

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

**CORAM:**

**\* THE HON'BLE SRI JUSTICE K. LAKSHMAN**

**+CRIMINAL APPEAL No.972 OF 2005**

**% Delivered on: 06-07-2020**

**Between:**

# Surender Singh & 2 others .. Appellants

Vs.

\$ The State of Andhr Pradesh rep.by Public Prosecutor,  
High Court of A.P., Hyderabad .. Respondent

! For Appellants : Mr. C. Sharan Reddy

^ For Respondent : Public Prosecutor

< Gist : 

> Head Note :

? Cases Referred :

1. AIR 2019 SC 4529
2. (2010) 9 SCC 73
3. (2008) 1 SCC 202
4. (2008) 16 SCC 512
5. 2001 Cri.L.J. 4625
6. 2008 (11) Scale 470
7. AIR 1957 SC 623
8. (2004) 5 SCC 334
9. (1997) 5 SCC 348
10. 1994 Supp. (1) SCC 173
11. (1997) 11 SCC 552
12. (1998) 5 SCC 687
13. (1994) 1 SCC 73

**THE HON'BLE SRI JUSTICE K. LAKSHMAN****CRIMINAL APPEAL No.972 OF 2005****JUDGMENT:**

Feeling aggrieved by the judgment, dated 24.03.2005, passed by the V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad in Sessions Case No.445 of 2003, the appellants - Accused Nos.1 to 3 preferred the present appeal.

2. Vide the aforesaid judgment, the trial Court found the appellant - accused No.1 guilty of the charge punishable under Section 304-B of the Indian Penal Code, 1860 (IPC), while the appellants - accused Nos.2 and 3 of the charge punishable under Sections 498-A of IPC. However, accused No.4 was not found guilty of any of the above charges. Accordingly, the trial Court sentenced accused No.1 to undergo ten (10) years rigorous imprisonment and to pay fine of Rs.5,000/- and in default of fine amount, to undergo five (05) months simple imprisonment for the offence punishable under Section 304-B of IPC, while accused Nos.2 and 3 were sentenced to undergo two (02) years rigorous imprisonment each and to pay fine amount of Rs.3,000/- each and in default of fine, to undergo three (03) months simple imprisonment each for the offence punishable under Section 498-A of IPC.

3. It is relevant to note that appellant No.1 is the husband and appellant Nos.2 and 3 are in-laws of deceased - Sarika Bai, while accused No.4, who was acquitted, is sister of accused No.2.

4. The case of the prosecution is as under:

(i) The marriage of deceased - Smt. Sarika Bai was performed with accused No.1 on 10.05.2000 and it is an arranged marriage. At the time of marriage, parents of the deceased gave 15 tolas of gold, furniture and clothes.

(ii) The deceased and accused No.1 lived together happily for a period of five months and, thereafter, all the appellants - accused started harassing the deceased physically and mentally by demanding additional dowry of Rs.50,000/- and one motorcycle. They have also driven her out from matrimonial house twice with the above said demand. The accused have also threatened the deceased that if she fails to fulfill the above demand, they would perform second marriage of accused No.1 with another girl.

(iii) About 12 days prior to 24.06.2003, the deceased came to her parents house and stayed there informing that the accused persons were harassing her for the aforesaid demand. On 24.06.2003, the parents of the deceased along with her maternal uncles went to the matrimonial house of the deceased, dropped the deceased there and requested the accused not to harass the deceased and informed them that they cannot meet the said demand. They have also informed the accused that they are poor and not in a position to meet the said demand. But, the accused did not agree for the same and warned them that they would perform marriage of accused No.1 with another girl if they fail to accede to their demand.

(iv) While so, in the intervening night of 25/26-06-2003 at about 11:45 p.m., Shankar Singh, son of maternal uncle of the deceased, came and informed the parents of the deceased that the deceased committed suicide by hanging. On coming to know the same, the parents of the deceased went to the matrimonial house of the deceased and found the dead-body of the deceased lying on the floor. Then, mother of the deceased went to the police station on 26.06.2003 at 00:55 hours and gave oral report about the death of her daughter, on which her statement was reduced into writing by the police, wherein she narrated about the harassment meted out by the accused on her daughter for bringing additional dowry and motorcycle that ultimately made the deceased to commit suicide.

(v) The police registered a case in Crime No.186 of 2003 under Section 304-B of IPC and investigated into the matter.

5. On completion of investigation, the police filed a charge sheet against accused Nos.1 to 4 for the offence under Section 304-B of IPC. The same was taken on file vide S.C. No.445 of 2003 for the said offence.

6. The trial Court framed charge under Section 304-B of IPC against the appellants and accused No.4. The appellants - accused Nos.1 to 3 and accused No.4 denied the charges and pleaded not guilty and prayed for trial.

7. During trial, the prosecution has examined as many as 12 witness viz., PWs.1 to 12 and marked the documents as Exs.P1 to P8. MO.1 - Saree was also exhibited during the course of trial. The accused did not adduce any evidence.

8. After completion of trial and on appreciation of evidence, both oral and documentary, the trial Court found the appellants - accused No.1 guilty of the charge under Section 304-B of IPC and appellants - accused Nos.2 and 3 for the charge under Section 498-A of IPC. Accordingly, they were convicted for the said charges imposing the sentence of imprisonments in the manner stated above. However, the trial Court did not find accused No.4 guilty of any of the charges and, accordingly she was acquitted of the said charges.

9. Feeling aggrieved by the said conviction and imposition of sentences of imprisonment, accused Nos.1 to 3 preferred the present appeal.

10. Heard Mr. C. Sharan Reddy, learned counsel for the appellants - accused Nos.1 to 3 and the learned Public Prosecutor for the State appearing on behalf of the respondent.

11. It is relevant to note that as stated above, on receipt of oral report from PW.1, mother of the deceased and after recording her statement, the police registered a case against accused Nos.1 to 4 for the offence under Section 304-B of IPC. The police after completion of the investigation, filed charge sheet against accused Nos.1 to 4 for

the said offence. The trial Court framed the charge against them for the offence under Section 304-B of IPC. But, the trial Court convicted accused No.1 for the offence under Section 304-B of IPC, while accused Nos.2 and 3 for the offence under Section 498-A of IPC by observing that the prosecution has discharged the burden of proving its case beyond reasonable doubt and accordingly imposed the sentences of imprisonment in the manner stated above. However, the trial Court acquitted accused No.4 for both the charges. The prosecution did not file any appeal challenging the impugned judgment acquitting accused No.4 for both the charges. Like-wise, the prosecution also did not file any appeal challenging the impugned judgment acquitting accused No.1 for the offence under Section 498-A of IPC and further acquitting accused Nos.2 and 3 for the offence under Section 304-B of IPC. The present appeal is filed by the appellants herein challenging the conviction recorded by the trial Court in the manner stated above.

12. Impugning the judgment, the learned counsel for the appellants - accused Nos.1 to 3 would submit that though the police filed charge sheet against the appellants for the offence under Section 304-B of IPC, the trial Court framed the charge against them for the very same offence, but convicted accused Nos.2 and 3 for the offence under Section 498-A of IPC. He would further contend that though the trial Court convicted accused No.1 for the offence under Section 304-B of IPC while accused Nos.2 and 3 under Section 498-A of IPC,

acquitted accused No.1 for the offence under Section 498-A of IPC and accused Nos.2 and 3 for the offence under Section 304-B of IPC.

13. The learned counsel would further contend that none of the witnesses deposed that the appellants - accused Nos.1 to 3 have demanded dowry at the time of marriage. None of the witnesses also deposed about the alleged demand of additional dowry by the appellants. There is no direct witness and also convincing evidence at all to record convictions against the appellants.

14. He would further contend that there are contradictions in the depositions of prosecution witnesses, more particularly, PW.1, mother of the deceased, PW.2, uncle, PW.3, cousin, PW.4, maternal uncle, PW.5, neighbour and PW.12, Investigating Officer, and that the prosecution failed to prove the guilt of accused No.1 for the offence under Section 304-B of IPC and accused Nos.2 and 3 for the offence under Section 498-A of IPC.

15. He further submits that all the prosecution witnesses categorically admitted that no *panchayat* was held with regard to the alleged demand of additional dowry of Rs.50,000/- and motorcycle by the appellants. He would further contend that the deceased gave a birth to a female baby who was so weak and died on the third day. The deceased conceived second pregnancy, gave birth to a female baby again, one month after performing the celebration of twenty first



day ceremony of the baby, parents of the deceased took the deceased to their house with baby.

16. He would further contend that PW.5, neighbour of the deceased, did not depose about the alleged demand of additional dowry or harassment of the deceased by the appellants. There are improvements in the depositions of PWs.1, 2 and 3 from that of statements recorded by the police under Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.). The trial Court failed to consider the deposition of PW.9, doctor, who conducted post-mortem examination, that there were no injuries on the dead body of the deceased. Though there is no charge under Section 498-A of IPC, the trial Court convicted accused Nos.2 and 3 for the said offence and, therefore, the said conviction under impugned judgment is liable to be set aside.

17. With the above said contentions, the learned counsel for the appellants would submit that there is no harassment or demand of additional dowry by the accused and prayed to set aside the impugned judgment acquitting the appellants of the aforesaid offences.

18. On the other hand, the learned Public Prosecutor would submit that to prove the guilt of the accused, the prosecution has examined the relevant witnesses and according to the depositions of prosecution witnesses, the accused harassed the deceased for additional dowry of Rs.50,000/- and motorcycle.



19. He would further submit that on account of harassment, the deceased used to go to her parents' house and stay there for a quite some time. But, on counseling of the parents, the deceased used to go to her matrimonial house. According to him, there is corroboration of evidence and nothing was elicited by the accused during cross-examination to disprove the case of prosecution.

20. The learned Public Prosecutor further submits that the prosecution has proved its case for the offences under Sections 304-B of IPC and 498-A of IPC beyond all reasonable doubt. The trial Court has rightly convicted the appellants for the said offences and there are no circumstances that warrant interference by this Court in the present appeal.

21. With the above said submissions, the learned Public Prosecutor prayed for dismissal of the present appeal.

22. On perusal of the evidence on record, it is not in dispute that the marriage of the deceased was performed with accused No.1 on 10.05.2000 and it is an arranged marriage. It is also not in dispute that the deceased gave birth to a female child, who died three days after the birth and that the deceased gave birth second time to female child. It is also not in dispute that the deceased died on 25.06.2003. As per PW.9, the doctor, who conducted post-mortem examination, the cause of the death of the deceased is due to hanging. According to the prosecution, the deceased committed suicide due to harassment

meted out by the appellants demanding additional dowry of Rs.50,000/- and motorcycle from the deceased and it amounts to dowry death.

23. In view of the above stated facts, it is relevant to extract Section 304-B of IPC, which is as under:

**“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 purposes 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 for life.”

24. It is also relevant to extract Section 113-B of the Indian Evidence Act, which deals with presumption as to dowry death, which is as under:

**“113-B. 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 had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

**Explanation.-** For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code(45 of 1860")"

25. Further, it is also relevant to extract Section 498-A of IPC

which is as under:

**“498-A. Husband or relative of husband of a woman subjecting her to cruelty.—**Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

**Explanation.—**For the purpose of this section, “cruelty” means—

- (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

26. On perusal of the above said provisions, it can be seen that the offence under Section 304-B of IPC requires the following ingredients; (i) within 7 years of the marriage, there must happen the death of a woman (the wife); (ii) the death must be caused by any

burns or bodily injury; or the death must occur otherwise than under normal circumstances; (iii) it must be established that soon before her death, she was subjected to cruelty or harassment; (iv) the cruelty or harassment may be by her husband or any relative of her husband; and (v) the cruelty or harassment by the husband or relative of the husband must be for, or in connection with, any demand for dowry.

27. It is relevant to note that as per Section 304-B of IPC, husband or any relative of the husband shall be deemed to have caused her death. Section 113-B of the Indian Evidence Act, 1872 provides for presumption as to dowry death. It provides that when the question is whether the dowry death, namely, the death contemplated under Section 304-B of IPC has been committed by a person, if it is shown that soon before her death, the woman was subjected by such person to cruelty or harassment, for in connection with, any demand for dowry, the Court shall “presume” that such person had caused the dowry death. It is, no doubt, a rebuttable presumption and it is open to the husband and his relatives to show the absence of the ingredients of Section 304-B of IPC.

28. It is also relevant to note that foremost aspect to be established by the prosecution is that there was reliable evidence to show that the woman was subjected to cruelty or harassment by her husband or his relatives which must be for or in connection with any demand for dowry, soon before her death. Before the presumption is raised, it must be established that the woman was subjected by such

person to cruelty or harassment and it is not any cruelty that becomes the subject matter of the provision but it is the cruelty or harassment or in connection with, demand for dowry.

29. As per Section 498-A of IPC, there should be willful conduct of the nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman and the harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand, shall be liable to punishment.

30. It is apt to note that there is no definition of 'dowry' in IPC. Section 2 of the Dowry Prohibition Act, 1961, defines the 'dowry' which is as follows:

**“2. Definition of “dowry”.**— In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or *mahr* in the case of persons to whom the Muslim Personal Law (*Shariat*) applies.”

By virtue of an amendment vide Act 63 of 1984, which came into force with effect from 02.10.1985, the words “in connection with the marriage of the said parties” were inserted by the Legislature. Therefore, the Legislature in its wisdom, made it very clear that ‘dowry’ should be in connection with the marriage of the parties.

31. In view of the above stated legal position, coming to the case on hand, the questions that fall for consideration before this Court are:

- (i) Whether the ingredients, as discussed supra, for the offences under Sections 304-B of IPC and 498-A of IPC are present in the case on hand?
- (ii) Whether convictions recorded by the trial Court for the offences under Section 304-B of IPC against the appellant - accused No.1 and under Section 498-A of IPC against the appellants - accused Nos.2 and 3 are sustainable, both on facts and in law?
- (iii) Whether the trial Court can convict accused Nos.2 and 3 for the offence under Section 498-A of IPC though there was no charge of the said offence against them?

**POINTS: 1, 2 and 3**

32. It is relevant to note that it is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B of IPC is to be invoked. But it should have happened “soon before her death”. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the

proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words soon before her death is to emphasize the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide, the court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

33. To prove the said offences, the prosecution has examined PW.1, mother of the deceased, PW.2; maternal uncle of the deceased; PW.3, maternal cousin of the deceased; PW.4, maternal uncle of the deceased; PW.5, neighbour of the deceased; PW.6, mediator to the scene of offence; PW.7, mediator to inquest; PW.8, photographer; PW.9, the doctor, who conducted post-mortem examination report; PW.10, MRO, who conducted inquest; PW.11, Sub-Inspector of Police, who registered the FIR; and PW.12, Inspector of Police, who investigated the case.

34. PW.1, mother of the deceased, deposed about performing of the marriage of the deceased, her second daughter with accused



No.1 on 10.05.2001, presentation of 15 tulas of gold ornaments, furniture, new clothes and spending an amount of Rs.2.00 lakhs towards marriage expenses. According to her, it is an arranged marriage arranged by her elder sister - Rajani Bai and her husband - Brij Mohan (PW.4). She further deposed that the deceased and accused No.1 lived happily for five months and thereafter accused started harassing the deceased by demanding additional dowry of Rs.50,000/- and also a motorcycle. The accused used to send her daughter to her house to bring the said additional dowry and her daughter informed her about the said harassment and also abusing and beating her for the said demand.

35. PW.1 further deposed that the deceased gave a birth to a female child, who was so weak and died on the third day of birth. She also deposed that the deceased gave birth to second female child. They have performed 21<sup>st</sup> day ceremony to the said baby and presented 5 grams of gold locket, new clothes and sending an amount of Rs.15,000/- for the said ceremony. She further deposed that she brought her daughter to their house and her daughter was there with them for about one month. After one month, she sent her daughter and child to her in-laws house. But, the accused did not stop the harassment and insisted the deceased to bring the said additional dowry. The accused have necked the deceased out of their house threatening that in the event of non-payment of the said additional dowry, they would perform second marriage to accused No.1. PW.1

further deposed that her daughter came to their house and stayed there for about 10-15 days. She further deposed that 10-15 days prior to the same, accused No.3, father-in-law of the deceased, came to the house of PW.1 and demanded the said additional dowry and threatened that they will perform second marriage. Despite specific request, there is no change in the attitude of accused No.3. Therefore, according to PW.1, she has informed the matter to her brothers. On the same day at about 3.00 p.m., her brothers and her husband went to the house of the accused along with her daughter and grand-daughter, requested accused to look after her daughter properly and came back. She further deposed that on 25.06.2003, PW.3 came and informed her that all the accused beat the deceased indiscriminately till she died and that kept her body on the mat.

36. During cross-examination, she has admitted that no *panchayat* was convened with the elders with regard to additional dowry demanded by the accused and the harassment.

37. PW.2, maternal uncle of the deceased, deposed about his sister (PW.1) informing about demand of additional dowry and harassment of her daughter by the accused. He further deposed that 15 days prior to the death of the deceased, the deceased was necked out by her in-laws from her in-laws house along with child and his sister informed the same. He has further deposed that on 24.06.2003, accused No.3 came to the house of his sister (PW.1), demanded the additional dowry of Rs.50,000/- cash and motorcycle or otherwise

they would perform the marriage of his son to another girl and with the said intimation, he left to his house without taking the deceased to her in-laws house. On such information from PW.1, PW.2 and his brothers including PW.3 went to the house of PW.1, all of them took the deceased, her child to the house of the accused at about 3.00 p.m. on 24.06.2003 and requested the accused to take care of the deceased and her child properly. On the next day i.e., 25.06.2003 at about 11.15 p.m., he came to know about the suicide of the deceased through PW.4. During cross-examination, he has admitted that he has not conducted any *panchayat*. He has further admitted that he has not mentioned in his statement recorded under Section 161 of Cr.P.C. that after going to the house of the accused along with Sarika (deceased) they all requested accused Nos.1 to 4 to treat the deceased with love and affection and that her mother has no capacity to meet the demand and that she has already spent so much amount on marriage.

38. PW.3, paternal cousin of the deceased, deposed about the marriage of the deceased with accused NO.1, they lived happily for five months and he came to know through PW.1 about the demand of additional dowry and harassment. He further deposed about PW.1 intimating his father before 15 days of the incident about the demand of the said additional dowry and his father and uncles went to the house of the accused and requested them to take care of the deceased and her child.

39. PW.4 is the maternal uncle of the deceased and husband of PW.1's sister. He deposed that he mediated and arranged the marriage of the deceased with accused No.1. He further deposed that at the time of marriage, the accused had demanded an amount of Rs.50,000/-, motorcycle, 15 tulas of gold and other house-hold articles. However, they have finally presented 15 tulas of gold, house-hold articles and spent the amount towards marriage expenses. He came to know about the demand of additional dowry by the accused and harassment of the deceased through PW.1. He further deposed that he went to the house of the accused and enquired about the said additional dowry and harassment and the accused got annoyed on him and told him that he has not business to enquire about the same. 15 days prior to the death of the deceased, he came to know through PW.1 that the deceased was necked out from her matrimonial house by the accused demanding additional dowry and thereafter PW.1 along with others went to the house of the accused, dropped the deceased along with her child in the house of the accused with a request to take care of them properly as per his advise.

40. During cross-examination, he has admitted that on 25.06.2003 at about 12.00 noon, he saw gathering in front of the house of the accused, then out of curiosity, he went to the house of the accused, found the dead body of the deceased lying on the ground. He has informed the matter to Mr. Om Prakash, brother of PW.1 and also to the police. He has further admitted that no *panchayat* was

convened with regard to the said demand of additional dowry and harassment.

41. PW.5, neighbour of the deceased, deposed about some quarrels in the house of the accused and however he does not know the details of the said quarrels and the purpose of the same. As per his knowledge, the accused have looked after the deceased properly except some petty quarrels. During cross-examination, he has admitted that he was not present in the house on the date of incident.

42. PW.9, the doctor, who has conducted post-mortem examination, deposed that he has opined the cause of the death as “due to hanging” and he has submitted Ex.P7 - postmortem examination report.

43. PW.10, MRO, deposed about conducting of inquest in the presence of PW.7 and Smt. Shanthi in Osmania General Hospital, Hyderabad.

44. PW.12 is the Inspector of Police and Investigating Officer. He deposed about receipt of information, registration of crime and conducting of investigation etc. During cross-examination, he has admitted that PW.1 did not state specifically about the demand of additional dowry and harassment.

45. It is apt to note that during examination under Section 313 of Cr.P.C., accused No.1 has stated that the deceased used to go to her

parents house without informing him and that she used to stay only 2 or 3 days with him; used to go to her parents house; used to stay there for 10 to 15 days; and when accused No.1 informed the deceased not to do like that, she never heeded his request. He has further stated that despite counselling, there was no change in the attitude of the deceased.

46. It is also apt to note that, according to the accused, the deceased did not like accused No.1 and her marriage was performed with accused No.1 against her wish. Thus, she was under frustration and committed suicide on her own.

47. The above stated facts would reveal that the marriage of the deceased with accused No.1 was performed on 10.05.2001 and it is an arranged marriage. It is also not in dispute that they have lived happily for about five months the deceased gave birth to a female child, who died on the third day of birth. The deceased gave a birth to second female child, 21<sup>st</sup> day ceremony was held.

48. It is also not in dispute that no *pancahyat* was held with regard to the said alleged demand of additional dowry amount of Rs.50,000/- and motorcycle by the accused. Almost all the prosecution witnesses including PW.1, PW.2, PW.3 and PW.4 have admitted the said fact. However, PW.1 specifically deposed that, 10-15 days prior to the incident, the accused abused her daughter in filthy language, beat her and necked her out of their house demanding the

said additional dowry. According to PW.1, 10-15 days prior to the incident, one day, accused No.3 came to her house and demanded the said additional dowry. There is also specific evidence by PW.1 and PW.4, mediator of the marriage, that the accused have threatened PW.1 that they will perform second marriage of accused No.1 in the event of meeting their demand of additional dowry. It is relevant to note that PWs.1 to 4 did not state in detail about the said harassment and other incidents in their statements recorded under Section 161 of Cr.P.C. The learned counsel for the appellants - accused strenuously argued that there was *panchayat* held with regard to the alleged harassment and demand of additional dowry as admitted by all the prosecution witnesses, there are serious contradictions in their depositions which are major. The trial Court without considering the same convicted the appellants only on probabilities, surmises and conjectures.

49. From the above stated depositions, the death of the deceased was due to hanging in two years of the marriage and the said death was not under normal circumstances. There was harassment and she was subjected to cruelty soon before her death. The said harassment was by the husband (accused No.1) and accused Nos.2 and 3, in-laws of the deceased, and the said harassment was in connection with the demand of additional dowry.

50. As discussed above, the prosecution witnesses, more particularly, PWs.1 to 4, specifically deposed about demand of



additional dowry and the harassment meted out by the accused with regard to the said additional dowry. Though, no *panchayat* was held, PW.1 informed about the said additional dowry and harassment to her brothers and PW.4, sister's husband, who mediated the marriage. In fact, PW.4 himself advised PW.1 to inform the said demand of additional dowry and harassment to her brothers and accordingly she has intimated the same to her brothers including PW.2. Accordingly, PW.1, PW.2, PW.3, brother's son, PW.4, sister's husband went to the house of the accused along with PW.1, deceased, her child and dropped them at the house of the accused and requested the accused to take care of the deceased and her child. There is also specific evidence as deposed by them that accused No.3 came to the house of PW.1 and demanded for additional dowry and also threatened that he will perform second marriage to his son (accused No.1) in the event of non-payment of said additional dowry. Nothing contra was elicited from them during cross-examination by the accused.

51. The learned counsel for the appellant by referring the depositions of prosecution witnesses would contend that they have admitted during cross-examination that the accused No.1 family was rich than PW.1 family and he was having motorcycle by the time of marriage. Therefore, the question of demand of an amount of Rs.50,000/- towards additional dowry and motorcycle does not arise. But, there is no hard and fast rule of possibility of not demanding additional dowry by accused No.1 though he is rich than family of

PW.1 and he is having motorcycle as on the date of marriage. As discussed supra, there is probable and specific evidence that the appellants have demanded additional dowry and harassed the deceased for the said dowry and the same cannot be brushed aside on the ground that accused No.1 was rich and having a motorcycle. There is corroboration in the evidence of prosecution witnesses except minor contradictions and omissions. There are no substantial contradictions to tilt the prosecution case. The entire evidence including circumstantial evidence would prove the demand of additional dowry and harassment by way of chain of events right from the marriage till the death of deceased.

52. The accused have contended that the deceased did not like accused No.1 at the time of marriage and her marriage was performed with accused No.1 against her wish. But, absolutely, there is no evidence, much less probable evidence, in support of the said defence. The accused failed to elicit anything on the said aspect during cross-examination of prosecution witnesses. The accused failed to examine any witness in support of the same. It is apt to note that they have not even taken the said defence during their examination under Section 313 of Cr.P.C. Though the accused have right to remain silent and even during their examination under Section 313 of Cr.P.C. they have not disclosed the said defence.

53. It is further contended by the accused that during examination under Section 313 of Cr.P.C., accused No.1 stated that

the deceased used to go to her parents' house without informing, used to stay with him only for 2 or 3 days, used to go to her parents' house, stay there for 10-15 days. When accused No.1 requested the deceased not to do so, she did not heed to the said request and there was no change in her attitude. Accused No.1 further stated that despite counseling, there was no change in the attitude of the deceased. But, the accused failed to prove the same by producing any evidence, much less reliable evidence. They have not examined any witness even to prove the said counseling. On perusal of the entire evidence, there were no suggestions to the prosecution witnesses on the said aspects during cross-examination. In view of the same, it can safely be concluded that the said defence of the accused is not probable and believable and, therefore, the same cannot be accepted.

54. It is relevant to note that Section 113 of the Indian Evidence Act deals with presumption as to the dowry death. However, it is a rebuttable presumption, whereas, in the present case, the accused failed to rebut the said presumption. The defence of the accused that the deceased died due to frustration is not convincing and probable.

55. The Hon'ble Supreme Court in **Girish Singh v. The State of Uttarakhand**<sup>1</sup>, had held that a right of appeal is the creature of statute. Unless appellate power is expressly limited by additional conditionalities, the Appellate Court has power or rather is duty bound

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<sup>1</sup>. AIR 2019 SC 4529

in the case of an appeal by the Accused to reappraise the evidence. Even in an appeal against acquittal, the appellate court has power of reappraisal of evidence though subject to the limitation that interference would be in a case where the Trial Court's verdict is against the weight of evidence which is the same thing as a perverse verdict. In the said judgment also, the Hon'ble Supreme Court held that the appellate Court must not be oblivious to the fact what it is duty bound to find is whether an offence is committed or not and such a pursuit also would embrace the duty of the court to apply its mind to the evidence as a whole and arrive at conclusions as to facts and inferences there-from as well. After all, at stake for the Accused are, priceless rights to liberty, reputation and the right to life, not only of himself but also his family members. The Law Giver, has contemplated that the High Court will be the final arbiter of facts and even of law. The jurisdiction of the Apex Court was deliberately limited to the extra ordinary powers it enjoys Under Article 136 of the Constitution of India unless it be exercised under other provisions. It further held that it wish to emphasize is that the cause of justice and the interest of litigants would be better sub-served if the Appellate Court takes a closer look, in particular of the cross-examination of the witnesses and analyze the same.

56. The Hon'ble Supreme Court in **Durga Prasad v. State of M.P.**<sup>2</sup> held that benefit of doubt to the appellants having particular

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<sup>2</sup>. (2010) 9 SCC 73

regard to the fact that except for certain bald statements made by prosecution witnesses alleging that the victim had been subjected to cruelty and harassment prior to her death, there is no other evidence to prove that the victim committed suicide on account of cruelty and harassment to which she was subjected just prior to her death, which, in fact, are the ingredients of the evidence to be led in respect of Section 113-B of the Indian Evidence Act, 1872, in order to bring home the guilt against an accused under Section 304-B of IPC. It further held that in order to hold an accused guilty of an offence under Section 304-B of IPC, it has to be shown that apart from the fact that the woman died on account of burn or bodily injury, otherwise than under normal circumstances, within 7 years of her marriage, it has also to be 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. Only then would such death be called "dowry death" and such husband or relative shall be deemed to have caused the death of the woman concerned. It also further held that no charges were framed against the Appellants under the provisions of the Dowry Prohibition Act, 1961 and the evidence led in order to prove the same for the purposes of Section 304-B of IPC was related to a demand of dowry.

57. The Hon'ble Supreme Court by referring to a judgment in **Biswajit Halder @ Babu Halder v. State of W.B.**<sup>3</sup> held that in order

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<sup>3</sup>. (2008) 1 SCC 202

to bring home a conviction under Section 304-B of IPC, it will not be sufficient to only lead evidence showing that cruelty or harassment had been meted out to the victim, but that such treatment was in connection with the demand for dowry.

58. In **Narayanamurthy v. State of Karnataka**<sup>4</sup>, the Hon'ble Supreme Court by referring Section 113-B of the Indian Evidence Act and Section 304-B of IPC, laid down the basic ingredients to attract the offence of Section 304-B of IPC as extracted above. The Apex Court in the said judgment by referring to its earlier judgment in **Satvir Singh v. State of Punjab**<sup>5</sup> has held that deficiency in the evidence proves fatal to the prosecution case. Even otherwise, mere evidence of cruelty and harassment is not sufficient to being in application of Section 304-B of IPC. It is to be established that 'soon before death', deceased was subjected to cruelty or harassment by her husband for, or 'in connection with demand for dowry' and held in the said case, in the afore-mentioned situation, the provisions of Section 304-B of IPC, and Section 113-B of the Evidence Act could not be attracted to hold the accused guilty of the offence of dowry death.

59. The Apex Court in **Satvir Singh**<sup>5</sup> held that there are three occasions related to dowry. (i) before the marriage, (ii) at the time of marriage, and (iii) 'at any time' after the marriage. The third occasion may appear to be an unending period. But the crucial words are 'in

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<sup>4</sup>. (2008) 16 SCC 512

<sup>5</sup>. 2001 Cri.L.J. 4625

connection with the marriage of the said parties'. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of 'dowry'. Hence the dowry mentioned in Section 304-B of IPC should be any property or valuable security given or agreed to be given in connection with the marriage. It further held that it is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304-B of is to be invoked. But it should have happened 'soon before her death'. The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words 'soon before her death' is to emphasize the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval which elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty



would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'.

60. As discussed supra, the prosecution has proved the guilt of accused Nos.1 to 3 by examining proper and relevant witnesses. From the depositions of prosecution witnesses, the prosecution has established the above said five ingredients of Section 304-B of IPC i.e., (i) within 7 years of the marriage, there must happen the death of a woman (the wife); (ii) the death must be caused by any burns or bodily injury; or the death must occur otherwise than under normal circumstances; (iii) it must be established that soon before her death, she was subjected to cruelty or harassment; (iv) the cruelty or harassment may be by her husband or any relative of her husband; and (v) the cruelty or harassment by the husband or relative of the husband must be for, or in connection with, any demand for dowry.

61. On the critical analysis of the entire evidence, the trial Court gave a specific finding that all the ingredients of Section 304-B of IPC were proved by the prosecution by examining the relevant witnesses. It further held that no doubt, PWs.1 to 4 are closely related to the deceased, but their relationship by itself is no ground to disbelieve their evidence, if otherwise it is probable, trustworthy and reliable. The trial Court gave a finding that the defence taken by the accused that the deceased committed suicide due to frustration as she

was not liking to marry accused No.1, she used to go to the house of her parents without intimating accused No.1 is not believable.

62. Thus, the trial Court gave specific reasons while convicting the appellant - accused No.1 for the offence under Section 304-B of IPC and appellants - Accused Nos.2 and 3 for the offences under Sections 498-A of IPC. This Court is satisfied with the said reasons. On the other hand, the appellants failed to establish any ground or circumstance that warrants interference by this Court in the present appeal.

63. The learned counsel for the appellants - accused No.1 to 3 would submit that they are closely related, uneducated and living in poverty. He would further submit that appellant No.2 is aged about 69 years and appellant No.3 is about 71 years and they are suffering from various old-age ailments. He would further submit that the appellant - Accused No.1 got remarried and he is having children including the female child of the deceased and he has to look after them. He would further submit that the incident was happened way back in the year 2003 i.e., about 17 years ago and both the deceased and accused stayed together for only two years. With the said contentions, the learned counsel for the appellants sought to take a lenient view.

64. As discussed supra, the police registered a case against appellants - accused for the offence under Section 304-B of IPC and

the trial has also framed the charge under Section 304-B of IPC. But, the trial Court has convicted the appellant - accused No.1 for the offence under Section 304-B of IPC, whereas the appellants - accused Nos.2 and 3 for the offence under Sections 498-A of IPC. In fact, there is no charge under Section 498-A of IPC against accused Nos.2 and 3. It is contended by the learned counsel for the appellants that the trial Court cannot convict accused Nos.2 and 3 herein for the offence under Section 498-A of IPC without there-being a charge framed against them. The Hon'ble Apex Court in **Dinesh Seth v. State of N.C.T. of Delhi**<sup>6</sup> by relying upon several judgments including the judgments in **Gurbachan Singh v. State of Punjab**<sup>7</sup>, **Dalbir Singh v. State of U.P.**<sup>8</sup>, **Sangaraboina Sreenu v. State of A.P.**<sup>9</sup>, **Lakhjit Singh v. State of Punjab**<sup>10</sup>, **Pyare Lal v. State of Haryana**<sup>11</sup>, **Satpal v. State of Haryana**<sup>12</sup> and **State of West Bengal v. Orilal Jaiswal**<sup>13</sup> held that an offence under Section 498-A of IPC is made out if the woman is subjected to physical assault, humiliation, harassment and mental torture. It further held that in certain situations, an accused can be convicted of an offence with which he may not have been specifically charged and that an error, omission or irregularity in the framing of charge is, by itself not sufficient for upsetting the conviction. The appellate Court, confirming or

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<sup>6</sup>. 2008 (11) Scale 470

<sup>7</sup>. AIR 1957 SC 623

<sup>8</sup>. (2004) 5 SCC 334

<sup>9</sup>. (1997) 5 SCC 348

<sup>10</sup>. 1994 Supp. (1) SCC 173

<sup>11</sup>. (1997) 11 SCC 552

<sup>12</sup>. (1998) 5 SCC 687

<sup>13</sup>. (1994) 1 SCC 73

revisional Court can interfere in such matters only if it is shown that error, omission or irregularity in the framing of charge has caused prejudice to the accused and failure of justice has been occasioned. It was further held that the appellant and his co-brother in the said case were charged under Section 304-B of IPC. The specific allegation levelled against them was that they had subjected the deceased to cruelty for or in connection with demand for dowry and she had died unnatural death within seven (07) years of her marriage. Thus, the appellant knew that he was to defend himself against the allegation of cruelty. The ingredient of cruelty is common to Sections 304-B and 498-A IPC, but the width and scope of two sections is different, inasmuch as Section 304-B deals with cases of death as a result of cruelty or harassment within seven years of marriage, Section 498-A has a wider spectrum and it covers all cases in which the wife is subjected to cruelty by her husband or relative of the husband which may result in death by way of suicide or cause grave injury or danger to life, limb or health (whether mental or physical) or even harassment caused with a view to coerce the woman or any person related to her to meet unlawful demand for property or valuable security. In order to bring home charge under Section 304-B of IPC, the prosecution is required to establish that the death of the woman has been caused by burns or bodily injury or otherwise than under normal circumstances within seven years of her marriage and soon before her death, the woman is subjected to cruelty or harassment by her husband or his relative. However, for the purpose of conviction under Section 498-A

of IPC, it is sufficient to prove that the woman was subjected to cruelty, as elucidated in the explanation appearing below substantive part of the Section, by her husband or his relative. The Hon'ble Apex Court finally held that even though the prosecution evidence was not sufficient to establish charge under Section 304 or 306 of IPC, conviction under Section 498-A of IPC can be upheld because the deceased was treated with cruelty by the appellant therein.

65. In the present case also, appellant Nos.2 and 3 were charged with the allegation of cruelty against the deceased. They were given opportunity of cross-examination to disprove the said allegation during trial. In view of the same, the contention of the learned counsel for the appellants that no charge was framed against appellant Nos.2 and 3 for the offence under section 498A IPC and, therefore, they cannot be convicted for the said offence is not sustainable.

66. As stated above, the prosecution has proved the guilt of accused No.1 for the offence under section 304-B of IPC beyond reasonable doubt. But, however, considering the fact that the incident had occurred 17 years ago, accused No.1 got remarried and he has to look after his children including the child born through the deceased and his old aged parents, who are suffering from various ailments. Under the said circumstances, accused No.1 is entitled for taking a lenient view by this Court with regard to reduction of punishment. This Court is having power to record sentence of imprisonment for a

lesser period by giving special reasons as held by the Apex Court. Accordingly, reasons were recorded supra.

67. Therefore, the conviction recorded by the learned V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad in Sessions Case No.445 of 2003 against the appellant - Accused No.1 for the offence under Section 304-B of IPC is confirmed. However, the sentence of imprisonment imposed by the trial Court against him for the said offence is reduced to one (01) year which includes the period already undergone by appellant No.1 - accused No.1 for the said offence, from ten (10) years. In so far as appellant Nos.2 and 3 - accused Nos.2 and 3 are concerned, the convictions and sentences of imprisonment recorded by the trial Court against them under Section 498-A of IPC are also hereby confirmed. However, considering the age of appellant No.2 as about 69 years and appellant No.3 as about 71 years and they are suffering from various old-age ailments and also considering that the incident is of 17 years back, this Court is inclined to take a lenient view. Accordingly, the sentences recorded by the trial Court against accused Nos.2 and 3 are modified to that of the period which they have already undergone for the offence under Section 498-A of IPC. The appellant No.1 - Accused No.1 is directed to surrender before the trial Court within two (02) months from today for serving out the remaining sentence of imprisonment.

68. Accordingly, the present Criminal Appeal is allowed in part.

As a sequel, miscellaneous applications, if any, pending in the appeal shall stand closed.

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**JUSTICE K. LAKSHMAN**

**06<sup>th</sup> July, 2020**

Mgr

**Note:** Whether L.R. Copy to be marked: **YES**

