

**HIGH COURT OF ANDHRA PRADESH****Date of Decision: 1st February 2024****Bench: Justice A.V. Ravindra Babu**

CRIMINAL APPEAL No.1509 OF 2010

**Kondru Israel** ... Appellant/Accused.**Versus****The State of Andhra Pradesh, rep. by Public Prosecutor, High Court of A.P. and another. ... Respondent.****Legislation and Rules:**

Section 304-B of the Indian Penal Code (IPC)

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

Section 113-B of Indian Evidence Act

**Subject:** Appeal against conviction under Section 304-B IPC for dowry death, involving the appellant Kondru Israel in the alleged harassment and death of his wife.**Headnotes:**

Conviction Under Section 304-B IPC for Dowry Death – Appellant Kondru Israel found guilty of dowry death under Section 304-B IPC – Deceased, wife of appellant, committed suicide due to continuous harassment for dowry – Death occurred within seven years of marriage under non-normal circumstances [Paras 11-15, 30-31, 53, 60].

Evidence of Cruelty and Harassment – Testimonies of PW1 (mother of deceased), PW2, PW3, PW4, and PW6 established harassment and cruelty towards deceased by appellant – Harassment linked to demand for unpaid dowry [Paras 16-17, 36-37, 46-48].

Defence of Accused – Appellant's defense of deceased's ill health and consequent suicide not substantiated – No medical evidence provided to support claim – Defence considered an afterthought [Paras 54-55].

Application of Section 113-B of Indian Evidence Act – Presumption as to dowry death applied – Proximity of harassment to death established – Death categorized as 'dowry death' [Paras 58-60].

**Sentence and Direction – Appellant's sentence of rigorous imprisonment for ten years confirmed – Directed to surrender before the trial court [Paras 61-65].**

**Decision: Appeal dismissed - Conviction and sentence confirmed.**

Referred Cases:

- The State of Andhra Pradesh v. Raj Gopal Asawa and others (2004) 4 SCC 470

Representing Advocates:

Counsel for the Appellant: Sri T.S.N. Murthy

Counsel for the Respondent: Public Prosecutor

### JUDGMENT:-

Challenge in this Criminal Appeal is by the unsuccessful A.1 to the judgment, dated 09.11.2010 in Sessions Case No.340 of 2009, on the file of III Additional District & Sessions Judge, Kakinada (“Additional Sessions Judge” for short), where under the learned Additional Sessions Judge found the present appellant/A.1 guilty of the charge under Section 304-B of the Indian Penal Code (“IPC” 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 10 (ten) years. By the said judgment, the learned Additional Sessions Judge found A.2 and A.3 not guilty of the charge under Section 304-B of IPC and further found A.4 and A.5 not guilty of the charge under Section 304-B r/w 34 of IPC and acquitted them under Section 235(1) of Cr.P.C. As against the acquittal of A.2 to A.5 as above, there is no appeal filed by the State.

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.340 of 2009 arose out of a committal order in P.R.C.No.21 of 2009, on the file of Additional Judicial First Class Magistrate, Peddapuram, relating to Crime No.61 of 2009 of Rangampeta Police Station.

4) The Sub-Divisional Police Officer, Peddapuram, filed a charge sheet in Crime No.61 of 2009 of Rangampeta Police Station alleging the offence under Section 304-B r/w 34 of IPC.

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

(i) One Kondru Sundara Mani (hereinafter will be referred to as "deceased"), aged 20 years, was no other than the wife of A.1. A.1 is son and A.4 and A.5 are the daughters of A.2 and A.3. The deceased is native of Kandrakota village of Peddapuram Mandal and she was only daughter of the *de facto* complainant by name Chinthada Laxmi (L.W.1). The father of deceased died about two years ago.

(ii) L.W.1 performed the marriage of deceased with A.1 on 14.06.2009 at the house of Accused at G. Donthamuru Village as per Hindu rites and caste custom in the presence of relatives and elders. At the time of marriage, she gave Rs.25,000/- towards dowry to A.1 out of agreed dowry of Rs.35,000/-, Rs.3,000/- towards *adapadusu katnam* to A.4 and A.5 and also gifted gold ring and gold chain to A.1. She presented a pair of gold ear studs, gold *Sathamam* and a pair of silver anklets to the deceased. She sent the deceased to the house of accused to lead marital life. The deceased is blessed with a daughter by name Sirisha, now aged 2 years. All the accused started harassing the deceased by beating her for want of unpaid dowry of Rs.10,000/- and sent her to the house of L.W.1 thrice to bring the balance unpaid dowry of Rs.10,000/-. L.W.1 used to take the deceased to the house of

accused by pacifying the accused and by assuring that she would give the balance of dowry within a few days. She left the deceased at the in-laws house. In April, 2009 A.3 took the deceased and her daughter to house of L.W.1 and left her by saying that she will be taken to her in-laws house whenever the unpaid dowry of Rs.10,000/- is paid to them. On 23.06.2009, L.W.3-Arasada Appala Konda and L.W.4Kosuri Laxmi, who are the relatives of the deceased, took her to in-laws house as per the request of L.W.1 and informed to the accused that the due amount of Rs.10,000/- will be paid before 10.07.2009. On 01.07.2009 night A.1 and A.2 started harassment and beat the deceased on the plea that she did not prepare the fish curry properly which was witnessed by neighbourers. Harassment was continued in spite of the request made by L.W.1, L.W.3 and L.W.4. Accordingly, on 02.07.2009 at 1-00 p.m., the deceased committed suicide by hanging herself to a beam in the room of her in-laws for unbearable harassment made by the accused.

(iii) Basing on the report of L.W.1, L.W.22-S. Bhaskara Rao, Asst. Sub-Inspector, Rangampeta Police Station, registered the report as a case in Crime No.61 of 2009 under Section 304-B of IPC at 11-00 p.m., on 02.07.2009 and L.W.23-M.V. Ramana Rao, Sub-Divisional Police Officer, Peddapuram, took up investigation. L.W.21-P. Rakada Mani, Tahsildar, Rangampeta Mandal, held inquest over the dead body of deceased at the scene of offence in the presence of inquest panchayathdars and also other witnesses. During investigation, L.W.23 inspected the scene of offence in the presence of mediators and got the scene photographed by L.W.14-Gubbala Srinivasa Rao and seized nylon rope under the cover of

observation report. He prepared rough sketch. He arrested A.1, A.2, A.4 and A.5 on 03.07.2009 and on 09.07.2009 he arrested A.3 and sent them to judicial custody. L.W.20-Dr.M. Ashok Kumar, Medical Officer, who conducted autopsy over the dead body of the deceased, opined that the deceased would appear to have died of with asphyxia due to constricted force of ligature around the neck of larynx with trachea and it may be due to hanging. Hence, the charge sheet.

6) The learned Additional Judicial Magistrate of First Class, Peddapuram, took cognizance of the case and numbered it as PRC and after complying the formalities under Section 207 of Cr.P.C., committed the case to the Court of Sessions and thereupon it was numbered as Sessions Case and made over to the learned Additional Sessions Judge, for disposal, in accordance with law.

7) On appearance of the accused before the learned Additional Sessions Judge, charges under Section 304-B of IPC against A.1 to A.3, Section 304-B r/w 34 of IPC against A.4 and A.5, were framed against the accused and explained to them in Telugu, for which they pleaded not guilty and claimed to be tried.

8) The prosecution during the course of trial, in order to establish the guilt against the accused, examined P.W.1 to P.W.13 and got marked Ex.P.1 to Ex.P.14 and M.O.1 and M.O.2. 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 by the prosecuitor, for which they denied the same and stated that they are implicated in a false case and that they have no defence witnesses.

9) 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 charge under Section 304-B of IPC, convicted and sentenced him as above. The learned Additional Sessions Judge found A.2 to A.5 not guilty of the charges framed. Felt aggrieved of the aforesaid conviction and sentence, the unsuccessful A.1 filed the present appeal.

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

(1) Whether the prosecution proved the death of the deceased viz., Kondru Sundara Mani was within a period of seven years from the date of marriage otherwise than in normal circumstances and as to whether soon before her death she was subjected to cruelty or harassment by A.1 in connection with any demand for dowry?

(2) Whether the prosecution proved the charge under Section 304-B of IPC against A.1 beyond reasonable doubt?

3) Whether the judgment, dated 09.11.2010 of the learned Additional Sessions Judge is sustainable under law and facts?

**Point Nos.1 to 3:-**

11) P.W.1 was mother of the deceased. P.W.2 and P.W.3 were the mediators/close relatives who were said to have took the deceased to the house of A.1 and dropped her by assuring to pay the remaining balance of dowry within a specified time. P.W.4, P.W.5, P.W.6 and P.W.7 were the neighbourers to the house of accused. P.W.8 was the Photographer, who took the photographs of the dead body at the instance of the police. P.W.9 was a mahazar witness for the observation of the scene of offence as well as conducting inquest. P.W.10 was medical officer, who conducted autopsy. P.W.11 was the Executive Magistrate, who conducted

inquest. P.W.12 was the Asst. Sub- Inspector, who registered the FIR basing on the report of P.W.1. P.W.13 was the concerned Sub-Divisional Police Officer, who was investigating officer.

12) Section 304-B of I.P.C., 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.]

13) Further Section 113-B of the Indian Evidence Act, 1872 contemplates a presumption with regard to the dowry death and it 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)."

14) Therefore, looking into the facts and circumstances, the prosecution is bound to prove the following to succeed in the charge:

- (1) That the death of the deceased was otherwise than in normal circumstances;
- (2) that the death happened within a period of seven years from the date of marriage; and
- (3) that soon before her death, she was subjected to cruelty or harassment by A.1 in connection with any demand of dowry.

15) Firstly, this Court would like to deal with as to whether the prosecution proved that the death of the deceased was occurred within a period of seven years from the date of marriage otherwise than in normal circumstances.

16) The case of the prosecution is that P.W.1 agreed to provide dowry of Rs.35,000/- to A.1 and she paid Rs.25,000/- at the time of marriage apart from other things and there was balance amount of Rs.10,000/- to be paid by P.W.1 to A.1 and in connection with the balance amount, there were several demands from the accused, as such, the deceased was subjected to harassment physically as well as mentally. The further case of the prosecution is that P.W.1 employed P.W.2 and P.W.3 who were her relatives when the deceased was dropped at her house and she requested them to take the deceased to the house of A.1 and to drop her with an assurance to pay the balance amount within a specified time.

17) In that context, the evidence of P.W.1 is that after P.W.2 and P.W.3 dropped the deceased at the house of accused and one week thereafter A.1 contacted her by phone and informed her that her daughter died by hanging. She received the phone call at 2-00 p.m. and after gathering their people, they went to the house of accused by 5-00 p.m., and found the dead body of the deceased



Sundara Mani lying on the floor inside the house of the accused. They waited up to 9-00 p.m., and after their people gathered there, they decided to give a report since they feel that the death of deceased is not natural. Then, they went to Rangampeta Police Station at 9-00 p.m., and presented a report which is Ex.P.1.

18) Coming to the evidence of P.W.2, she deposed that after they dropped the deceased at the house of A.1 and on the ninth day she received information at about 2-00 p.m. that the deceased died. Later, they all went to the house of accused by 4-00 p.m. and found the dead body of deceased Sundara Mani lying on the floor over a mat.

19) According to P.W.3, on the ninth day after they dropped the deceased at the house of accused, at 2-00 p.m., P.W.1 came to their house and informed her about the death of deceased Sundara Mani. They all went to the house of accused by 4-30 p.m. and found the dead body of Sundara Mani lying on the floor in the house of accused.

20) P.W.4, a neighbourer to the house of accused, testified that one night prior to the date of death of Sundara Mani, there was a quarrel between her and A.1, but she does not know the reason. A.1 beat Sundara Mani at that time. On the next day morning, Sundara Mani did household works and later at about 12-30 noon, she went outside and at about 1-00 pm., she returned to the house and noticing the gathering of people. She learnt that the deceased Sundara Mani died by hanging herself.

21) P.W.5, another neighbour testified that they found the dead body of Sundara Mani lying on the floor of the house of

accused and she learnt that Sundara Mani might have died by hanging.

22) Similar is the evidence of P.W.6, another neighbour, that previous night prior to the death of Sundara Mani, A.1 beat Sundara Mani and on the next day, he came to know through A.2 that A.1 beat Sundara Mani.

23) P.W.7, another neighbour, testified that after taking lunch, he was in his house and A.1 came by running to his house and informed that his wife hanged herself. He rushed to the house of A.1. They found the doors of one of the rooms were closed and by using a crow-bar they lifted the doors and got opened the room. He found the dead body of A.1's wife hanging with the knees touching the floor.

24) P.W.8, the Photographer, testified that he took seven photographs of the dead body lying on the ground in the house of A.1. He also took one photograph showing the rope that is hanging to the roof. One photograph was taken from outside the house. Ex.P.2 to Ex.P.8 are the said photographs and Ex.P.9 is the corresponding CD.

25) The evidence of P.W.9 reveals that he was physically present at the time of observation of the scene of offence by the police and after at the time of conducting inquest by the Mandal Revenue Officer.

26) P.W.11, the Mandal Revenue Officer, testified the fact that he conducted inquest and panchayatdars opined that the deceased committed suicide by hanging.

27) As seen from the evidence of P.W.10, the medical officer, who conducted autopsy over dead body, he found a ligature

mark which extends from center of the neck towards right side, running obliquely upwards over the back of the neck. He is of the opinion that the death was due to asphyxia due to ante mortem hanging. He issued postmortem report which is Ex.P.12.

28) It is to be noted that during the entire cross examination of the aforesaid witnesses, accused did not venture to dispute the cause of death. Even according to the defence set forth by the accused before P.W.1 and other witnesses, the deceased committed suicide by hanging. The reason set forth by the accused is that unable to bear the chronic stomach pain which she was encountering, she committed suicide. The reason set forth by the accused that the deceased committed suicide on account of chronic ill-health is a matter to be considered hereinafter.

29) Therefore, the cause of death of the deceased was by hanging. Dead body was physically found in the house of A.1 while it was hanging to a beam. The medical evidence reveals the cause of death was due to hanging. There was no dispute that the factum of commit of suicide by the deceased. Hence, the death of deceased was otherwise than in normal circumstances.

30) Coming to the evidence of P.W.1, the mother of deceased, she performed the marriage of her daughter with A.1 in the year 2006. According to P.W.2, P.W.1's daughter Sundara Mani was given in marriage to A.2 about two years prior to the death of the deceased. According to P.W.3, the daughter of P.W.1 by name Sundara Mani, was given in marriage to A.1. In the entire trial, accused did not dispute the fact that the marriage of him with deceased was performed three years prior to the death. Thus, the prosecution further satisfied another essential ingredient that the death of deceased was within a period of seven years from the date of marriage. Therefore, the prosecution categorically established that the deceased died within a period of seven years of the

marriage otherwise than in normal circumstances in the house of A.1.

31) Now, this Court has to look as to whether the evidence on record establishes another ingredient that soon before death A.1 subjected the deceased to cruelty and harassment in connection with a demand for dowry.

32) Sri T.S.N. Murthy, learned counsel appearing for the appellant, would strenuously contend that the learned Additional Sessions Judge did not believe the case of the prosecution with regard to the charge under Section 304-B of IPC against A.2 and A.3 and further the charge under Section 304-B r/w 34 of IPC against A.4 and A.5 and rightly extended an order of acquittal. With the same set of evidence, the learned Additional Sessions Judge believed the case of the prosecution insofar as the present appellant is concerned. P.W.1 to P.W.3 are quite interested witnesses. P.W.1 being the mother of deceased and P.W.2 and P.W.3 being co-sister and sister-in-law of P.W.1 had the reason to support the case of the prosecution falsely. There was no dispute about the cause of death. But, according to the defence, the deceased was suffering with chronic stomach pain and unable to bear the stomach pain, she committed suicide. According to the evidence of the prosecution witnesses, the alleged petty quarrel between A.1 and the deceased during previous night was only regarding preparation of fish curry. The mother of A.1 told to neighbourers according to their evidence that A.1 beat the deceased as she did not prepare the fish curry properly. Even otherwise, the aforesaid allegation was also false. Though the *de facto* complainant claimed to have reached to the house of A.1 having come to know about the death of deceased,

she did not think over to lodge any report to the police. Ex.P.1 report was lodged belatedly with delay which is fatal to the case of the prosecution. According to the defence, there was a demand from P.W.1 to A.1 to pay abnormal amounts and as she was not able to comply with the demand, false case was filed against him. The evidence of the prosecution witnesses suffers with omissions. According to the evidence of P.W.3, the alleged harassment was only after the deceased gave birth to a female child. According to the case of the prosecution from the very beginning accused were subjecting the deceased to cruelty for non-payment of dowry. In fact, no dowry was given to A.1 at the time of marriage and marriage was performed in the house of accused. The evidence of P.W.4 reveals that she was subjected to examination by the police thrice and it was nothing to improbable. P.W.5 was the person who drafted the report under Ex.P.1. Thus, Ex.P.1 was a manufactured report after the due deliberations and concoctions. L.W.16-Akumarthi Abbulu is one of the mahazar witnesses for the observation report and inquest report, was not examined by the prosecution. Learned counsel for the appellant would further submit that only kith and kin of the deceased were examined to speak of the alleged harassment and neighbouring witnesses were not examined to speak of the alleged harassment and the deceased committed suicide unable to bear the stomach pain and that the learned Additional Sessions Judge while disbelieving the case of the prosecution against A.2 to A.5, ought to have disbelieved the case of the prosecution even against A.1. He would further submit that the evidence on record is not satisfying the essential ingredients of Section 304-B of IPC, as such, the criminal appeal is liable to be allowed.

33) Sri N. Sravan Kumar, learned counsel, representing the learned Public Prosecutor, would contend that throughout trial evidence adduced by the prosecution is quietly consistent. There was a balance amount of Rs.10,000/- to be paid by P.W.1 to A.1 towards dowry as agreed and as she was unable to meet the same, the deceased was subjected to torture. P.W.2 and P.W.3 corroborated the evidence of P.W.1. The neighbouring witnesses speak of the fact that during previous night, deceased was subjected to physical harassment by A.1. It is A.2 who canvassed theory between neighbourers that quarrel was petty one for non-preparation of fish curry properly. According to the findings of the learned Additional Sessions Judge, such theory was propagated falsely suppressing a demand for dowry. Place of death was in the house of A.1. The learned Additional Sessions Judge on thorough appreciation of the evidence on record, rightly found the present appellant guilty. Accused miserably failed to probabalize his defence about the so-called ill-health of the deceased and the learned Additional Sessions Judge made appropriate findings in this regard. He would submit that the prosecution has the benefit of presumption under Section 113-B of the Indian Evidence Act and prosecution established all the essential ingredients of Section 304-B of IPC coupled with the statutory presumption under Section 113-B of the Indian Evidence Act, as such, the criminal appeal is liable to be dismissed.

34) Before going to appreciate the evidence on record, it is appropriate to refer the substance of Ex.P.1 by P.W.1. Ex.P.1 in substance runs that the *de facto* complainant performed the marriage of Sundara Mani, her daughter, three years ago with A.1

and she agreed to provide dowry of Rs.35,000/- and at the time of marriage she given Rs.25,000/- and there remained due of Rs.10,000/- towards balance dowry and two months prior to the incident, A.3 brought her daughter and left at her house by saying that after paying Rs.10,000/- towards balance dowry, he can send her daughter for marital life. On 23.06.009 her sister-in-law Kosuru Lakshmi and Co-sister Arasada Appala Konda took her daughter to in-laws house by assuring to pay the amount of balance dowry before 10.07.2009 and they convinced A.1 and others. It alleges that A.1 and others used to torture her daughter on account of non-payment of dowry. On 02.07.2009 at 2-00 p.m., A.1 telephoned to her stating that the deceased committed suicide at 1-00 p.m. Then she along with relatives rushed and was informed that the deceased committed suicide by hanging and she found the dead body and she entertained a suspicion that she might have been killed on account of nonpayment of dowry. This is the substance of the allegations in Ex.P.1.

35) During course of trial, P.W.1, the *de facto* complainant, spoke of the marriage of A.1 with the deceased and that she agreed to pay a sum of Rs.35,000/- as dowry and out of it she paid Rs.25,000/- and balance was not paid for want of money. They also paid Rs.3,000/- towards *adapadusu lanchanam*, silver anklets weighing about 10 Tulas and also presented a gold ring weighing half sovereign and gold chain weighing half sovereign to A.1. They also presented ear studs weighing half sovereign and gold *Mangalasutram* weighing half sovereign to their daughter besides silver anklets. She spoke of the marital life of the deceased with A.1 and that they were blessed with a female child. Her daughter in two

occasions revealed to her that at the instance of her mother-in-law, A.1 used to abuse her and beat her for balance dowry. According to P.W.1, further in the month of May, 2009, A.1 brought the deceased and left at her house stating that if they want peaceful family life of the deceased, they should pay balance dowry of Rs.10,000/-. The deceased was in her house for two months in that occasion. Thereafter, A.2 and A.3 came to the house and took away the daughter of deceased, Sirisha. Two or three days thereafter, her sister-in-law i.e., sister of her husband by name Kosuri Lakshmi and co-sister by name Asarala Appalakonda took her deceased daughter to the house of A.1 and dropped her there and on their return they told her that accused are demanding payment of balance dowry of Rs.10,000/- and they convinced them to look after the deceased properly and they will see that the balance dowry amount is arranged in short time. They also requested her to arrange the balance amount within ten days. They also told her that A.1 and A.2 asked her to write bond to that effect that the accused will not be responsible if anything happens to the deceased, for which they refused to do so. One week thereafter A.1 contacted her in phone and informed her that her daughter died by hanging. She received phone at 2-00 p.m. and after gathering their people, they went to the house of accused at 5-00 p.m., and found the dead body of the deceased Sundara Mani lying on the floor. They waited up to 9-00 p.m. and after all their people came there, they decided to give a report. Then they went to the police station and lodged Ex.P.1 report.

36) P.W.2, the co-sister and P.W.3, sister-in-law of P.W.1, supported her evidence. Their evidence runs that the disputes were due to non-payment of balance of Rs.10,000/- by P.W.1 to the



accused and that when A.3 brought the deceased and her daughter and left them at the house of P.W.1 stating that P.W.1 can drop the deceased and her daughter after giving balance dowry. At request of P.W.1, they took the deceased to her in-laws house and then A.1 and A.2 asked them whether they brought the balance dowry of Rs.10,000/- for which they replied that they did not bring that amount and that they asked them to take back Sundara Mani. However, they asked A.1 to give some time for payment of that amount and accordingly they assured to pay the amount within 10 days. Though A.1 asked them to execute a bond to the effect that the deceased shall not die by herself, but they refused to do so. Later, on the ninth day thereafter, they received information about the death of deceased.

37) It is the contention of the learned counsel for the appellant that there are omissions in the evidence of P.W.1 to P.W.3. Now, I would like to deal with the same.

38) As seen from the cross examination part of P.W.1, in Ex.P.1, she did not state that they presented cash, gold and silver ornaments to the accused at the time of marriage. It is to be noted that the above said omission is relating to the items other than cash of Rs.25,000/-. Though Ex.P.1 did not whisper about the presentation of so-called *adapadusu lanchanam*, silver and gold ornaments, etc., but the substratum of the case of the prosecution as projected in Ex.P.1 was adhered by P.W.1. It is not a case where the evidence of P.W.1 is suffering with any material omissions or contradictions. The only omission that was suggested to P.W.1 is that she did not state in Ex.P.1 about other cash, gold and silver

ornaments and in my considered view, the above improvement is not at all material.

39) Turning to the evidence of P.W.2, she admitted in cross examination that she did not state before police that the accused asked them for execution of a bond stating that the deceased may die. Except this omission, no other omission was suggested to P.W.2. No omissions were suggested to P.W.3 during cross examination. However, the fact remained is that there is no whisper in Ex.P.1 that A.2 and A.4 came to the house of P.W.1 and took away Sirisha, the daughter of deceased. It is to be noted that even P.W.1 testified the said fact that A.2 and A.4 came to the house and took away Sirisha, though she was being given fed by her mother. The evidence of P.W.1 to P.W.3 that A.3 brought the deceased and left her at the house of P.W.1 with a demand to pay the balance dowry is not an omission. The improved evidence from P.W.1 to P.W.3 is that A.2 and A.4 took away Sirisha, the daughter of deceased. It is not relating to on any material aspects because ultimately the deceased was supposed to be in the house of her in-laws when she was dropped by A.3 at the house of P.W.1 with a demand to pay the balance dowry. In my considered view, the aforesaid omissions are not at all material. Apart from this, there is no whisper in Ex.P.1 that A.1 insisted P.W.2 and P.W.3 to execute a bond about the welfare of the deceased, for which they refused. However, when the evidence of P.W.2 and P.W.3 is such that when they dropped the deceased at the house of A.1 and that A.1 insisted that they have to execute a bond to the effect that the deceased shall not die by herself for which they refused to execute any such bond, there was no cross examination stating that the above portion

of the evidence of P.W.2 and P.W.3 were on account of any omissions from their statements during investigation. However, the substratum of the case of the prosecution as projected in Ex.P.1 was fully adhered to by P.W.1 to P.W.3. Even if the part of the evidence of P.W.1 to P.W.3 which was not there in Ex.P.1 for a moment is excluded from consideration, the case of the prosecution as projected in Ex.P.1 remained intact.

40) Now, it is a matter of appreciation as to whether the evidence of P.W.1 to P.W.3 is liable to be believed.

41) As seen from the cross examination part of P.W.1, she testified and reiterated that A.1 contacted her in phone at about 2-00 p.m., and informed her about the death of deceased. She denied that she does not know how to use and talk in the phone and that A.1 did not contact her in phone and did not inform anything. The above said suggestion given to P.W.1 on behalf of A.1 is not at all convincing. A duty was cast upon A.1 being the husband of the deceased to communicate about the death of deceased to P.W.1. If not A.1 who intimated the said fact to P.W.1 was not clarified by the accused. The evidence of P.W.1 that she came to know about the death of deceased by way of a phone call from A.1 at 2-00 p.m. has basis in Ex.P.1.

42) The defence of A.1 before P.W.1 is that the deceased used to suffer from stomach pain and was unable to bear the said pain, she committed suicide and that on the advice of the elders, she lodged a false complaint against the accused. She denied the said suggestion. P.W.2 also denied the defence of the accused that the deceased was suffering from stomach pain and that unable to bear the said pain, she committed suicide. P.W.3 also denied a

suggestion that the deceased was suffering from stomach pain and unable to bear the said pain, she died. This aspect that the deceased committed suicide on account of stomach pain will hereinafter be discussed.

43) It is to be noted that one of the contentions of the appellant is that P.W.1 did not lodge the report promptly. According to the evidence of P.W.1, she along with P.W.2 and P.W.3 went to the house of accused where the dead body was lying by 5-00 p.m. and they waited for arrival of other people and thereafter decided to give a report. Thus, according to them, they went to the police station at 9-00 p.m., so as to lodge a report. It is borne out by the record that scribe of Ex.P.1 was P.W.5. According to him in cross examination, Ex.P.1 was drafted by him outside the police station. As seen from Ex.P.1 coupled with the evidence of P.W.12 that on 02.07.2009 at 11-00 p.m., P.W.1 gave a report to him and it was registered as a case in Crime No.61 of 2009. It is to be noted that P.W.1 was no other than mother of deceased, who came to know about the occurrence and went to the house of A.1 and waited for arrival of elders. Considering the same, I am of the considered view that in a case of this nature when P.W.1 came to know about the death of deceased, it was quite natural for her to ponder over as to whether a report is to be lodged or not and nothing suspicious could be found on the part of P.W.1 for lodging of report at 11-00 p.m.

44) According to arguments of the learned counsel for the appellant/A.1 as A.1 did not meet abnormal demand made by P.W.1 to pay huge amounts, Ex.P.1 was pressed into service. It is to be noted that the learned defence counsel during cross examination of P.W.1 elicited certain facts which are to the effect that by 9-00 p.m.,

P.W.1 did not entertain the idea giving in complaint. The elders on their side and the elders in the village advised them to give a report to the police. Though the elders of the village of the accused advised them that they may see that double the amount of dowry will be returned, but their people did not agree for, stating that public will scold her, if she keep quiet by taking money. Hence, they decided to lodge a report. The above answers elicited from the mouth of P.W.1 means that she was not at all fond of money though double the amount of dowry was promised to be given to P.W.1. Considering the same, absolutely, there was no possibility for due deliberations and concoctions. The evidence of P.W.1 with regard to the delay in lodging Ex.P.1 is nothing but few hours and its stand to the test of scrutiny. Absolutely, there was no possibility for any due deliberations and concoctions on account of few hours delay in lodging Ex.P.1.

45) It is to be noted that P.W.2 and P.W.3 were kith and kin of P.W.1 being co-sister and sister-in-law. It is quite natural for P.W.1 to take their help to drop the deceased at the house of A.1 and it was also quite natural for P.W.2 and P.W.3 to help P.W.1 so as to take the deceased to the house of A.1. They withstood the probing cross examination.

46) During cross examination P.W.2 testified that she and her husband acted as elders in the settlement of marriage and also performance of the marriage. Her house and the house of P.W.1 are nearby. The house of Kosuri Lakshmi (L.W.4) is also in the same street. Before the death of deceased, P.W.1 told her on two occasions that the accused used to harass the deceased demanding for payment of balance dowry. But, by then she and her

husband did not intervene. She denied that accused did not harass the deceased and she did not go to the house of accused for dropping the deceased and that she is deposing false. Coming to the cross examination of P.W.3, she deposed that P.W.1 gave instructions for drafting report and her brother prepared the report. She denied that accused did not harass the deceased and that she is deposing false.

47) The evidence of P.W.2 and P.W.3 corroborated the evidence of P.W.1 about their role in taking the deceased to the house of A.1 and their assurance to A.1 to see that the balance of dowry will be paid within a time bound period. P.W.2 and P.W.3 categorically testified the demand made by A.1 when took the deceased to the house of A.1 so as to drop her at request of P.W.1. Virtually, P.W.2 and P.W.3 have no motive at all to depose false against the accused.

48) As seen from the evidence of P.W.4 and P.W.6, who were the neighbourers, they spoke of the previous night incident where A.1 beat the deceased. According to P.W.4, one night prior to the day of night there was a quarrel between her and A.1 and A.1 beat Sundara Mani. According to her cross examination, her house gate is towards north of the house of accused. Though she deposed in cross examination that police examined her initially at her house and subsequently police called her and examined her when she was at a distance of 100 yards from the dead body, nothing abnormal could be found in her answers. The contention of the appellant that police examined twice or thrice P.W.4 for obvious reasons deserves no merits in my considered view.

49) Coming to the evidence of P.W.6, she also spoke of the fact that previous day night prior to the death of Sundara Mani, A.1 beat Sundara Mani. It is to be noted that according to her, she came to know about the beating by A.1 against Sundara Mani through A.2 and A.2 set forth a reason before P.W.6 that a quarrel was regarding preparation of fish curry. Though P.W.6 was not a witness to the above said beating, but her cross examination reveals that as she was present in her house, she heard about the said beating. The facts and circumstances are such that as the neighbours i.e., P.W.4 and P.W.6 had knowledge about the quarrel between A.1 and deceased in the previous night which resulted into beating by A.1, A.2 canvassed a theory that it was a petty issue on account of a dispute relating to preparation of fish curry. So, no credence can be attached to the so-called version of A.2 that the dispute was only on account of non-preparation of fish curry. P.W.6 reiterated in cross examination that she could hear the utterings and beatings from the house of the accused when she was in her house. Thus, P.W.4 and P.W.6 who were the neighbors adjacent to the house of A.1 categorically testified the physical assault made by A.1 against the deceased in the previous night.

50) The factum of P.W.2 and P.W.3 taking away the deceased from the house of P.W.1 and dropping her at the house of A.1 was hardly within a period of 7 to 9 days prior to the death of deceased. The prosecution adduced consistent evidence to the effect that somehow or the other the deceased was dropped at the house of P.W.1 for no fault of her from her in-laws house and A.1 in the entire cross examination did not challenge the testimony of P.W.1 to P.W.3 about staying of the deceased along with her mother as above for a

considerable period of time. As this Court already pointed out the ultimate destiny of the deceased should be at her in-laws house and that is the reason why P.W.1 took initiative and with the help of P.W.2 and P.W.3 dropped the deceased at the house of A.1. Hence, the date of death of deceased was hardly within a period of 7 to 9 days subsequent to the dropping of the deceased by P.W.2 and P.W.3 at A.1's house.

51) The case of the prosecution that P.W.1 came to know about the death of deceased through A.1 was fully established.

52) As this Court already pointed out the death of the deceased was otherwise than in normal circumstances within a period of seven years from the date of marriage and it was in her in-laws house.

53) The evidence of P.W.1 to P.W.3 categorically proves the fact that soon before the death, the deceased was subjected to harassment mentally and physically in connection with a demand for balance dowry. The evidence of P.W.4 and P.W.6 supports the evidence of P.W.1 to P.W.3 with regard to the physical assault on the deceased.

54) It is to be noted that the solitary defence of A.1 is nothing but denial simplicitor by stating that he never demanded any dowry and that on account of severe ill-health, deceased committed suicide. The appellant/A.1 got advanced a contention before the learned Additional Sessions Judge that unable to bear the stomach pain continuously, she committed suicide. It is no doubt true that the standard of proof on the part of A.1 to succeed in the defence cannot be on par with the standard of proof with which the prosecution has to establish the guilt.



55) Now, the defence of A.1 is to be tested on the touch stone of preponderance of probabilities. According to A.1 for no fault of him, the deceased committed suicide unable to bear the stomach pain. P.W.1 to P.W.3 quietly denied the said defence of A.1. Such alleged ill-health of the deceased for a long period would have been borne out by any record, if really the said defence is true. If really the deceased was suffering with unbearable stomach pain for a continuous period, definitely, A.1 would have produced necessary proof in the form of O.P. or the medical prescription, etc. Nothing is forthcoming from the accused to probabalize his defence. Even during Section 313 of Cr.P.C. examination, accused had an opportunity to explain certain things and nothing could be found in the statement of A.1 in Section 313 of Cr.P.C. examination that the deceased was suffering with stomach pain and that unable to bear the said stomach pain, she committed suicide. Thus, what all the defence set forth by the accused during cross examination of P.W.1 to P.W.3 is nothing but an afterthought. A.1 did not venture to set forth this type of defence during cross examination of P.W.13, the Sub-Divisional Police Officer i.e., the investigating officer. If really the deceased was suffering such an ill-health, it is for A.1 to state as to what care he had taken to provide necessary medical aid being her husband. Therefore, A.1 miserably failed to probabalize his defence that the deceased unable to bear the stomach pain, committed suicide.

56) It is to be noted that the prosecution did not examine one of the mahazar witnesses i.e., L.W.16-Akumarthi Abbulu and given up his examination. As the prosecution examined P.W.9, who supported the case of the prosecution, it appears that he was given

up. It is the quality of evidence that weighs but not quantity. No adverse inference can be drawn for non-examination of L.W.16.

57) As seen from the evidence of P.W.9, who was the Village Revenue Officer, he testified about the fact that on 03.07.2009 at 7-30 a.m. and 8-00 a.m., he found the dead body by going to the house of the accused at request of police and in his presence scene observation was conducted and one Akumarthi Abbulu also acted as a mediator and he (P.W.9) scribed the said report and police seized two rope pieces and one rope piece was seized from the rafter of the roof and the other which was lying by the side of the dead body and that he was also present at the time of inquest over the dead body of the deceased. The evidence of P.W.9 is consistent with the evidence of P.W.11, who conducted inquest over the dead body of the deceased. Their evidence is further consistent with the evidence of P.W.13, Sub-Divisional Police Officer. Thus, the contention of the appellant that the prosecution did not examine L.W.16 is devoid of merits.

58) The Hon<sup>ble</sup> Supreme Court in *The State of Andhra Pradesh v. Raj Gopal Asawa and others*<sup>1</sup> 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<sup>ble</sup> 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*

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<sup>1</sup> (2004) 4 SCC 470

*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".

59) 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.

60) The evidence of P.W.1 to P.W.3 categorically proves the fact that soon before death the deceased was subjected to harassment in connection with a demand for dowry. The embodied presumption under Section 304-B of IPC and further the statutory presumption under Section 113-B of the Indian Evidence Act, 1872 further strengthens the case of the prosecution. As the evidence on record categorically proves the fact that soon before her death, the deceased was subjected to physical and mental torture by A.1 in connection with a demand for balance dowry, it is nothing but a dowry death. In my considered view, the prosecution proved the essential ingredients of Section 304-B of IPC and further by virtue of the evidence let in Section 113-B of the Indian Evidence Act, 1872 further strengthens its case.

61) The learned Additional Sessions Judge as evident from the judgment elaborately dealt with the contentions canvassed and rightly appreciated the evidence on record and with tenable reasons found the present appellant guilty of the charge under Section 304-B of IPC. Further having regard to the nature of the offence, this Court is of the considered view that the sentence of imprisonment of ten years imposed against the appellant, is not at all harsh.

62) In the light of the above, this Court is of the considered view that the judgment, dated 09.11.2010 in Sessions Case No.340 of 2009, on the file of III Additional District & Sessions Judge, Kakinada, is sustainable under law and facts and there are no grounds to interfere with the aforesaid judgment.

63) In the result, the Criminal Appeal is dismissed and the conviction and sentence imposed against appellant/A.1 in Sessions Case No.340 of 2009, shall stand confirmed.

64) 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 07.02.2024 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.

65) The appellant/A.1 is directed to surrender before the Court below on or before 10.02.2024 and on such surrender the learned Additional Sessions Judge shall take necessary steps to entrust the conviction warrant. If the accused fails to surrender on or before 10.02.2024, the learned Additional Sessions Judge shall issue Non-Bailable Warrant and shall take necessary steps to carry out the sentence imposed against the accused.

66) The Registry is directed to forward the copy of the judgment along with original record to the trial Court on or before 07.02.2024.

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

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