HIGH COURT OF ANDHRA PRADESH

THURSDAY ,THE TWENTIETH DAY OF OCTOBER

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE A V RAVINDRA BABU

CRIMINAL REVISION CASE NO: 449 OF 2005

Between:

1. DAMARLA REVATHI DEVI W/o Late Hema Raju
   R/o Vijayawada,
   Krishna Dist.

...PETITIONER(S)

AND:

1. BHATTU SRINIVASA RAO & 4 OTHERS S/o Veera Raghavulu @ Veera Raghavaiah
   R/o 11 ward, Mangalgiri,
   Guntur, Dist.
2. Bhattu Sambrajyam W/o Veeraghavulu
   R/o 11 ward, Mangalgiri,
   Guntur, Dist.
3. Bhattu Veeraghavulu@ Veera Raghavaiah S/o Veerabhadram
   R/o 11 ward, Mangalgiri,
   Guntur, Dist.
4. Dharmarla Vijaya Kumari W/o Koti Ram Murthy
   R/o 11 ward, Mangalgiri,
   Guntur, Dist.
5. The State of A.P. rep. by Public Prosecutor High Court of A.P.,
   Hyderabad.

...RESPONDENTS

Counsel for the Petitioner(s): M RADHAKRISHNA

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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CRIMINAL REVISION CASE No.449 OF 2005

Between:

Damarla Revathi Devi,
W/o.Late Hema Raju, Aged 53 years,
R/o. Vijayawada,
Krishna District. Petitioner/PW.1

Versus

1. Bhattu Srinivasa Rao,
   S/o.Veera Raghavulu @ Veera
   Raghavaiah, Aged 35 years.

2. Bhattu Sambrajyam, W/o.Veera
   Raghavulu, Aged about 50 years.

3. Bhattu Veera Raghavulu @ Veera
   Raghavaiah, S/o. Veerabhadram,
   Aged 67 years.

4. Dhamarla Vijaya Kumari,
   W/o.Koti Ram Murthy,
   Aged 28 years.
   (All are Residents of 11th Ward,
   Mangalagiri, Guntur District).

5. The State of A.P.,
   Rep. by Public Prosecutor,
   High Court of A.P.,
   Amaravathi. .... Respondents

DATE OF ORDER PRONOUNCED : 20.10.2022

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers may be allowed to see the Order? Yes/No

2. Whether the copy of Order may be marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to see the Fair copy of the order ? Yes/No

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A.V.RAVINDRA BABU, J

*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

+ CRIMINAL REVISION CASE No.449 OF 2005

% 20.10.2022

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   Amaravathi. .... Respondents

! Counsel for the Petitioner : Sri M. Radha Krishna

^ Counsel for the Respondents
No.1 to 4 : Sri K. Rama Koteswara Rao

^ Counsel for the Respondent No.5 : Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

1. (2004) 7 SCC 665

2. 2010 (2) ALD (Crl.) 779 AP

3. (2006) 1 SCC 283

4. (2014) 14 SCC 477

5. 2007 (1) ALT (Crl.) 463 (DB)

6. 2022 LiveLaw SC 107

7. AIR 2012 (SC) 2488

8. 2010 15 SCC 116

9. (2013) 7 SCC 256

This Court made the following:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

CRIMINAL REVISION CASE No.449 OF 2005

ORDER:

This Criminal Revision Case came to be filed by the petitioner namely Damarla Revathi Devi, wife of late Damarla Hema Raju, who was the prosecution witness No.1 in Sessions Case No.263 of 2003, on the file of the Court of V Additional District and Sessions Judge (Fast Track Court), Guntur (for short, 'the learned Additional Sessions Judge'), under Sections 397 and 401 of the Code of Criminal Procedure, 1972 (for short, 'the Cr.P.C'), challenging the judgment of acquittal, dated 03.11.2004, where under the learned Additional Sessions Judge exonerated all the accused of the charges under Sections 498-A and 304-B of the Indian Penal Code, 1860 (for short, 'the IPC').

2. PW.1 in Sessions Case No.263 of 2003 is the mother of the deceased by name Bhattu Srivardhini. Her husband *i.e.,* Damarla Hemaraju (LW.1) gave a statement under Ex.P-8 before the Police, which was recorded as FIR in Crime No.174 of 2000 of Mangalagiri Town Police Station, for the offences under Sections 498-A and 306 R/w.34 of IPC and was investigated into. LW.1-*de-facto* complainant was not examined by the prosecution as he died.

Respondent No.1 herein is no other than the husband (A-1), respondent Nos.2 and 3 are the in-laws (A-2 and A-3) and respondent No.4 is the sister-in-law (A-4) of the deceased respectively. The respondents herein were tried by the learned Additional Sessions Judge for the charges under Sections 498-A and 304-B of IPC and they were acquitted of the charges framed by virtue of the judgment in Sessions Case No.263 of 2003, dated 03.11.2004. The State of A.P. seems to have not preferred any Appeal against the acquittal, but PW.1, who is the husband of the *de-facto* complainant (died), preferred this Criminal Revision Case under Sections 397 and 401 of the Cr.P.C.

3. The brief facts, which are germane for the purpose of deciding this Criminal Revision Case, which can be culled out from Ex.P-8, dated 04/05-09-2000, statement of the *de-facto* complainant *i.e.,* husband of PW.1, are as follows:

He was living by selling stamps in Civil Courts, Vijayawada. He was blessed with four daughters and two sons. Her second daughter *i.e.,* Srivardhini, was given in marriage to one Bhattu Srinivasa Rao (respondent No.1 herein), resident of Mangalagiri in the year 1996. At the time of marriage, he presented cash of Rs.65,000/- towards dowry and Rs.25,000/- towards other

lanchanams. After marriage, he sent her daughter to her in-laws house and one year thereafter she gave birth to a male child. His son-in-law *i.e.,* Srinivasa Rao (A-1) was addicted to consumption of alcohol and used to demand his daughter for money by beating her. A-1 used to send his wife *i.e.,* Srivardhini to the house of her parents frequently. He complied the demands of his son-in-law. Her daughter *i.e.,* Srivardhini came to him and told that her in-laws, sister-in-law and her husband are harassing her for getting money. On 04.09.2000 evening his daughter Srivardhini telephoned to his house and informed that she entertained a suspicion that she will be killed by her husband, in-laws and sister-in-law and her husband, for which his wife consoled her not to afraid and asked her to come to Vijayawada. After half an hour, they received a phone call that their daughter was burnt. Then his wife proceeded to Mangalagiri along with others and found her daughter in a precarious condition on the verge of death, as such she was taken to Government General Hospital, Guntur, where they were informed that her daughter Srivardhini died. Then the dead body was shifted to her in-laws house. He came to know about all these facts through his wife and entertained a suspicion that the husband of the deceased, in-laws, sister-in-law and her husband poured kerosene and killed his daughter. Basing on the

statement of LW.1, the Police registered a case in Crime No.174 of 2000, dated 05.09.2000, for the aforesaid offences. Ultimately, the Sub-Divisional Police Officer concerned, after completion of investigation, laid charge sheet against the respondents herein for the offences under Sections 498-A and 304-B of IPC. Later, the learned Additional Sessions Judge, framed charges under Sections 498-A and 304-B IPC against the respondents herein, for which they denied the offence.

4. In order to establish the guilt of the respondent Nos.1 to 4, the prosecution examined PWs.1 to 13 and got marked Exs.P-1 to P-29 and MOs.1 to 6. After closure of the evidence of the prosecution witnesses, the respondents were subjected to 313 Cr.P.C. examination and they denied the incriminating circumstances and got examined DW.1. DW.1 before the trial Court was no other than the sister of A-4.

5. The trial Court, after hearing both sides and on consideration of the evidence available on record, acquitted the respondent Nos.1 to 4 for the charges framed against them.

6. As pointed out the State of A.P. did not file any Appeal, as such PW.1 filed this Criminal Revision Case seeking to revise the impugned order of the acquittal.

7. Before framing the appropriate point for consideration, it is pertinent here to refer the scope of the Revision under Sections 397 and 401 Cr.P.C. Section 397 Cr.P.C. contemplates the powers of the High Court and Sessions Court to exercise the powers of revision as to the correctness, legality or propriety of any order of the Court inferior to that. Section 401 of Cr.P.C. specifically deals with the High Court's power of revision. It is no doubt true that under Sub-section (3) of Section 401 of Cr.P.C. nothing shall be deemed to authorize a High Court to convert a finding of the acquittal into one of conviction. So, there is a legal impediment to the effect that this Court cannot convert a finding of the acquittal into one of conviction, which has been specifically provided in Sub-section (3) of Section 401 of Cr.P.C.

8. In ***Ram Briksh Singh and others v. Amkbika Yadav and another***[1], the Apex Court referring to its earlier decision relating to the powers of the High Court under Section 401 Cr.P.C. held that the High Court can set-aside the order of acquittal and remit

[1] (2004) 7 SCC 665

the case for retrial where material evidence is overlooked by the trial Court. This is clearly reflected in a judgment of this Court in ***Sama Subhash Reddy v. S. Lalitha and others***[2] wherein the Andhra Pradesh High Court dealt with the powers of the revision under Section 401 Cr.P.C. relying upon a judgment of the Apex Court, as above. It is quietly evident from the said decision that the revisional powers in setting-aside the order of acquittal have to be sparingly and exceptionally exercised when there is a manifest error of law and procedure and only to prevent the gross miscarriage of justice. So, if the material evidence available on record is totally overlooked by the trial Court or when the findings of the trial Court are perverse the revisional Court can set-aside the order of acquittal and order for retrial. So, it is quietly evident that this Court cannot exercise the powers of the Court of Appeal under Section 386 Cr.P.C. and convert an order of acquittal into conviction, but it can certainly set-aside the order of conviction and order retrial, when the public justice demands such a course.

9. In view of the above, now the point that arises for consideration is:

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[2] 2010 (2) ALD (Crl.) 779 AP

Whether the judgment of the trial Court in Sessions Case No.263 of 2003, dated 03.11.2004, suffers with any illegality, irregularity, impropriety and is perverse and, if so, whether the matter is liable to be remanded to the trial Court?

10. **POINT**: Learned counsel appearing for the petitioner would vehemently contend that a look at the judgment of the trial Court means that the learned trial Judge had no inclination whatsoever to consider the evidence of PWs.1 to 4, kith and kin of the deceased, who supported the case of the prosecution, and the learned Judge ordered an order of acquittal on the ground that other witnesses did not support the case of the prosecution. Learned trial Judge furnished perverse reasons pointing out the so called discrepancy in the evidence of PWs.1 and 2. The judgment of the trial Court is in utter disregard to the well established principles of law. The learned trial Judge did not deal with presumptions available to the case of the prosecution in IPC relating to the charge under Section 304-B IPC as well as in the Evidence Act, 1872 and did not discuss the evidence of the Medical Officer, PW.10, and Ex.P-7 post-mortem report, which reveals that the deceased died due to asphyxia by strangulation

and there was a fracture of hyoid bone. The learned trial Judge believed the suggestions that were put forth on behalf of the respondents/accused, which were not substantiated in any way but overlooked the evidence without making any effort whatsoever to find out the *bona-fides* in the case of the prosecution. He would further contend that the judgment of the trial Court is totally perverse against the well established principles of law, overlooking the evidence available on record and the presumptions available in favour of the prosecution as such gross miscarriage of justice was done. He would rely upon a judgment of this Court in ***Sama Subhash Reddy*** (2nd *supra*) and further submitted that the facts in the above said case are similar to the present case on hand and further it is a fit case to order remand of the matter with a direction to the trial Judge to frame even the charge under Section 302 IPC.

11. Learned counsel appearing for the respondent Nos.1 to 4 would contend that the independent witnesses did not support the case of the prosecution and there was no corroboration to the testimony of PWs.1 to 4 from independent sources and the *de-facto* complainant was not examined on account of his death. Ex.P-8 could be marked only through the Investigating Officer

and the trial Court rightly expected the prosecution to show corroboration to the evidence of interested witnesses. The evidence on record would not attract the ingredients of Section 304-B as well as Section 498-A of IPC. The evidence of the Medical Officer, coupled with Ex.P-7-post mortem report is also vague. There are no grounds whatsoever to remand the matter. He further submitted that retrial can only be ordered in exceptional circumstances and there are no exceptional circumstances in the instant case. Medical evidence would not prevail over the oral evidence. With the above submission, learned counsel appearing on behalf of the respondent Nos.1 to 4 sought for dismissal of the Criminal Revision Case. Learned counsel for the respondents in this regard would rely upon the decisions of the Hon'ble Apex Court in ***Vishnu alias Undrya v. State of Maharashtra***[3] and ***Mary Pappa Jebamani v. Ganesan and others***[4] and a decision of this Court in ***Abdul Sayeed v. State of A.P., Rep. by its Public Prosecutor, High Court of A.P., Hyderabad***[5].

[3] (2006) 1 SCC 283
[4] (2014) 14 SCC 477
[5] 2007 (1) ALT (Crl.) 463 (DB)

12. No arguments are advanced on behalf of the 5th respondent-State.

13. I have perused the entire material available on record. As seen from the evidence of PW.1, mother of the deceased, PW.2, elder sister of the deceased, PW.3, elder brother of the deceased and PW.4, younger brother of the deceased, they all supported the case of the prosecution.

14. The so called independent witnesses PWs.5 and 6 did not support the case of the prosecution. PW.7 also did not support the case of the prosecution. PW.8 also did not support the case of the prosecution.

15. Among PWs.5 to 8, PW.5 is said to be the neighbor to the house of the deceased and PW.6 being the close relative of A-1 *i.e.,* the nephew. The evidence of PWs.1 to 4 literally runs in support of the allegations contained in the statement of the *de-facto* complainant insofar as the allegations of demand of additional amounts and subjecting the deceased to cruelty and dowry harassment. Though, as per Ex.P-8 report lodged by the *de-facto* complainant the respondents/accused might have killed her by pouring kerosene and setting fire by demanding extra amounts,

FIR came to be registered under Sections 498-A and 306 IPC. Later, charge sheet was filed under Sections 498-A and 304-B IPC. There is a specific whisper by the Investigating Officer in the charge sheet referring the medical opinion obtained by him and in the charge sheet filed, the Investigating Officer mentioned that LW.17-Dr. T. Rani Samyukta, Medical Officer, Government Hospital, Mangalagiri on receipt of the experts opinion issued final opinion that the cause of death is due to asphyxia due to throttling. The defence of the respondents/accused before the trial Court was that having failed to get a job, the deceased fed up and committed suicide by pouring kerosene and set ablaze her and by then none of the accused were present in the house. The Medical Officer, PW.10, spoken about the contents of the post-mortem report and spoken about the final opinion as regards cause of death as asphyxia due to throttling. There was no dispute that the occurrence in question was happened in the house of the respondents/accused. Even after the death, the dead body was brought to the house of the accused alone from the Government General Hospital, Guntur. There is no dispute that the death of the deceased had occurred within 7 years from the date of her marriage. Therefore, the death of the deceased appears to be

otherwise than under normal circumstances, hardly within 4 years of her marriage.

16. Now this Court is not supposed to express any opinion that the learned Additional Sessions Judge ought to have appreciated the evidence in a particular way. Hence, this Court can only examine as to whether the appreciation of the evidence is totally perverse, overlooking the evidence on record and the legal principles covering the issue. Further, this Court has to see as to whether there was any non-application of mind by the learned Additional Sessions Judge to the provisions of law and such a judgment of the trial Judge carried any total miscarriage of justice.

17. Now coming to the judgment of the trial Court, learned Additional Sessions Judge in the judgment referred the arguments of the learned counsel for the accused before the trial Court to the effect that there is no evidence with regard to the dowry harassment and there is no direct evidence to prove the offence and that accused are entitled for acquittal. What the prosecution has argued was not reflected in the judgment of the trial Court. He referred to the evidence of PWs.1 to 4 in substance. At Para No.15 of the judgment, the learned Judge framed the point as follows:

> "Whether the prosecution proved the guilty of the offence against all the accused No.1 to 4 beyond all reasonable doubts offence punishable U/s.498-A and 304-B IPC?"

18. From Para Nos.16 to 26, again he referred the case of the prosecution. At Para No.27, he made a mention that PWs.2 to 4 supported the evidence of PW.1, because they are daughter and sons of PW.1. He referred that PWs.5 to 8 did not support the case of the prosecution. He pointed out a discrepancy from the evidence of PWs.1 and 2, according to the judgment of the trial Court. According to PW.1 after receiving telephone call from A-1 with regard to the death of the deceased, she and Padmavathi, elder daughter, left for Mangalagiri to the house of A-1 to A-3 and came to know that she was taken to Mangalagiri Private Hospital and they were not there and the private hospital staff asked them to take the deceased to Guntur Hospital and they took her to Guntur and the Doctors stated that it is better to take the injured to the house. Later, she died. He observed that PW.2 deposed in a different manner as if she and her mother went along with the deceased to Guntur in a car. The so called discrepancy pointed out by the trial Court has no significance at all. The trial Court made a comment that the prosecution did not file any proof to show that the *de-facto* complainant paid the amounts to the

accused. When the evidence of PWs.1 to 4 literally spoken about the alleged harassment that was meted out to the deceased, the trial Court made a finding that their evidence did not prove the harassment as independent witnesses did not support the case, the accused are entitled for acquittal.

19. In my considered view, the reasons furnished by the trial Court are nothing but perverse. In a case of dowry harassment, the natural witnesses are kith and kin of the deceased. The incident in question was said to be happened in the house of the accused. What the trial Court was expected to do was to analyze the evidence as to whether the death of the deceased was occurred otherwise than under normal circumstances and the evidence adduced by the prosecution is believable or not. There is no dispute that there is a presumption under Section 304-B IPC itself that if the death of a woman occurs otherwise than under normal circumstances within seven years of her marriage, it shall be called as a dowry death. Apart from this, according to Section 113-B of the Indian Evidence Act, when the question is as to whether a person has committed a 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. Virtually, the trial Court Judge did not discuss anything about the presumption under Section 113-B of the Indian Evidence Act.

20. Insofar as the charge framed under Section 304-B IPC is concerned, it runs that "*You A-1 to A-4 poured the kerosene and set fire on the body of the deceased Srivardhini and killed her for which she succumbed to injuries*". This Court would like to make it clear that the essential ingredients of Section 304-B IPC, dowry death, and Section 302 IPC, murder, are totally different. The learned trial Judge, having mentioned in the charge that A-1 to A-4 poured the kerosene and set fire on the body of the deceased Srivardhini and killed her, did not frame the charge under Section 302 IPC. There is no whisper in the judgment of the trial Court as to the application of mind of the learned trial Judge to the evidence of PW.10, Medical Officer, and Ex.P-7, which means that the death of the deceased was due to asphyxia due to throttling. So, it is a clear case where the learned Additional Sessions Judge, without any proper reason overlooked the evidence of PWs.1 to 4 and maintained perverse reasons to disbelieve the evidence of PWs.1 to 4. The trial Court Judge ought to have discussed as to

how and why the evidence of PWs.1 to 4 was not believable. Instead of analyzing the evidence of PWs.1 to 4, he recorded perverse reasons by pointing out the so called discrepancy between the evidence of PWs.1 to 4, which cannot be taken as a discrepancy and further overlooked the evidence of PW.10, the Medical Officer, and the findings in the post-mortem report.

21. Further, the finding of the learned Additional Sessions Judge in upholding the defence plea of alibi is also without any legal basis. During the course of cross-examination of PW.1, the accused got elicited from her mouth that the house of A-2 to A-3 consists of two rooms and they (*de-facto* complainant) brought the dead body and laid in the room of northern side portion of A-2 and A-3. It is further elicited that the deceased daughter and A-1 used to live in the northern side room and towards northern room there is a bedroom. It is elicited that to the southern side of the said portion, A-2 and A-3 are living. Since the date of marriage A-1 and his wife *i.e.,* Srivardhini used to live separately in a room on southern side. Within a distance of 200 yards from the house of A-2 and A-3, the house of A-4 is situated. During the course of cross-examination, PW.1 denied the suggestion that on the date of incident, A-4 went to Vijayawada along with Katsyani and

Swathi on the occasion of birthday of A-4. She denied that at the time of incident A-3 was at the house of Nandam Venkata Rao and that on the same day A-2 went for purchasing and selling milk. She denied that at the time of alleged incident, A-1 was teaching tuitions. She denied that by the time A-4 and her friends Katsyani and Swathi returned from Mangalagiri to Vijayawada, already incident was over.

22. By virtue of the above contention of the accused was that they were elsewhere at the time of incident in question. This Court would like to make it clear that the alibi is not an exception envisaged in the IPC or in any other law and it is rule of evidence recognized by Section 11 of the Indian Evidence Act that the facts inconsistent with the fact in issue are relevant. When the accused took the plea of alibi, burden of proof lies on him under Section 103 of the Indian Evidence Act. The Hon'ble Supreme Court in ***Pappu Tiwary v. State of Jharkhand***[6] held that the burden to establish the plea of alibi on the accused is heavy and the plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence. The Hon'ble Supreme Court reiterated

[6] 2022 LiveLaw SC 107

the said decision by relying upon the earlier judgment in ***Jitender Kumar v. State of Haryana***[7].

23. In this regard, coming to the findings of the learned Additional Sessions Judge at Para No.29 of the judgment, it was held that according to the evidence of PW.1 on the date of offence, A-4 and DW.1 went to Vijayawada on the occasion of birthday of A-4. It is rather surprising to note that such a finding was given by the trial Court without any basis. In my considered view, there is no such admission from the mouth of PW.1. It was DW.1 who deposed so. Even the trial Judge did not analyze the evidence of DW.1 and simply believed the evidence of DW.1. The learned trial Judge further gave a finding that, at the time of offence, A-2 and A-3 were also not there and further A-1 went for teaching tuitions. DW.1 has never spoken about the absence of A-1 to A-3. There was no evidence at all to prove the absence of A-1 to A-3 in the house of A-1 to A-3 at the time of the incident. There were no probabilities in support of such a defence, leave apart any substantive evidence. The suggestions that were put forth before PW.1 were denied. So, basing on the suggestions, the learned trial Judge upheld the contention of the plea of alibi. On the other

[7] AIR 2012 (SC) 2488

hand, the learned trial Judge did not analyze the evidence of PWs.1 to 4 and has simply thrown out the evidence of PWs.1 to 4. The approach of the learned Additional Sessions Judge in upholding the plea of alibi of A-1 to A-4 is nothing but baseless and perverse without analyzing the evidence on record and also against the established legal principles enunciated by the Hon'ble Supreme Court in the above referred decision.

24. This Court has looked into the decision cited by learned counsel for the respondents as regards the contention that the medical evidence would not prevail over the ocular evidence. It is not the stage to look into all those aspects, especially when the judgment of the trial Court is perverse overlooking the crucial evidence on record. Even in the decision cited by learned counsel for the respondents/accused in ***Mary Pappa Jebamani*** (4th *supra*), it is held that retrial can be ordered in extraordinary circumstances. The case on hand presents an extraordinary situation. In ***Sama Subhash Reddy*** (2nd *supra*), in a similar case on hand, where the trial Judge ignored the evidence of kith and kin of the deceased and the postmortem report and recorded the order of acquittal, the Composite High Court of Andhra Pradesh remanded the case to the trial Court for framing appropriate

charges and for retrial with a finding that the retrial does not mean that the evidence available on record can be erased. In ***Sama Subhash Reddy*** (2nd *supra*), the injuries on the dead body of the deceased were ante mortem in nature *i.e.,* prior to the death of the deceased. Having regard to the above, this Court is of the considered view that the learned Additional Sessions Judge rendered the judgment in a casual and mechanical manner without making any effort to discuss the evidence on record and without examining the evidence in accordance with law. A bare look at the judgment reveals that the learned Additional Sessions Judge in utter disregard of the material before him and also in utter ignorance of the relevant provisions of law dealt the issue which resulted in flagrant miscarriage of justice. It is quite unfortunate that the State of A.P. did not file any Appeal though the judgment of the trial Court is perverse. In such circumstances, it is quite natural for PW.1 to knock the doors of this Court by way of Revision. Hence, it is a fit case to remand the matter to the trial Court with certain directions.

25. The allegations in the charge sheet and the evidence of PW.10, Medical Officer, coupled with Ex.P-7 means that there was fracture of hyoid bone and the cause of death was due to asphyxia

due to throttling and the injuries were ante mortem in nature. Even the Medical Officer, as regards the burn injuries, having considered the Histo-Pathology report, regarding nature of specimen *i.e.,* skin over thigh opined that skin and subcutaneous tissue mostly burnt with loss of cellular details but a few areas show vasodilatation with stagnation of blood suggestive of vascular reaction at the time of burns indicating ante mortem in nature. So, according to the evidence of PW.10, the factor for the cause of the death of the deceased was asphyxia due to throttling. Now it is appropriate to refer the decisions of the Hon'ble Apex Court in ***Rajbir and others v. State of Haryana***[8] and ***Jasvinder Saini and others v. State***[9] ***(Government of NCT of Delhi)***.

26. As the matter is going to be remanded, the trial Court has to take care to frame appropriate charges, in the light of the above decisions. In ***Rajbir and others*** (8th *supra*), the Hon'ble Supreme Court dealt with a situation where the trial Court awarded life sentence under Section 304-B IPC to the accused and the Hon'ble High Court of Haryana reduced it to ten years. The evidence on record shows that it was a case of murder as such the Hon'ble Supreme Court directed the trial Courts in India that to add

[8] 2010 15 SCC 116
[9] (2013) 7 SCC 256

ordinarily Section 302 IPC to charge of Section 304-B IPC. The judgment of the Hon'ble Supreme Court in ***Rajbir and others*** (8th *supra*) is applicable to all the trial Courts in India and, subsequently, the Hon'ble Supreme Court in ***Jasvinder Saini*** (9th *supra*) had an occasion to examine the scope of directions that were given in the earlier decision and held at Para No.13 that according to the judgment in ***Rajbir and others*** (8th *supra*), the Court directed addition of charge under Section 302 IPC to every case in which the accused are charged under Section 304-B IPC. The Hon'ble Supreme Court held that in their opinion that was not true purport of the earlier directions and the direction was not meant to be followed mechanically and without due regard to the nature of the evidence available in the case. While holding so, the Hon'ble Supreme Court clarified as follows:

> "All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court. It is common ground that a charge under Section 304B Indian Penal Code is not a substitute for a charge of murder punishable under Section 302. As in the case of murder in every case under Section 304B also there is a death involved. The question whether it is murder punishable under Section 302 Indian Penal Code

> or a dowry death punishable under Section 304B Indian Penal Code depends upon the fact situation and the evidence in the case. If there is evidence whether direct or circumstantial to *prima facie* support a charge under Section 302 Indian Penal Code the trial Court can and indeed ought to frame a charge of murder punishable under Section 302 Indian Penal Code, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main charge of murder is not proved against the accused at the trial, the Court can look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial Court in that view of the matter acted mechanically for it framed an additional charge under Section 302 Indian Penal Code without adverting to the evidence adduced in the case and simply on the basis of the direction issued in ***Rajbir's*** case (supra). The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in ***Rajbir's*** case (supra), but it would have been more appropriate to remit the matter back to the trial Court for fresh orders rather than lending support to it in the manner done by the High Court".

27. The directions of the Hon'ble Supreme Court, as above, are squarely applicable to the present case on hand. As this Court already pointed out when the allegations in the charge sheet are

that the cause of death was due to asphyxia by throttling in view of the post-mortem report, when the charge runs that the accused poured kerosene on the body of the deceased and set her ablaze, the trial Court ought to have considered framing of the charge under Section 302 IPC. Apart from it, by virtue of the directions of the Hon'ble Supreme Court as above, the learned Additional Sessions Judge, now has to consider the material available on record to frame the charge under Section 302 IPC in addition to the charge under Section 304-B IPC.

28. In the light of the above, whenever the trial Courts are dealing with the allegations under Section 304-B IPC, it is incumbent on the part of the Courts to consider as to whether the material available on record would warrant framing of charge under Section 302 IPC. Such an exercise is to be done by the Courts irrespective of as to whether Police laid the charge sheet under Section 302 IPC or not. As the issue is relating to menace of dowry deaths, where there may be occasions that a case of murder may be projected as a dowry death, a duty is cast upon the trial Courts to take care of as to whether the material available on record would warrant framing of charge under Section 302 IPC also in addition to the charge under Section 304-B IPC.

29. The Investigating Officer having conducted the investigation of the case on the premise that the deceased was burnt to death or committed suicide had an occasion to look into the findings of the post-mortem report which altogether presents a different situation that she died due to asphyxia by strangulation. He ought to have considered as to whether the charge sheet could also be filed under Section 302 IPC. Such an exercise was not done by the Investigating Officer. Coming to the contents of the inquest report, the opinion of the inquest panchayatdars is that either the deceased may be murdered or she might have committed suicide. Having extracted the finding in the postmortem report in the charge sheet, the Investigating Officer came to the conclusion that it is a case of dowry death. He also failed to distinguish the commission of murder and the commission of dowry death.

29. Having regard to the above and totality of the facts and circumstances, the Criminal Revision Case is allowed by setting-aside the judgment of the trial Court in S.C. No.263 of 2003, dated 03.11.2004, and the matter is remanded to the learned V Additional District and Sessions Judge, Guntur, to consider framing of a charge under Section 302 IPC, if the material on record warrants the same, in addition to the charge under Section

304-B IPC, which was already framed, and to conduct retrial, by permitting the prosecution to adduce additional evidence, if any, and to recall the witnesses that were examined already by the prosecution and defence, if they so desires. This direction does not meant to eschew the evidence available on record as the intention of the Court in giving such direction is only to permit additional evidence, if any, and for recalling of witnesses as desired by the prosecution and the defence. The learned V Additional District and Sessions Judge, Guntur, is hereby directed to complete the entire process within four (4) months and to dispose of the matter, in accordance with law, without being influenced by any of the observations made hereinabove, at the time of final disposal of the Sessions Case, as the aforesaid observations made by this Court are only to point out the manner in which the matter was disposed of by the trial Court.

30. Respondents/Accused are hereby directed to appear before the learned V Additional District and Sessions Judge, Guntur, on 27.10.2022 to take note of further proceedings. The Registry is directed to send the entire lower court record along with a copy of this order through a special messenger to the learned V Additional

District and Sessions Judge, Guntur, on or before 22.10.2022 without fail.

31. The Registry is directed to mark a copy of this judgment to all the Criminal Courts in the State to follow the directions scrupulously while dealing with 304-B IPC cases and also to mark a copy to the Director General of Police, for circulation of the same to all the Police Officers, who are likely to deal with investigation of the cases for the offence under Section 304-B IPC.

Consequently, Miscellaneous Applications pending, if any, shall stand closed.

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JUSTICE A.V.RAVINDRA BABU

Date :20.10.2022
DSH