

HIGH COURT OF ANDHRA PRADESH**Date of Judgment: 25th January 2024**

CRIMINAL APPEAL NO. 8 OF 2011

Chengaipattu @ Nathineni Sreenivasulu ... Appellant/1st Accused**VERSUS****The State of Andhra Pradesh ... Respondent/Complainant****Legislation and Rules:**

Indian Penal Code (IPC), Section 304-B

Dowry Prohibition Act (DP Act), Section 4

Code of Criminal Procedure (Cr.P.C.), Section 235(2), Section 313

Subject: Appeal against the conviction for dowry death under Section 304-B of IPC and Section 4 of the DP Act, involving harassment and cruelty towards the deceased wife.

Headnotes:

Criminal Appeal – Dowry Death and Dowry Demand – Appellant convicted under Section 304-B IPC and Section 4 of Dowry Prohibition Act for dowry death of his wife – Prosecution proved harassment and cruelty for additional dowry soon before death – Sentences for both offenses to run concurrently. [Paras 1-58]

Dowry Death – Essential Ingredients – Death within seven years of marriage under abnormal circumstances – Proved consumption of poison leading to death – Presence of ante-mortem injuries indicating physical harassment – Satisfies proximity test for 'soon before her death' requirement in Section 304-B IPC. [Paras 32-36, 50-52]

Harassment and Cruelty for Dowry – Prosecution established continuous harassment for additional dowry – Demands for money to purchase lands – Evidence from relatives and mediators corroborating

dowry demands and physical and mental harassment soon before death. [Paras 38-42]

Sentence – Conviction under Section 304-B IPC and Section 4 of Dowry Prohibition Act – Rigorous imprisonment for seven years for Section 304-B and simple imprisonment for one year for Section 4 of D.P. Act – Sentences to run concurrently. [Para 55]

Decision – High Court upheld trial court's conviction and sentence of appellant – Appeal dismissed – Directed registry to certify judgment to trial court for execution of sentence. [Paras 56-58]

Referred Cases:

- The State of Andhra Pradesh v. Raj Gopal Asawa and others (2004) 4 SCC 470 [Paras 44, 48].

Representing Advocates:

Counsel for Appellant: Sri P. Gangaram Reddy

Counsel for Respondent: Public Prosecutor

JUDGMENT:-

Challenge in this Criminal Appeal is to the judgment, dated 06.01.2011 in Sessions Case No.166 of 2006, on the file of III Additional District & Sessions Judge (FTC), Nellore (“Additional Sessions Judge” for short), where under the learned Additional Sessions Judge found the present appellant i.e., A.1 guilty of the charges under Section 304-B of the Indian Penal Code (“IPC” for short) and Section 4 of Dowry Prohibition Act (“DP Act” for short), convicted him under Section 235(2) of the Code of Criminal Procedure (“Cr.P.C.” for short) and after questioning him about the quantum of sentence, sentenced him to suffer rigorous imprisonment for seven years for the offence under Section 304-B of IPC and further sentenced him to suffer simple imprisonment for one year and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for two months for the offence under Section 4 of the Dowry Prohibition Act and that both the sentences shall run concurrently.

2) The parties to this Criminal Appeal will hereinafter be referred to as described before the learned Additional Sessions Judge for the sake of convenience.

3) The Sessions Case No.166 of 2006 arose out of a committal order in P.R.C.No.74 of 2005, on the file of IV Additional Judicial First Class Magistrate, Nellore, relating to Crime No.95 of 2004 of Indukurpet Police Station.

4) The case of the prosecution, in brief, according to the charge sheet filed by the Sub-Divisional Police Officer, Nellore Rural, is as follows:

(i) A.1 to A.4 are residents of Pogadadoruvuvari Kandriga and A.5 is resident of Thummagunta Village. One Chengalpattu @ Nathineni Sireesha (hereinafter will be referred to as “deceased”) is the wife of A.1. A.2 and A.3 are the parents of A.1. A.4 is younger brother and A.5 is elder sister of A.1. The deceased is the daughter of L.W.1-Thiruvalluru Varalakshmi and L.W.2-Thiruvalluru Subba Rao. L.W.3-Chengi Subrahmanyam is the grandfather of deceased.

(ii) A.1 married the deceased on 08.10.1999 at Sri Dharmarajaswamy Temple, Nellore by following Hindu marriage customs and traditions. At the time of marriage, the parents of the deceased presented cash of Rs.2,00,000/-, gold ornaments weighing about 20 sovereigns and household articles worth of Rs.10,000/- to the accused as dowry on the mediation conducted by L.W.7-Thiruvalluru Ankaiah, the own younger brother of A.3. During wedlock, they were blessed with two female children and they are living at P.D. Kandriga village, Indukurpet Mandal. Not satisfied with the dowry given at the time of marriage, all the accused subjected the deceased to physical and mental harassment by demanding her to bring additional dowry in the form of money from her parents. The deceased used to inform L.W.1 about the harassment being met out to her by all the accused. At request of the deceased, L.W.1 gave Rs.5,000/- to A.1 by bidding chit. At another occasion, she also gave Rs.4,000/- to A.1 by borrowing the same for interest. Several times L.W.3 and L.W.8-Naguluru Sreeramulu pacified the disputes between the accused and the deceased.

(iii) While the deceased was carrying second pregnancy, all the accused necked out her from their house in a petty issue. L.W.11-Ankireddipalli Bhaskara Reddy and L.W.12-Gongalreddy Subba Reddy took the deceased to P.D. Kandriga village to the house of accused and

warned them not to repeat the harassment against the deceased, but they continued the same harassment and they neglected her though the deceased fell ill. None of the accused took care of her welfare and health and they did not provide medical aid to the deceased. Having come to know about the same, one week prior to 27.08.2004 when the deceased was suffering from loose motions, L.W.1 went to P.D. Kandriga and took the deceased and her two daughters with the permission of the accused to Nellore. After getting her treatment at Nellore, she brought the deceased and the children back to the house of accused situated at P.D. Kandriga in the evening of 26.08.2004 in order to leave them with accused. On seeing them, A.2 came out from the house and asked as to whether they brought money as demanded by them. On the answer given by her, A.2 warned them not to enter into the house without bringing money. A.2 thrown the bag and baggage of the deceased from the house. When L.W.1 questioned about high handed behavior of A.2, A.1 came out from the house and slapped on the cheek of L.W.1. When the deceased went to rescue of L.W.1, her mother, all the accused jointly manhandled the deceased by beating her with hands and legs. Being unable to bear their high handed behavior of A.1 to A.5, L.W.1 tried to take the deceased back to Nellore, but all the accused demanded the deceased to move from there only after signing on the divorce papers so that the marriage of A.1 will be performed with some other lady. Without heeding to their demands, L.W.1 and the deceased started to go away. Then all the accused pushed L.W.1 forcibly, took the deceased into their house and threatened the deceased that they would kill her, if she leave that place without signing on the divorce papers. Then L.W.1 went to her house and turned up to the police station on 27.08.2004 at about 9-30 p.m., for intervention of police to save the deceased from the harassment of the accused for dowry. On 27.08.2004 at 6-30 p.m., the deceased who is not in a position to bear the physical and mental torture met out by the accused, committed suicide by consuming poison and went into unconscious state at her in-laws house. A.1 and A.3 with the help of L.W.11, L.W.12, L.W.13-Nasina Sankamma and L.W.14-Shaik Chettamma shifted the deceased in the tractor of L.W.11 to Indukurpet at about 7-30 p.m. On the advice of L.W.15-Dr. Rebala Maheswara Reddy, they took the deceased to Dr. Ramachandra Reddy Hospital (Peoples Poly Clinic), Nellore, by that time they reached she was found dead. On phone message parents of deceased came to know about the

death of the deceased on 28.08.2004 at 4-00 a.m. Then they came to P.D. Kandriga village and found the deceased with injuries. L.W.25-Ch. Krishnanadam, Asst. Sub Inspector of Police, recorded the statement of L.W.1 in the police station and registered it as a case in Crime No.95 of 2004 under Section 304-B of IPC on 28.08.2004 at 6-15 a.m. and submitted express FIR to all concerned. L.W.26-G. Eswaraiah, Sub Divisional Police Officer, took up investigation. L.W.22-D. Nagabhushanam, Deputy Mandal Revenue Officer, Indukurpet Mandal, held inquest over the dead body of the deceased in the presence of mediators and recorded the statements of L.W.1 to L.W.14. L.W.16-T. Suresh took photographs of the dead body at the time of inquest. On the requisition of L.W.22, the medical officers i.e., L.W.23-Dr. V. Kiran Kumar and L.W.24-Dr. D. Padmavathi conducted autopsy over the dead body of the deceased on 29.08.2004 and submitted *post mortem* certificate opining that the deceased died due to presence of Organ Phosphate an insecticide poison. L.W.17-Chukkala Satyanarayana, the Videographer, took videograph at the time of *post mortem* examination at D.S.R. Government Hospital, Nellore. L.W.26 Sub-Divisional Police Officer observed the scene of offence in the presence of mediators and examined the statements of witnesses and arrested A.1 and A.2 on 02.09.2004. He arrested A.3 and A.4 on 15.10.2004. Hence, the charge sheet.

5) The learned IV Additional Judicial Magistrate of First Class, Nellore, took cognizance of case under Section 304-B of IPC and Sections 3 and 4 of D.P. Act. After complying the formalities under Section 207 of Cr.P.C., and by exercising the powers under Section 209 Cr.P.C., committed the case to the Court of Sessions and thereupon it was numbered as Sessions Case and made over to the III Additional District & Sessions Judge (FTC), Nellore, for disposal, in accordance with law.

6) On appearance of the accused before the learned Additional Sessions Judge, charges under Section 304-B of IPC and Sections 3 and 4 of D.P. Act were framed against the accused and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

7) To bring home the guilt against the accused, the prosecution examined P.W.1 to P.W.14 and got marked Ex.P.1 to Ex.P.9

and the defence counsel got marked Ex.D.1 during cross examination of P.W.1 and further the prosecution got marked M.O.1-C.D. After closure of the evidence of prosecution, accused were examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances appearing in the evidence let in, for which they denied the same. A.1 stated that he has defence witnesses, but he did not examine any witnesses. During Section 313 of Cr.P.C. examination, when the Court asked him as to whether he wish to say anything about the case, he told that everything is false.

8) The learned Additional Sessions Judge, on hearing both sides and on considering the oral as well as documentary evidence, found A.1 guilty of the charges under Section 304-B of IPC and Section 4 of the D.P. Act, convicted and sentenced him as above. The learned Additional Sessions Judge found A.2 to A.5 not guilty of the charges and acquitted them under Section 235(1) of Cr.P.C. Felt aggrieved of the aforesaid conviction and sentence imposed by the learned Additional Sessions Judge under Section 304-B of IPC and Section 4 of D.P. Act, the unsuccessful A.1 filed the present appeal.

9) Now, in deciding this Criminal Appeal, the points that arise for consideration are as follows:

- (1) Whether the prosecution proved that A.1 i.e., appellant on 27.08.2004 at about 6-30 p.m., in his house committed dowry death of the deceased in the manner as alleged?
- (2) Whether the prosecution proved that A.1 demanded the deceased and her parents for additional dowry directly or indirectly within the meaning of Section 4 of D.P. Act?
- (3) Whether the prosecution proved the charges under Section 304-B of IPC and Section 4 of D.P. Act beyond reasonable doubt?
- (4) Whether the judgment of the learned Additional Sessions Judge is sustainable under law and facts?

Point Nos.1 to 4:-

10) P.W.1 was mother of the deceased. P.W.2 was grandfather of the deceased being the father of P.W.1. P.W.3 was husband of the sister of P.W.1. P.W.4 was wife of P.W.3. P.W.5 and P.W.6 were the so-called mediators, who mediated the issue between the deceased and the accused at the instance of parents of deceased or at the instance of the accused, as the case may be. P.W.7 was the Private Medical

Practitioner, who initially examined the deceased and advised that she has to be taken to Nellore for better treatment. P.W.8 was the inquest panchayatdar. P.W.9 was the Medical Officer, who conducted autopsy over the dead body of the deceased. P.W.10 was the photographer who took photographs over the dead body of the deceased at the time of inquest. P.W.11 was the videographer, who took videograph of the dead body at Government Hospital, Nellore. P.W.12 was the Asst. Sub Inspector, who recorded the statement of P.W.1 and registered FIR in Crime No.95 of 2004 under Section 304-B of IPC. P.W.13 was the Sub-Divisional Police Officer, who conducted investigation. P.W.14 was the Deputy Tahsildar who conducted inquest over the dead body of the deceased.

11) There is no dispute about the marriage of the deceased with A.1 four years prior to the death of deceased and that during wedlock the deceased and A.1 were blessed with two female children. These facts are not in dispute. Apart from this, the relationship between A.1 to A.5 is not in dispute. The evidence of P.W.1 on material aspects is that the marriage of deceased with A.1 was performed as per their caste customs and Hindu rites at Nellore. At the time of marriage, they gave cash of Rs.2,00,000/-, 20 sovereigns of gold and household articles worth of Rs.10,000/- to A.1 as dowry. The deceased joined with A.1 to lead marital life in her parents-in-law in P.D. Kandriga and they were blessed with two daughters. Now, they are residing with her. The deceased and A.1 lead happy marital life for about three months. The accused demanded the deceased for additional dowry to purchase lands. The deceased told her about the same. On account of the said disputes, her father Subrahmanyam and L.W.8-Sri Ramulu went to the house of accused to subside the disputes between them and the deceased. As her husband was not taking care of family, she requested her father to mediate the issue. In spite of advice by the elders, there was no change in the attitude. They gave Rs.5,000/- to her daughter to give the same to the accused. There was no change in the attitude. They harassed her to bring some more amounts. She borrowed Rs.4,000/- and gave the same to her daughter. As and when her relatives visited the house of the accused, the deceased used to tell them not to visit on the ground that accused was suspecting her fidelity. One week prior to the death of deceased, she came to know that the deceased fell sick and accused did not provide any medical aid. Then

she brought her to give medical aid. She got her treated by a competent doctor and after recovery she took her back to the house of accused. She, her daughter and her granddaughters went to the house of the accused. They asked whether they brought the amounts as demanded. When they told them to allow the deceased into the house, they did not pay any heed to their words and thrown away the belongings of the deceased on the road. A.1 beat her (P.W.1) with hand on her cheek and when the deceased came to rescue, A.2 to A.5 beat her indiscriminately. A.3 and A.5 insisted to convince the deceased to sign on white paper and to take her back to enable A.1 to give divorce to her. By keeping the children and the deceased with the accused, they did not allow to stay with them and asked her to go away. Then she went to the police station to lodge a report. Police advised her to settle the matter amicably. Then she returned to her house some time later, Mahesh came and informed that the deceased died. Then she, her son Ashok, her father Subrahmanyam Mahesh and Lalitha went to the house of the accused and found the dead body of deceased on the pial. The accused did not allow them to come near the dead body. Then she went to the police station and lodged a report. She was under the impression that the accused having beaten the deceased killed her. Ex.P.1 is the report given by her. She was present at the time of inquest.

12) P.W.2, the father of P.W.1, supported the evidence of P.W.1 on material aspects. He spoke of the marriage between A.1 and deceased and presentation of cash of Rs.2,00,000/-, 20 sovereigns of gold, household articles worth Rs.10,000/- to the accused and that the deceased and A.1 were blessed with two female children and after that the accused started harassing the deceased to bring additional amount and the deceased was telling the said facts to him as and when she was coming to her parents house. P.W.1 gave Rs.5,000/- to the accused through the deceased and as accused not satisfied with that amount, she gave Rs.4,000/- but there was no change. When the deceased was harassed by the accused and they were not treating well, he and Sri Ramulu wet to the house of accused and requested them to look after the deceased well. Some days later the deceased died. He was informed about the death of deceased by somebody over phone. One week prior to the death of deceased, she came to the house of P.W.1 stating that she fell sick. The deceased was given medical aid by P.W.1 and after recovery she was taken back to by P.W.1 to the house of accused. P.W.1

told him that accused did not allow her into house and beat her and the deceased for not bringing amount. She also told him that the accused was demanding the deceased to give divorce and to sign on some papers. After knowing the death of deceased, he and others went to the house of accused and found the dead body of deceased lying on the pial and by then the accused were not present.

13) The evidence of P.W.3 supported the presentation of cash, gold ornaments and household articles. He spoke of the fact that P.W.1 gave Rs.5,000/- in one occasion and Rs.4,000/in another occasion. He further deposed that when he visited the house of accused to see the deceased, she told him not to come to their house, as the accused attributed unchastity to her. He further corroborated the evidence of P.W.1 by deposing that at one instance P.W.1 brought the deceased to provide necessary medical aid and when she was taken back to the house of accused, they did not allow the deceased and insisted her to sign on some papers to get divorce. On coming to know about the death of the deceased, he and his wife came to the house of P.W.1 and from there they went to the house of accused and found the dead body of the deceased on the pial. Thereafter, P.W.1 presented a report.

14) The evidence of P.W.4, who is the wife of P.W.3, is also similar on crucial aspects i.e., dowry of Rs.2,00,000/-, presentation of gold ornaments and household articles to the accused and the demand made by accused to give additional dowry and complying the demands at two instances by giving Rs.5,000/- and Rs.4,000/- and by providing medical aid to the deceased and further so-called taking back the deceased to the house of accused and the incident happened at the house of accused, etc.

15) P.W.5 is the mediator, who deposed that at request of P.W.1 and her husband in the year 2003, he and P.W.2 went to the house of accused to convince them to look after the deceased well. He was told by P.W.1 that they gave some amounts to the accused but the accused were harassing the deceased. Hence, he and P.W.1 advised A.1 to A.3 not to harass the deceased and look after her well and also stated that the parents of deceased are not in a position to give any amount. Subsequently, he came to know that the accused did not look after the deceased and she died. In the month of August, 2004, on hearing about the death of deceased, he went to the house of accused and found the dead body lying on the pial with some injuries on her body.

16) P.W.6 is another mediator, who deposed that there used to be disputes in between the deceased and A.1 to A.3 with regard to the dowry amount and on the plea that the deceased was not attending agricultural work. On one occasion when the deceased went away to her parents" house, A.1 requested him to act as a mediator to bring back the deceased to his matrimonial fold. Then he, A.1 and Subba Reddy went to the parents" house of deceased and requested her to come and join with A.1. Accordingly, she came and joined with A.1 and both lead happy marital life for about six months. He advised the accused not to have any disputes with deceased. On one day in the month of August, 2004 at about 5-00 p.m., he returned back from the fields and found A.1 was bringing the deceased by holding her and A.3 told that the deceased consumed something. Then he and Subba Reddy went there and advised A.3 to give butter milk and though butter milk was poured in the mouth of deceased, she could not swallow the same. Then she was taken in a tractor to Indukurpet to an R.M.P. Doctor, who advised to take the deceased to Nellore. He gave Rs.1,000/- to the grandmother of A.1 and asked them to take the deceased to Nellore and accordingly she was taken to Nellore. At about 9-30 p.m., the dead body of deceased was brought back to the house of accused.

17) P.W.7 spoke to the fact that about six years ago on one occasion at 6-00 p.m., some persons brought a lady in a tractor, who was in the state of unconscious. He examined her and she was almost in coma stage. He advised them to take her to Nellore. The person, who was brought to him, was aged about 25 to 30 years and she was a resident of P.D. Kandriga village. 18) P.W.8, the inquest panchayatdar, supported the case of the prosecution by testifying that he acted as Panchayatdar to be present at the time of inquest was held over the dead body of deceased Shrirsha. Ex.P.2 is the inquest.

19) P.W.9, the medical officer, who conducted autopsy over the dead body of the deceased, whose evidence will be referred hereinafter.

20) P.W.10, photographer, testified that he took photographs over the dead body of deceased and Ex.P.5 is the photographs five in number.

21) P.W.11, the Videographer, who videographed the dead body.

22) P.W.12 spoke of the statement of P.W.1 recorded by him on 28.08.2004 at 6-15 p.m. and registration of the same as a case in Crime No.95 2004 under Section 304-B of IPC. Ex.P.6 is the FIR.

23) P.W.13 is the Sub-Divisional Police Officer, who speaks of his investigation.

24) P.W.14, the Deputy Tahsildar, spoke of the factum of conducting inquest over the dead body of the deceased by recording the statements of kith and kin of the deceased.

25) Sri P. Ganga Rami Reddy, learned Counsel for appellant, would strenuously contend that the evidence of P.W.1 to P.W.4 is interested in nature. For obvious reasons, the prosecution did not examine the husband of P.W.1 i.e., father of deceased. If he was examined by the prosecution, truth would have come out. The prosecution did not establish the essential ingredients of Section 304-B of IPC and Section 4 of Dowry Prohibition Act, for which A.1 was convicted. The learned Additional Sessions Judge having acquitted A.2 to A.5, as charges were not proved, erred in believing the case of the prosecution insofar as A.1 is concerned. The prosecution did not adduce convincing evidence to prove that the deceased was subjected to cruelty or harassment on account of demand for additional dowry. Ex.P.1 did not disclose that the demands are made towards additional dowry. The learned Additional Sessions Judge erroneously relied upon the evidence of P.W.5 and P.W.6 who did not speak of the demand of additional dowry. The defence of the accused was that P.W.1 did not like the marriage between the deceased and A.1 and demanded the deceased and A.1 to come and to reside in the village of P.W.1 for which A.1 did not agree and having vexed with the attitude of P.W.1, the deceased committed suicide. Though the commission of suicide was in the house of A.1, but on that ground, the case of the prosecution cannot be strengthened. Though the death of deceased was on account of consumption of pesticides poison, the deceased was compelled to do so only on account of attitude of P.W.1. The learned Additional Sessions Judge did not consider the defence of the accused in proper perspective. With the above submissions, he would contend that the prosecution utterly failed to establish the ingredients of Section 304-B of IPC and Section 4 of Dowry Prohibition Act. He would also contend that P.W.1 filed a Pauper O.P. without paying Court fee to recover the alleged dowry amounts given to A.1 and when she had no capacity to pay Court fee, it was

improbable that they could have paid huge amount of Rs.2,00,000/- towards dowry to A.1. The learned Additional Sessions Judge overlooked important circumstances in favour of the defence, as such, he would submit that appeal is liable to be allowed.

26) Sri N. Sravan Kumar, learned counsel, representing learned Public Prosecutor, would contend that the place of death of the deceased was in the house of A.1. The marriage of A.1 with deceased was performed four years prior to the death of deceased. The death of deceased was otherwise than in normal circumstances. There were injuries found on the person of the deceased and according to medical evidence they were ante mortem in nature. Contention of A.1 is that there was a possibility for the deceased to receive such injuries when she was struggling for life on ground. The prosecution established that A.1 and A.3 took the deceased for medical help. They did not put forth probable reason as to how the deceased committed suicide. Without any proper reason, they attributed fault against P.W.1 was that on account of attitude of P.W.1, the deceased committed suicide. It is not at all tenable. Though A.1 and deceased were blessed with two female children, A.1 bent upon to demand additional dowry towards purchase of lands and P.W.1 was not afforded to comply such demand because husband of P.W.1 was not taking care of family. The prosecution need not examine father of the deceased because P.W.1 lodged the report and as he was not cooperative in the family affairs of P.W.1. No malafidies can be attributed against the prosecution on account of non-examination of father of deceased. The evidence of P.W.1 to P.W.4 is quietly consistent. Mediators supported the case of the prosecution. The prosecution had the benefit of presumption under Section 113-B of the Indian Evidence Act, 1872. When the deceased fell ill and when P.W.1 provided medical aid by taking her to her house and later brought back the deceased to the house of A.1, P.W.1 was not allowed into the house and A.1 slapped P.W.1 for which deceased intervened and even deceased was also subjected torture and evidence goes to show that soon before her death, the deceased was subjected to harassment and cruelty on account of a demand for additional dowry. The learned Additional Sessions Judge rightly appreciated the evidence on record, as such, the appeal is liable to dismissed.

27) As one of the charges is under Section 304-B of I.P.C., it is pertinent to extract here which runs as follows:

1 [304B. 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.]

28) Apart from this, there is a presumption under Section 113-B of the Indian Evidence Act, 1872 regarding dowry death which runs as follows:

Section 113-B in The Indian Evidence Act, 1872

"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 has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

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

29) At this juncture, it is pertinent to look into the case of the prosecution as projected in Ex.P.1.

30) As seen from Ex.P.1, it was the statement recorded by the police from P.W.1. The allegations, in brief, were that at the time of marriage of the deceased with A.1, parents of deceased presented cash of Rs.2,00,000/- as dowry and further 20 sovereigns of gold and household articles worth of Rs.10,000/-. After the marriage, the accused

demanded for additional amounts so as to purchase lands and in two occasions P.W.1 complied the demand by handing over Rs.5,000/- by participating in chit and further Rs.4,000/- by borrowing the amount on interest. The accused used to suspect even the fidelity of P.W.1. At one occasion when the deceased fell ill, they did not provide any medical aid. Then P.W.1 brought back the deceased and provided medical aid and it was happened one week prior to the death. When she took back the daughter to the house of accused, she was not allowed into house and accused thrown away the household belongings of the deceased. When she (P.W.1) questioned, A.1 slapped on her cheek and when the deceased intervened, he was also beaten with a demand to sign on white papers to get divorce. It was happened one day prior to the death. On 27.08.2004 she went to the police station to lodge a report and later she came to know that the deceased died. These are the substance of the allegations. Ex.P.1 also reveals that she entertained a suspicion that the deceased might have been killed.

31) There is no dispute that P.W.1 to P.W.4 spoke of the contents of Ex.P.1 report.

32) Firstly, this Court would like to deal with as to whether the prosecution proved that the death of deceased was happened within seven years from the date of marriage otherwise than in normal circumstances. Ex.P.1 alleges that the marriage of the deceased with A.1 was happened four years prior to the statement. This fact was spoken to by P.W.1. There is no dispute that the marriage of A.1 with the deceased was happened four years prior to the death of deceased. In the entire cross examination of P.W.1 to P.W.4, this fact is not disputed. There is no dispute about the date of death of deceased. The death of deceased was admittedly within a period of seven years from the date of marriage.

33) According to P.W.1 to P.W.4, the deceased consumed pesticide and she died. According to evidence of P.W.6, one of the mediators, when he found A.1 bringing deceased by holding her, A.3 told that the deceased consumed something. There is evidence of P.W.8, the inquest panchayatdar, supporting the case of the prosecution that the deceased died on account of consumption of pesticide. There is also evidence of medical officer, P.W.9. According to the evidence of P.W.9, on 29.08.2004 he conducted *post mortem* examination on the dead body

of deceased Sirisha from 11-00 a.m. onwards and found the following external injuries:

Multiple abrasions are present on the anterior chest wall both breast right shoulder and over the ant abdominal wall in the left iliac region. In both axillar, two abrasions obliquely present measuring about 3 x 1 ½ c.m., 2 x 3 cm., away from the axillary pits. Both abraded marks present in right axilla and left axilla are fresh. A bruise measuring about 5 x 1 cm. over the right shoulder is present.

On the back and on the post abdominal wall and left hip abrasion are present. Single abraded wounds are present on the right elbow on extreme aspect of the left knee.

Superficial venous congestion present on the neck and lower part of cheek and on upper anterior chest wall.

So, he found the above external injuries. Though he deposed on 27.01.2010 that basing on the chemical report, his findings is that the death of the deceased was due to Cardio Pulmonary arrest and the injuries found on the person of the deceased is ante mortem in nature and Ex.P.4 is his final opinion, the prosecution got recalled him for further chief examination and he deposed that as per the RFSL report, the cause of death of the deceased is due to presence of Organic Phosphate Insecticides. Basing on the report given by RFSL, he gave opinion that the death was due to Organic Phosphate Insecticide. Due to oversight, in the earlier occasion, he deposed that the death is due to Cardio Pulmonary arrest.

34) As seen from the *post mortem* report, his final opinion is that the death was due to presence of Organic Phosphate Insecticide. Apart from this, even according to the defence of A.1 before P.W.1, the deceased committed suicide by consuming insecticide. Thus, the cause of death was not natural. The cause of death was in the presence of A.1 and A.3. It is nothing but a death otherwise than in normal circumstances.

Apart from this, the place of death of the deceased was in the in-laws house. Apart from this, P.W.9 testified the presence of several injuries on the person of the deceased which are ante mortem in nature. The site of injuries i.e., abrasions on the anterior chest wall and abdominal wall in the left iliac region and further two abrasions were obliquely present at both axillar. Further he found abraded marks in the right axilla

and left axilla fresh in nature. He found a bruise over the right shoulder. He also found abrasions on the post abdominal wall and left hip. He found single abraded wounds on the right elbow on extreme aspect of the left knee. During cross examination, P.W.9 deposed that if a poisonous substance is taken, the person who took such poison would suffer struggling for life and if a person falls on a hard surface, there is a chance of receiving abrasions.

35) It is to be noted that nothing was suggested to P.W.1 or P.W.9 during cross examination that the accused found the deceased struggling for life on ground. On the other hand, the place of death was in the in-laws house and according to the evidence of P.W.6, he found A.1 and A.3 holding the deceased and A.3 revealed that the deceased consumed something. The evidence of P.W.6 discloses that he advised them to take the deceased to Nellore and accordingly the deceased was taken to Nellore in an auto. The evidence of P.W.7, the Private Medical Practitioner, revealed that the deceased was firstly brought to him in a tractor and he deposed that she shall be taken to Nellore for better treatment as already by then she was in Coma. Therefore, the evidence on record discloses that firstly the deceased was taken to P.W.7 and from there she was taken to Nellore. It was done by A.1 and A.3. So, it is not a case where the deceased struggled for life by lying herself on ground. On the other hand, A.1 was physically present at the time of incident and he took the deceased along with A.3 to medical help. No positive version is coming from the mouth of A.1 to explain the circumstances in which multiple abrasions on crucial parts of the body of the deceased were found. All these goes to show that the death of deceased was otherwise than in normal circumstances within a period of seven years from the date of marriage and it was happened in the house of A.1. The prosecution cogently established one of the essential ingredients of Section 304-B of IPC and Section 113-B of the Indian Evidence Act, 1872 that the death of deceased was within a period of seven years from the date of marriage otherwise than in normal circumstances.

36) The next ingredient to be satisfied by the prosecution is that soon before her death the deceased was subjected to harassment with a demand for amounts in connection with dowry.

37) There was an allegation in Ex.P.1 that accused demanded for amounts to purchase lands. The evidence of P.W.1 discloses that not

being satisfied with the amounts she given i.e., Rs.2,00,000/-, 20 sovereigns of gold and household articles worth of Rs.10,000/-, A.1 demanded additional amounts so as to purchase the lands. According to Section 4 of the Dowry Prohibition Act, the demand for dowry can be directly or indirectly. So, the context of the case of the prosecution that P.W.1 presented dowry, gold and household articles at the time of marriage and not being satisfied with the same, additional amounts were demanded so as to purchase the lands.

38) It is a fact that P.W.1 during cross examination admitted that after the death of deceased, she filed a case so as to recover the dowry amounts from the accused and she filed a Pauper O.P. which was dismissed directing her to pay the Court fee and she did not prefer any appeal against the said order. She admitted that she filed a Guardian Petition against A.1 claiming the custody of the children of the deceased on the file of I Additional District Judge, Nellore. Those admissions made by P.W.1 are not going to affect the case of the prosecution in any way. According to P.W.1 presently the children of the deceased are in her custody which is not disputed by A.1. Apart from this, the contention of the accused is that when P.W.1 was not afforded to pay Court fee for Pauper O.P., her contention that she gave dowry and additional amounts cannot stand to any reason. The above said contention deserves no merits for the reason that even according to the accused, the concerned Court declined to number the Pauper O.P. by directing P.W.1 to pay the Court fee amount which means that she had the capacity to pay the court fee even according to the contention advanced. So, basing on the above facts, it cannot be held that P.W.1 was not having any financial capacity to pay the amounts either at the time of marriage or subsequent to the marriage.

39) In a case of dowry death, the kith and kin of the deceased were the proper persons to speak of the demand. The evidence of P.W.1 that pursuant to the demands, she paid a sum of Rs.5,000/- at one occasion to his daughter so as to give the same to A.1 and further borrowed Rs.4,000/- and gave the same has support from the contents of Ex.P.1. P.W.2 to P.W.4 claimed that they came to know about the said fact from P.W.1. It is to be noted that though P.W.1 to P.W.4 were inter-related but on that ground itself the case of the prosecution cannot be thrown out.

40) P.W.5 and P.W.6 were the so-called mediators who mediated the issue. According to P.W.5 at request of P.W.1 and her husband, he and P.W.2 went to the house of accused to convince them to look after the deceased well. He claimed that he was told by P.W.1 that they gave some amounts to the accused but the accused were harassing her daughter. He testified that they advised A.1 to A.3 not to harass the deceased and to look after her well. The parents of the deceased are not in a position to give any amount to them. During cross examination, he denied that he did not mediate the disputes of A.1 and deceased and he did not visit the house of accused and that he is deposing false. Nothing is elicited from the evidence of P.W.5 as to how he is interested in the case of the deceased. Apart from this, there is also evidence of P.W.6, who conducted some sort of mediation at the instance of accused so as to bring the deceased to the fold of A.1. He categorically testified that there used to be disputes between the deceased and accused with regard to dowry amount and also on the plea that the deceased was not attending agricultural work. He testified that when the deceased went away to her parents' house at request of A.1, he acted as mediator and brought back the deceased to his matrimonial fold. He further claimed that he advised the accused not to have any dispute with the deceased. During cross examination his evidence was sought to be challenged on the ground that he is deposing false. Absolutely, P.W.6 who had no relation with either party has no reason to depose false. It is a case where P.W.5 and P.W.6 claimed that they intervened in the disputes between A.1 and deceased and they advised the accused to behave with the deceased properly. In my considered view, the evidence of P.W.5 and P.W.6 is of much use to the case of the prosecution because they categorically testified that there was dispute on account of dowry demands from the part of A.1.

41) During cross examination of P.W.1 accused agitated that she had no intention to give the deceased in marriage to A.1 and that she had no liking towards the deceased as she married A.1. She denied that she insisted the deceased and A.1 to come to Nellore. She denied that she abused the deceased for not paying any heed to her words and having vexed with her attitude, the deceased consumed poison and died.

42) These suggestions were not given to P.W.2 to P.W.4 or P.W.5 and P.W.6, the mediators. It is to be noted that the deceased and

A.1 were blessed with two children. It is rather improbable to assume that though the deceased and A.1 are blessed with two female children, P.W.1 had an intention to spoil their life by making a demand to come to Nellore. The suggestion given to P.W.1 that she abused the deceased for not paying any heed to her words and she having vexed with the behavior of her, the deceased consumed pesticide was nothing but baseless and without any substance. No mother like P.W.1 would go to the extent of spoiling marital life of her daughter, especially, when the deceased and A.1 were blessed with two female children. In my considered view, there is consistency in the evidence adduced by the prosecution with regard to the demand made by A.1 to bring additional amounts so as to purchase lands.

43) The Hon^{ble} Supreme Court in ***The State of Andhra Pradesh v. Raj Gopal Asawa and others***¹ had an occasion to consider the essential ingredients of Section 304-B of IPC and further the definition of the word „dowry’ in Section 2 of the Dowry Prohibition Act and dealt with the issue elaborately at Para Nos.8 to 11. It is necessary to extract here the observations of the Hon^{ble} Supreme Court, as above:

“8. Explanation to Section 304B refers to dowry "as having the same meaning as in Section 2 of the Act", the question is: what is the periphery of the dowry as defined therein? The argument is, there has to be an agreement at the time of the marriage in view of the words "agreed to be given" occurring therein, and in the absence of any such evidence it would not constitute to be a dowry. It is noticeable, as this definition by amendment includes not only the period before and at the marriage but also the period subsequent to the marriage. This position was highlighted in *Pawan Kumar and Ors. v. State of Haryana* (1998 CriLJ 1 144) .

9. The offence alleged against the respondents is under Section 304B IPC which makes "demand of dowry" itself punishable. Demand neither conceives nor would conceive of any agreement. If for convicting any offender, agreement for dowry is to be proved, hardly any offenders would come under the clutches of law. When Section 304B refers to "demand of dowry", it refers to the demand of property or valuable security as referred to in the definition of "dowry" under the Act. The

¹ (2004) 4 SCC 470

argument that there is no demand of dowry, in the present case, has no force. In cases of dowry deaths and suicides, circumstantial evidence plays an important role and inferences can be drawn on the basis of such evidence. That could be either direct or indirect. It is significant that Section 4 of the Act, was also amended by means of Act 63 of 1984, under which it is an offence to demand dowry directly or indirectly from the parents or other relatives or guardian of a bride. The word "agreement" referred to in Section 2 has to be inferred on the facts and circumstances of each case. The interpretation that the respondents seek, that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. "Dowry" definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or taking dowry and Section 4 which deals with a penalty for demanding dowry, under the Act and the IPC. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. It is not always necessary that there be any agreement for dowry.

10. Section 113B of the Evidence Act is also relevant for the case at hand. Both Section 304B IPC and Section 113B of the Evidence Act were inserted as noted earlier by the Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths.

Section 113B reads as follows:-

"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 has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

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

The necessity for insertion of the two provisions has been amply analysed by the Law Commission of India in its 21st Report dated 10th August, 1988 on 'Dowry Deaths and Law Reform'. Keeping in view the impediment in the preexisting law in securing evidence to prove dowry related deaths, legislature thought it wise to insert a provision relating to

presumption of dowry death on proof of certain essentials. It is in this background presumptive Section 113B in the Evidence Act has been inserted. As per the definition of 'dowry death' in Section 304B IPC and the wording in the presumptive Section 113B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the concerned woman must have been "soon before her death" subjected to cruelty or harassment "for or in connection with the demand of dowry". Presumption under Section 113B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the Court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

- (1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304B IPC).
- (2) The woman was subjected to cruelty or harassment by her husband or his relatives.
- (3) Such cruelty or harassment was for, or in connection with any demand for dowry.
- (4) Such cruelty or harassment was soon before her death.

11. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'. The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her

death' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence".

45) In the light of the above said decision of the Hon^{ble} Supreme Court, there need not be any agreement at the time of marriage with regard to the dowry. As pointed out, the death of the deceased was other than the normal circumstances and was within a period of seven years from the date of marriage.

46) Considering the same, I am of the considered view that the evidence of P.W.1 to P.W.4 means that what all the demands made by A.1 was only towards additional dowry so as to purchase lands.

47) The prosecution is bound to establish that such demands are made soon before her death. What is soon before her death is a question to be considered by this Court.

48) The Hon^{ble} Supreme Court in ***Raj Gopal Asawa's*** (*supra*) had an occasion to deal with what is soon before her death in view of the provisions of Section 304-B IPC and 113-B of the Indian Evidence Act, 1872. It is apposite to extract here the observations of the Hon^{ble} Supreme Court at Para No.11, which are as follows:

"11. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. Prosecution

has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the '*death occurring otherwise than in normal circumstances*'. The expression '*soon before*' is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. '*Soon before*' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression '*soon before her death*' used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression '*soon before*' is not defined. A reference to expression '*soon before*' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term '*soon before*' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression '*soon before*' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence".

49) So, by virtue of the above, it is very clear that „*soon before*“ is a relative term and it would depend upon the circumstances of each case and no straightjacket formula can be laid down as to what would constitute a period of soon before the occurrence. No definite period has been indicated. Soon before death is not defined. The Court has to decide as to what is soon before death, basing on the proximity test.

50) Coming to the present case on hand, the date of death of deceased was on 27.08.2004 which is one day after the incident that was occurred at the house of deceased. According to the case of the prosecution and evidence of P.W.1, when the deceased fell ill and as the accused did not provide proper medical aid, P.W.1 brought the deceased so as to provide medical aid and after recovery of her health, which is one day prior to 27.08.2004, she took the deceased to the house of A.1. According to the evidence of P.W.1 in this regard, when she took the deceased back to the house of accused, accused asked as to whether she brought any amount as demanded and she replied that to allow the deceased into the house, as such, there was a quarrel and even A.1 gone to the extent of slapping on the cheek of P.W.1 for which the deceased intervened and she was also beaten by the accused. Then she went away by leaving the deceased alone and accused also demanded to sign on white papers to divorce for which she refused. According to her, she went to the police station to lodge a report, but police advised to settle the matter amicably. Then she returned to the house and thereafter she came to know that the deceased died. Just one day prior to the death of the above, the said incident was happened. If the said incident is proved, it would definitely satisfy the proximity test.

51) During cross examination, P.W.1 denied that she did not state to police that when she took the deceased to the house of accused, accused asked her and the deceased whether they brought any amount as demanded and she denied the above said suggestion. During cross examination of P.W.13, the investigating officer, the accused did not elicit that P.W.1 did not state so when she was examined by him. The omission with regard to the above incident suggested to P.W.1 was not elicited by the accused from the mouth of P.W.13. Hence, this Court has no reason to disbelieve the evidence of P.W.1 with regard to the incident happened when she took the deceased to the house of accused after providing necessary medical aid. In the light of the above, the evidence adduced by the prosecution squarely satisfies the proximity test.

52) It is to be noted that apart from the fact that the death of the deceased was due to presence of Organic Phosphate Insecticide, there were several abrasions found on the body of the deceased which were ante mortem in nature. The accused had no probable say whatsoever as to how such injuries could be found on the person of the deceased which were ante mortem in nature. It was A.1 who ultimately

took the deceased to the hospital. The absence of proper explanation about the injuries found on the person of deceased when the death of deceased was happened in the house of A.1 is further strengthening the case of the prosecution. The presence of the above said injuries means that prior to the death there was also a possibility for physical harassment of the deceased. In my considered view, the evidence on record fully satisfies the proximity test that soon before her death, the deceased was subjected to harassment mentally and physically.

53) As seen from the judgment of the learned Additional Sessions Judge, the learned Additional Sessions Judge rightly considered the evidence on record by appreciating the evidence with care and caution extended benefit of doubt insofar as A.2 to A.5 is concerned.

54) Having regard to the overall facts and circumstances and looking into the evidence available on record, this Court is of the considered view that the prosecution categorically established the essential ingredients of Section 304-B of IPC. Further the evidence adduced by the prosecution attracts Section 4 of the Dowry Prohibition Act which contemplates a demand directly or indirectly from the parents or other relatives or guardian of bride or bridegroom for dowry. In my considered view, the prosecution categorically proved beyond reasonable doubt about the charges under Section 304-B of IPC and Section 4 of the Dowry Prohibition Act. This Court does not see any reason to interfere with the judgment of conviction and sentence imposed against A1.

55) However, while looking into the sentence part, it is found that the punishment imposed against A.1 for the offence under Section 4 of the Dowry Prohibition Act was simple imprisonment. The punishment imposed against A.1 under Section 304-B of IPC was rigorous imprisonment. The learned Additional Sessions Judge made an order that both the sentences shall run concurrently. As the punishment imposed under Section 4 of the Dowry Prohibition Act is simple imprisonment, it cannot run concurrently. However, at this stage, this Court cannot make it run consecutively or cannot convert the sentence as that of rigorous imprisonment because practically when both the sentences shall run concurrently, A.1 has to necessarily undergo rigorous imprisonment only even for the offence under Section 4 of D.P. Act. Considering the same, at this stage, this Court cannot literally alter

the nature of the punishment under Section 4 of the Dowry Prohibition Act.

56) In the result, the Criminal Appeal is dismissed.

57) The Registry is directed to take steps immediately under Section 388 Cr.P.C. to certify the judgment of this Court to the trial Court on or before 01.02.2024 and on such certification, the trial Court shall take necessary steps to carry out the sentence imposed against the appellant and to report compliance to this Court.

58) The Registry is directed to forward the copy of the judgment along with original record to the trial Court on or before 01.02.2024.

Consequently, miscellaneous applications pending, if any, shall stand closed.

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CRL. APPEAL NO.8 OF 2011

Note:

The Registry is directed to forward the copy of the judgment along with original record to the trial Court on or before 01.02.2024.

Date: 25.01.2024

PGR