 2 that on 14.11.2010, the deceased made a phone call to PW-1 and requested him to take her back as she had fear of death in the hands of the accused. On 15.11.2010 at about 9 a.m., they received phone call from PW-9 informing about the death of the deceased. On that, they rushed to the house of the accused and found the dead body of the deceased in sitting posture to a wall and found that the deceased was throttled and nail marks were found around the neck. Both in one tone stated that accused Nos.1 to 3 are responsible for the death of their daughter. Ex.P-1 is the complaint/report lodged by PW-1 to the Police, Ex.P-2 are the four photographs of the deceased along with CD.

12. In the cross-examination, it is admitted by PW-1 that the deceased was not having left eye, as she lost it in an accident which took place three years prior to her marriage and an artificial eye was inserted by the Doctors.

13. PW-3 is a practicing Advocate and is an independent witness in this case. He testified about the marriage performed between Accused No.1 and the deceased, the amount agreed to be paid as dowry, the payment of Rs.1,00,000/- at the time of marriage and the promise made by PWs.1 and 2 to pay the balance amount at the time of Diwali festival and also about the gold ornaments which were given to the deceased at the time of marriage, the motorcycle given to accused and household articles were worth of Rs.1,00,000/-. It is specifically testified by PW-3 that Accused No.1 and deceased lived happily for three or four months and thereafter, the accused had sent the deceased to the house of PW-1 to bring the balance dowry amount of Rs.50,000/-, for which, he along with PW-1, telephoned to Accused No.2 and promised to pay it at the time of Diwali festival.

14. The evidence of PW-3 corroborates with the evidence of PWs.1 and 2 as to the presence of deceased at the house of PW-1. Further, Accused Nos.1 and 3 and the mother of Accused No.3 coming to the house of PW-1 and taking back the deceased to their house and that on the said day, he along with one Saheb Rao and

Bhoja Reddy were also present. It is specifically testified by PW-3 that on 10.11.2010, the deceased was taken back to the house of Accused Nos.1 to 3 and on 14.11.2010, PW-1 informed him that he received telephone call from the deceased about the harassment by accused Nos.1 to 3 and was also informed by PW-1 that he want to bring her back to the house. Further, on 15.11.2010 at 9 a.m., he was informed by PW-1 about the information received from one Sanjay regarding the death of deceased. On that, he along with PW-1, Bhoja Reddy, Saheb Rao and others went to the house of the accused by 10.15 a.m. and found the dead body of the deceased in a sitting posture. They also found that the mouth and neck portion of the deceased were covered with a cloth and tied with back support. Therefore, they suspected the death of the deceased and gave a complaint to the Police against the accused. Though PWs.1 to 3 were cross-examined at length, nothing could be elicited in favour of the accused.

15. PW-4 was also an independent witness. He testified about the marriage of deceased with Accused No.1 and part-payment of dowry. His evidence is also in the same lines as that of PW-3.

PW-4 also deposed that five days prior to the death of the deceased, Accused Nos.1 and 3 and other relatives came and took the deceased to her matrimonial house and later he was informed by PW-1 about the death of the deceased. It is specifically testified by PW-4 that they found nail marks and other blackish marks on the throat of the deceased.

16. The most crucial witness in this case is PW-5/the Doctor who conducted postmortem examination over the dead body of the deceased on 15.11.2010. PW-5 testified that basing on the requisition of Tahsildar, Kuntala, he conducted autopsy on the dead body of the deceased/J.Archana and found the following post-mortem injuries over the body;

- “1. Scratch mark of 2 inches length below right ear on the side of the neck.
2. Scratch mark of about $\frac{1}{2}$ inch just below the left eye.
3. Scratch mark of about $2\frac{1}{2}$ inches length obliquely on the left side of neck.
4. Scratch marks of about $\frac{1}{4}$ inch behind left ear.
5. An abrasion measuring $\frac{1}{4}''$ X $\frac{1}{4}''$ just above the left eye brow.
6. An abrasion measuring $\frac{1}{4}''$ X $\frac{1}{4}''$ on the left half of forehead close to the frontal hairline.”

17. It is further testified by PW-5 that a haematoma measuring 3x4" was found between the under side of forebrain and sellaturcica. Cerebral hemispheres pale. The viscera which was collected during the course of autopsy, does not contain any toxic substance and the cause of death of the deceased can be attributed due to sudden intra-cranial hemorrhage as a post-surgical sequel, resulting in cardio respiratory arrest and death. Ex.P-3 is the postmortem report and Ex.P-4 is the FSL report.

18. In the cross-examination, it is specifically admitted by PW-5 that the deceased got an artificial left eye and the injury sustained by the deceased is a piercing injury touching inside of the brain and the cause of death may be due to the accidental injury to the eye and the internal structures of the brain adjoining the back of the eye. Further, in the cross-examination, PW-5 deposed that the other injuries mentioned in Ex.P-3 may be caused when the body was transported after the death.

19. PW-6 is the Tahsildar, who conducted inquest over the dead body of the deceased. Ex.P-5 is the inquest panchanama. PW-8 is

the panch witness for the inquest and scene of offence panchanamas. His evidence disclose that they found the dead body of Archana at the house of the accused and also found nail scratches on the back side of the neck, left side of the neck and they opined that the deceased was murdered/killed. It is also testified by PW-8 that the Police have observed the scene of offence and prepared the crime detail form, which is Ex.P-6 and during the said time, four photographs of the dead body of the deceased were taken.

20. It is relevant to mention that in Ex.P-5/inquest report, at Column No.15, it is opined by the panch witness that the husband and in-laws of the deceased have harassed the deceased for additional dowry, beat her and killed her.

21. PW-7 is the scribe of Ex.P-1/report and his evidence disclose that at the instructions of PW-1 on 15.11.2010 at Burgupalli i.e. at the house of the accused, he scribed Ex.P-1/report and it also bears the signature of PW-1. He admitted that he did not specifically mention that he is the scribe of Ex.P-1.

22. PW-9 is related to PW-1 and the deceased. His evidence disclose that he informed PW-1 about the death of the deceased. It is specifically stated by PW-9 that on 15.11.2010 at 8.30 a.m., one Sainath informed him about the death of the deceased, and in turn, he informed it to PW-1. Though he was cross-examined, nothing could be elicited in favour of the accused.

23. PWs.10, 12 and 13 are the Police officials, who have registered the crime, present at the time of inquest conducted by PW-6/Tahsildar over the dead body at the house of the accused, prepared the crime detail report, recorded the statements of witnesses, forwarded the dead body of deceased for postmortem examination. Further, effected the arrest of Accused Nos.1 to 3 and after completion of investigation, laid charge sheet.

24. The leftover witness is PW-11, who took photographs of the dead body of the deceased at the instance of the Police.

25. It is pertinent to mention that Column No.7 of Ex.P-5/Inquest report disclose that there were scratch injuries made

with finger nails on the back of the neck and back of the left ear of the deceased and the left eye (artificial eye of the deceased) was slightly opened. Column No.8 of the inquest report/Ex.P-5 specifically disclose that the dead body of the deceased was found in a sitting position balanced to the wall, in the bed room of the house. The mouth and left eye of the deceased were slightly opened. The trial Court did not consider the aspect as to how the death was caused, except relying on the postmortem report issued by PW-5. The trial Court has only considered Ex.P-3/postmortem report and came to the conclusion that the cause of death can be attributed to sudden intra cranial hemorrhage resulting in cardio respiratory arrest leading to death. Further, wrongly appreciated that the reasons were not properly given by the Medical Officer as the external injuries found on the dead body were postmortem and that they were not bleeding. But, it is for Accused Nos.1 to 3 to explain as to how those injuries were caused to the deceased when the death of the deceased occurred within the four walls of the house. Though it is the defence of the accused that the death may be due to accidental injury, then it is for the accused to explain as

to why the dead body was in sitting posture in the bed room. Admittedly, the death of the deceased is not a natural one. Moreover, there are external injuries over the dead body of the deceased. It is the specific evidence of PW-5 that the cause of death was due to sudden intra cranial hemorrhage as a post-surgical sequel resulting in cardio respiratory arrest. Therefore, the burden is on the accused to prove that the deceased fell down accidentally, due to which, she sustained intra cranial hemorrhage and died due to cardio respiratory arrest. If that is so, as to why the dead body was in a sitting posture, that too, in the bed room of the deceased, has to be explained. Even in order to prove it to be accidental fall, the nail scratches prove that those are not the result of accidental fall. On the other hand, the defence of the accused was that the scratches occurred over the dead body of the deceased during transportation. But the inquest was held at the house of the accused and inquest report reveals that the dead body contains scratches by the time of inquest. Moreover, it is the evidence of PW-3 that the dead body was tied with back support and made to sit, which clearly disclose that the scene of offence was shifted and

was also screened away by the accused. Logically, a person cannot sustain external injuries or internal hemorrhage while being in a sitting posture. When any death occurred due to unnatural circumstances in a house, it is for the inmates of the house to explain as to how the deceased succumbed to injuries. It can be therefore construed that the trial Court has not properly appreciated the evidence on record and further wrongly appreciated that proper explanation was not given by the Medical Officer with regard to the injuries found on the dead body of the deceased. However, the evidence of the Medical Officer can only be appreciated as to the cause of death and the Medical Officer is not expected to presume the things and depose as to what has happened within the four walls of the house of the accused.

26. In this connection, a reference can be made to the judgment of Hon'ble Supreme Court in **Jugendra Singh v. State of U.P.**¹, wherein, it is held;

"To appreciate the submissions raised at the bar and to evaluate the correctness of the impugned judgment, we think it appropriate to refer to certain authorities in the field which deal

¹ AIR 2012 SC 2254

with the parameters for reversing a judgment of acquittal to that of conviction by the appellate court.

18. **In Jadunath Singh and Others v. State of U.P.** [AIR 1972 SC 116], a three Judge Bench of this Court has held thus:-

"This Court has consistently taken the view that an appeal against acquittal the High Court has full power to review at large all the evidence and to reach the conclusion that upon that evidence the order of acquittal should be reversed. This power of the appellate court in an appeal against acquittal was formulated by the Judicial Committee of the Privy Council in **Sheo Swarup v. King Emperor**, [AIR 1934 PC 227] and **Nur Mohammad v. Emperor** [AIR 1945 PC 151]. These two decisions have been consistently referred to in judgments of this Court as laying down the true scope of the power of an appellate court in hearing criminal appeals: see **Surajpal Singh v. State** [AIR 1952 SC 52] and **Sanwat Singh v. State of Rajasthan** [AIR 1961 SC 715]."

19. **In Damodar Prasad Chandrika Prasad and Others v. State of Maharashtra** [AIR 1972 SC 622] it has been held that once the Appellate Court comes to the conclusion that the view of the trial court is unreasonable, that itself provides a reason for interference. The two-Judge Bench referred to the decision in **State of Bombay v. Rusy Mistry**, [AIR 1960 SC 391] to hold that if the finding shocks the conscience of the Court or has disregarded the norms of legal process or substantial and grave injustice has been done, the same can be interfered with.

20. **In Shivaji Sahebrao Bobade and another v. State of Maharashtra** [AIR 1973 SC 2622], the three-Judge Bench opined that there are no fetters on the plenary power of the Appellate Court to review the whole evidence on which the order of acquittal is founded and, indeed, it has a duty to scrutinise the probative material de novo, informed, however, by the weighty thought that the rebuttable innocence attributed to the accused having been converted into an acquittal the homage of our jurisprudence owes to individual liberty constrains the higher court not to upset the finding without very convincing reasons and comprehensive consideration. This Court further proceeded to state that the cherished principles of golden thread to prove beyond reasonable doubt which runs

through the wave of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. Emphasis was laid on the aspect that a balance has to be struck between chasing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish the marginal innocents.

21. **In State of Karnataka v. K. Gopala Krishna** [AIR 2005 SC 1014], it has been held that where the findings of the Court below are fully unreasonable or perverse and not based on the evidence on record or suffer from serious illegality and include ignorance and misreading of record, the Appellate Court will be justified in setting aside such an order of acquittal. If two views are reasonably possible and the view favouring the accused has been accepted by the courts below, that is sufficient for upholding the order of acquittal. Similar view was reiterated in **Ayodhya Singh v. State of Bihar and others** [AIR 2005 SC 1022]

22. **In Anil Kumar v. State of U.P.** [AIR 2004 SC 4662], it has been stated that interference with an order of acquittal is called for if there are compelling and substantial reasons such as where the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated.

23. **In Girija Prasad (dead) by LRs. v. State of M. P.** [AIR 2007 SC 3106], it has been observed that in an appeal against acquittal, the Appellate Court has every power to re-appreciate, review and reconsider the evidence as a whole before it. It is, no doubt, true that there is a presumption of innocence in favour of the accused and that presumption is reinforced by an order of acquittal recorded by the trial court, but that is not the end of the matter. It is for Appellate Court to keep in view the relevant principles of law to re-appreciate and reweigh as a whole and to come to its own conclusion in accord with the principle of criminal jurisprudence.

24. **In State of Goa v. Sanjay Thakran** [AIR 2007 SC (Supp) 61], it has been reiterated that the Appellate Court can peruse the evidence and interfere with the order of acquittal only if the approach of the lower court is vitiated by some manifest illegality or the decision is perverse.

25. In **State of U. P. v. Ajai Kumar** [AIR 2008 SC 1269], the principles stated in **State of Rajasthan v. Sohan Lal** [(2004) 5 SCC 573] were reiterated. It is worth noting that in the case of Sohan Lal, it has been stated thus:-

“This Court has repeatedly laid down that as the first appellate court the High Court, even while dealing with an appeal against acquittal, was also entitled, and obliged as well, to scan through and if need be reappreciate the entire evidence, though while choosing to interfere only the court should find an absolute assurance of the guilt on the basis of the evidence on record and not merely because the High Court could take one more possible or a different view only. Except the above, where the matter of the extent and depth of consideration of the appeal is concerned, no distinctions or differences in approach are envisaged in dealing with an appeal as such merely because one was against conviction or the other against an acquittal.”

26. In **Chandrappa v. State of Karnataka** [AIR 2007 SC (Supp) 111], this Court held as under: -

“42 From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

- (1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.
- (2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.
- (3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with

acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

- (4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.
- (5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

27. In **S. Ganesan v. Rama Raghuraman and others** [AIR 2011 SC (Cri) 419], one of us (Dr. B.S. Chauhan, J.), after referring to the decision in **Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra** [AIR 2011 SC (Cri) 69], considered various aspects of dealing with a case of acquittal and after placing reliance upon earlier judgments of this Court, particularly in **Balak Ram v. State of U.P.** [AIR 1974 SC 2165], **Budh Singh v. State of U.P.** [AIR 2006 SC 2500], **Rama Krishna v. S. Rami Reddy** [AIR 2008 SC 2066], **Aruvelu v. State** [AIR 2009 SC (Supp) 2887] and **Babu v. State of Kerala** [AIR 2011 SC (Cri) 809], held that unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal. Similar view has been reiterated in **Ranjitham v. Basvaraj & Ors.** [AIR 2012 SC (Cri) 803] and **State of Rajasthan v. Shera Ram @ Vishnu Dutta** [AIR 2012 SC 1].

28. Keeping in view the aforesaid well-settled principles, we are required to scrutinize whether the judgment of the High Court withstands the close scrutiny or conviction has been recorded because a different view can be taken.”

27. Therefore, we can conclude that the trial Court has gone into extreme presumptions and assumptions as to the posture of the

dead body and has extended benefit of doubt to the accused, which is not proper. Admittedly, the evidence of PW-5 clearly disclose that the death had occurred due to intra cranial hemorrhage, causing cardio respiratory arrest. If at all any defence is taken by the accused that they were not present in the house at the time of incident, there should be some evidence before the Court to prove the said alibi. Furthermore, the evidence of PWs.1 to 5 corroborates the fact of demand of dowry by the accused soon before her death. As per the scrutiny of the evidence of PWs.1 to 6, it can be construed that: (1) the deceased died within Seven years of her marriage; (2) the death is not a natural one and it occurred under other than the normal circumstances; and (3) soon before her death, she was subjected to cruelty with a demand for additional dowry, which attracts the ingredients under Section 304-B of IPC. Therefore, we are of the opinion that the prosecution has proved the guilt of accused for the offence under Section 304-B of IPC.

28. The trial Court has not properly appreciated the evidence on record and passed the judgment on presumptions and assumptions,

and therefore, the judgment of trial Court needs interference, and the same is liable to be set aside.

29. The Learned Public Prosecutor has filed a Memo dated 13.02.2023, bringing it to the notice of the Court that accused No.2 i.e. respondent No.3 died on 26.08.2018. Copy of the death certificate is also filed along with the Memo. In view of the same, the case against accused No.2 i.e. respondent No.3 stands abated.

30. In the result, the appeal is allowed setting aside the judgment dated 22.02.2012 passed in S.C.No.175 of 2011 on the file of Principal Sessions Judge, Adilabad and convicting respondent Nos.2 and 4/Accused Nos.1 and 3 for the offence punishable under Section 304-B of IPC. Respondent Nos.2 and 4/Accused Nos.1 and 3 are directed to appear before this Court on 13.04.2023 for hearing on quantum of sentence.

Pending miscellaneous applications, if any, shall stand closed.

20.04.2023:

31. In execution of NBWs issued by this Court, accused Nos.1 and 3 i.e., respondent Nos.2 and 4 are produced today before this Court by the Police concerned.

32. When they are heard on quantum of sentence, accused No.1 stated that after the demise of his first wife, he contracted second marriage; that he is having six months child; that his father died and his mother is suffering with old age ailments; that he has no properties and that all the family members are depending upon his income. Accused No.3 stated that she is housewife; that her husband died; that her family in poverty and that she is suffering with old age ailments. In the circumstances, they prayed to take lenient view.

33. Considering the nature of offence and the explanation offered by accused Nos.1 and 3, we are inclined to take lenient view while imposing quantum of sentence. Since accused Nos.1 and 3 are found guilty for the offence under Section 304-B of IPC, accused No.1 is sentenced to undergo rigorous imprisonment for a

period of eight (8) years and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one month and accused No.3 is sentenced to undergo simple imprisonment for a period of seven (7) years and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of fifteen days. Pre and post detention, if any, shall be given set off.

34. The Police are directed to produce accused Nos.1 and 3 before the Superintendent, Central Jail, Cherlapally, who shall receive accused Nos.1 and 3 pending conviction warrants. The Principal Sessions Judge, Adilabad, is directed to forthwith issue conviction warrants of appellate Court in terms of this judgment by giving the details of pre and post detention period, including present detention.

Sd/- K SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Principal Sessions Judge, Adilabad (By Speed Post)
2. The Principal Judicial First Class Magistrate, Nirmal, FAC Judicial First Class Magistrate, Bhainsa , Adilabad Dist.
3. The Station House Officer, Kuntala Police Station, Kuntala Mandal, Adilabad Dist.
4. The Superintendent, Central Jail, Cherlapally, Ranga Reddy District. (By Special Messenger)
5. Two CCS to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
6. One CC to SRI. S. SURENDER REDDY, Advocate [OPUC]
7. One CC to Sri G. VASANTHA RAYUDU, Advocate (OPUC)
8. Two CD Copies

HIGH COURT

DATED:06/04/2023



JUDGMENT

CRL.APPEAL No.999 of 2013

ALLOWING THE CRL.APPEAL.

① Copied
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