The III Additional District and Sessions Judge Vs Keesari Madhav Reddy

Court: Andhra Pradesh High Court

Date of Decision: July 18, 2003

Acts Referred: Dowry Prohibition Act, 1961 â€" Section 3, 4, 6
Evidence Act, 1872 â€" Section 32
Penal Code, 1860 (IPC) â€" Section 302, 304B, 498A

Citation: (2003) 2 ALD(Cri) 1047 : (2003) 2 ALT(Cri) 401 : (2004) 1 DMC 12

Hon'ble Judges: Elipe Dharma Rao, J; Bilal Nazki, J

Bench: Division Bench

Advocate: Public Prosecutor, for the Appellant; C. Praveen Kumar, for the Respondent

Judgement

Bilal Nazki, J.
Criminal Appeal Nos. 361 of 2003 and 362 of 2003 arise out of Sessions Case No. 711 of 2000 tried and decided by III

Additional Sessions Judge, Warangal. Since one of the accused has been sentenced to death by the learned Sessions Judge in the same case a

reference has been received by this Court being R.T. No. 1 of 2003. A1l the three matters pertain to the same judgment, therefore, they are

disposed of together.

2. Criminal Appeal No. 361/2003 is filed by A1 and Criminal Appeal No. 362/2003 is filed by A2 and A3. A1l the three accused were tried by

the learned Additional Sessions Judge for the offences under Sections 498-A, 304-B and 302 of I.P.C. and Sections 3, 4 and 6 of Dowry

Prohibition Act. They pleaded not guilty and claimed to be tried. Prosecution examined 19 witnesses and marked 11 Exhibits. No evidence was

led in defence. A1 to A3 were convicted u/s 302, I.P.C. A1 was sentenced to death. He was also fined Rs. 5,000/- in default of payment of fine

he has to undergo simple imprisonment for two years. A2 and A3 were sentenced to life imprisonment u/s 302, I.P.C. They were also fined Rs.

5,000/- in default they have to undergo simple imprisonment for two years. A1l the three accused were also convicted u/s 304-B, I.P.C. but no

separate sentence was given. A1l the accused were also convicted u/s 498-A, I.P.C. and all of them were sentenced to rigorous imprisonment for

three years. They were also fined with Rs. 1,000/- each, in default each one of them have to undergo simple imprisonment of six months. A1l the

three were also convicted u/s 3 of the Dowry Prohibition Act with sentence of R1 for five years and fine of Rs. 40,000/- collectively. This amount

is payable to P.W. 1. In default of payment of money the accused shall have to undergo simple imprisonment for one year. They were also

convicted u/s 4 of Dowry Prohibition Act and each of them were sentenced to undergo R1 for 2 years and have to pay a fine of Rs. 1,000/- each

in default simple imprisonment for six months. u/s 6 of the Dowry Prohibition Act also they were convicted with sentence of R1 of 2 years each

and a fine of Rs. 5,000/- each in default simple imprisonment for six months. The sentences of imprisonment were directed to run concurrently.

3. The allegations on the basis of which the charge-sheet was filed were that the accused on 20th April, 2000 at 8.00 a.m. poured kerosene over

one Kesari Kalavathi and put her on fire. She died on the evening of 21st April, 2000 at M.G.M. Hospital, Warangal. The deceased Kalavathi

was wife of A1, A2 and A3 are parents of A1.

4. P.W. 1 is the father of the deceased. He stated that the deceased was married to A1 three years before. His eldest son-in-law Peddireddy had

settled the marriage. He had agreed to pay cash dowry of Rs, 80,000/- but paid Rs. 40,000/- to A2 and A3. A1 had taken his wife to his house at

Uppugal and lived with her for one month. After a month the witness took his daughter to his house at Sholapur. After two months thereafter he

along with his daughter visited Kondur and paid Rs. 2,000/- and clothes to A1 on the occasion of Deepavali. He sent his youngest daughter to her

husband A1 to stay with him. A1 took her to his house for one month, but started beating her for non-payment of dowry of Rs. 40,000/-. The

witness told the accused No. 1 that due to his financial incapacity he was unable to pay the balance of Rs. 40,000/-. He took his daughter back to

Kondur. After one month again A1 took his wife back to his house. In the meantime A1 got ill and had to be operated for appendicitis. The

witness paid Rs. 4,000/- to A1 for undergoing the operation. The operation was conducted by Dr. Ravinder Reddy. After the operation A1

returned to his house along with his wife. Again after one month the witness took his daughter back to his house. Thereafter the accused did not

visit the witness''s house to get back his wife for 7 or 8 months. After some time the witness took his daughter to Sholapur. When he returned to

Kondur he came to know about some function in A1''s house. He had visited A1''s house. Ladies had also gone to A1''s house. A1 made a

demand to the witness''s wife about the payment of balance of dowry. His wife told A1 that it would be settled by her husband. On the next day

morning he was called by elders who talked to him about the unpaid dowry. He told the elders that he refused to pay the amount to A1 because

his daughter was being beaten and A1 was not doing any work and was wandering here and there. The witness however expressed his willingness

to keep the amount in a Bank in his daughter''s name. The elders told him that he should pay the dowry amount as A1 was in debt to the tune of

Rs. 10,000/-. The witness refused to pay the amount. A1 wanted him to pay the entire amount of Rs. 40,000/- so that A1 could settle his debts

and also open an Electric winding shop, but the elders advised A1 not to open winding shop as there were many shops in the village. Elders finally

advised him to pay Rs. 10,000/- so that A1 clears his debts. They also advised A1 to accompany him to Sholapur. Thereafter A1 and the

daughter of the witness visited the witness at Kondur. He paid cash of Rs. 10,000/- to A1. A1 in turn paid cash of Rs. 10,000/- to the eldest son-

in-law of the witness so that he could pay it to the creditors of A1. He took A1 and his daughter to Sholapur. He got him a job in Sholapur where

he was receiving Rs. 1,000/- to Rs. 1,500/-. He was keeping this money to himself. The witness was maintaining him and his wife for about a

month. Even at Sholapur A1 beat his wife and he complained that he had been brought to Sholapur in order to evade the payment of balance of

dowry. Eventually he left Sholapur and returned back to his village. By that time his daughter was living separately along with A1. She visited and

told him that A1 had left her. The witness searched for A1 at Bus Station, Railway Station, etc., upto 12 O''clock then his wife, brother-in-law and

son-in-law visited A1''s house at Uppugal and enquired about him. After 10 months the witness returned back to Kondur. A1 brought 10 elders to

his house and asked him to send his wife along with him to his house. The witness also gave names of some of those elders. A1 told them that he

was going to Hyderabad to work in a Brandy shop on a salary of Rs. 2,000/- per month. A2 accompanied A1. Elders convinced him that A1

would not behave as he behaved at Sholapur and maintain his wife properly at Hyderabad. He took his daughter to the house of A1 to A3 on

Monday and then he visited his elder son-in-law''s house, On Wednesday the deceased visited her elder sister''s house and told her that she was

beaten and was not even given food. The witness reported the matter to elders at whose instance he had sent his daughter to the house of A1.

Elders called A1, A2 and A3 and A1 accepted that he had beaten his wife and continue to beat her till he gets the unpaid dowry amount. He made

an immediate demand of Rs. 2,000/- so that he could purchase a table fan. The witness promised to buy a table fan when he visited Hyderabad.

This meeting took place on Thursday and the witness went to his village to arrange for money for purchasing a table fan for A1. On Friday morning

he came to know at about 8.00 a.m. through Bethi Taramma (P.W. 12) that his daughter Kalavathi was burnt. He and his wife visited A1''s house.

They were followed by his another daughter and son-in-law. His daughter Kalavathi was lying in front of A1''s house with a petticoat. His another

son-in-law shifted Kalavathi in an auto to Ghanpur to Dr. Jogu Kistaiah''s hospital. The doctor refused to treat her. On enquiry the deceased told

the witness that A3 poured kerosene on her, A1 lit match-stick and burnt her and A2 was watching. He stated that this statement was made by the

deceased four times. He shifted his daughter to MGM Hospital, Warangal in a jeep. Till then A1 to A3 did not visit the deceased. Magistrate

recorded the statement of Kalavathi. He reported the matter to police which is marked as Ex. P1. Even after she had been burnt she continued to

say that she was not even given food. She again repeated that A3 poured kerosene, A1 lit fire and A2 was watching. He admitted Kalavathi in

MGM Hospital on Thursday morning and she died on Friday evening by 5.00 p.m. The death occurred within 3 years of her marriage. His

statement was recorded by the police. By the time of death of Kalayathi he was in the police station reporting the matter to the police. On

telephonic call made by SI of Police he was told that his daughter died in the hospital. SI visited the hospital. On Saturday postmortem examination

was conducted on dead body. She was cremated and he spent about Rs. 20,000/- and nobody came forward. A1 to A3 did not come even for

cremation.

5. This witness is father of the deceased who spoke about the harassment of the deceased, about the demand and non-payment of dowry. He also

spoke about the statement allegedly having been made by the deceased before her death to him. He also stated that at the time of death of

Kalavathi he was in the police station reporting the matter to the police. He came to know about the death of the deceased through SI of Police

who had made a telephone call to the hospital.

6. P.W. 2 is the wife of P.W. 1. She also narrated almost the same story about the demand of dowry and the treatment given to her daughter by

A1. She also said that the deceased had spoken to her while the deceased was being shifted to hospital. She stated, ""On inquiry Kalavathi told me

that A1 to A3 burnt her by pouring kerosene and setting her afire. She was alive in MGM hospital for two days, on Friday evening 5 p.m. she died

while undergoing treatment. She was married to A1 two years prior to her date of death"". Her statement was recorded by police.

7. There was a suggestion put by the defence to both the witnesses i.e., P.W. 1 and P.W. 2 that in the hospital itself an agreement was executed

by the accused in favour of the witnesses that the accused party would pay Rs. 80,000/- and since this amount was not immediately paid,

therefore, FIR was lodged belatedly and the agreement was in possession of P.W. 1. Both the witnesses rejected this suggestion.

8. P.W. 3 is the sister of the deceased. She also narrated almost the same story as narrated by other two witnesses with regard to demand of

dowry. She also added that Kalavathi had visited her house at Uppugal at one point of time and complained that she was not being given food and

A1 and A3 were abusing her for non-payment of dowry. She also said that she was told by Taramma that Kalavathi was burnt, so she rushed to

Kalavathi and found her burnt, fire having been extinguished. On enquiry Kalavathi told her that she was thirsty and hungry and that A3 poured

kerosene and A1 lit fire to her. The deceased was shifted to Ghanpur and on refusal by Dr. Kistaiah she was shifted to M.G.M. Hospital and got

her admitted. At MGM Hospital also the deceased told her that A3 poured kerosene on her and A1 set fire on her.

9. P.W. 4 is the husband of P.W. 3. He also spoke of the demands of dowry and also corroborated to the statement made by his wife that

Kalavathi had come to their house and told them that she was not being given food. He also denied the suggestion that some agreement had been

executed between accused party and the complainant party. He also denied the suggestion that Kalavathi was unconscious.

10. P.W. 5 is father-in-law of P.W. 3 Taramma informed him that Kalavathi was burning. He rushed to the house of Kalavathi and made inquiries

from her. Kalavathi told him that A3 poured kerosene and A1 set fire. They shifted Kalavathi in an auto to Ghanpur and on refusal by Doctor they

shifted her to Warangal in a jeep. She died on Friday at 5.30 p.m.

11. P.W. 6 is a neighbour. He had seen Kalavathi coming out of her house burning. He brought a blanket from his house and covered her. Other

neighbours had rushed and changed the clothes of Kalavathi. In cross-examination this witness stated that when he covered her with a blanket the

condition of the deceased was hopelessly bad and she was unable to speak.

12. P.W. 7 is a resident of Uppugal. He had settled the marriage of A1 with the deceased. He came to know that A3 poured kerosene and A1 lit

fire to her. She died on 20.4.2000. He also stated that on 19.4.2000 one Poreddy Rajireddy (P.W. 9) came to him and informed him that A2 and

A3 were not giving food to Kalavathi and they should call A1 to A3 to a panchayat. They called A1 and A3 to a panchayat and made enquiries

from them. They refuted the allegations and returned back to their house. On 20th April, 2000 he saw villagers running in front of his house. On

enquiry he was told that Kalavathi was burnt by pouring kerosene by somebody. He visited Kalavathi''s house. They shifted Kalavathi in a jeep to

MGM Hospital. Elders were saying that A3 poured kerosene and A1 lit fire to her.

13. P.W. 8 is also a witness to certain panchayats where the allegations were levelled that Kalavathi was not being offered food. P.W. 9 is resident

of Uppugal. He stated that on 20th April, 2000 at about 9.00 a.m. villagers were running here and there and on enquiry from them he was told that

Kalavathi was burnt. He informed P.W. 4 accordingly. On instructions from P.W. 4 he brought an auto, Kalavathi was shifted to hospital. She

died in MGM hospital on next day. People were talking that A1 and A3 poured kerosene and burnt Kalavathi. The distance between his house

and the house of P.W. 4 was about 2 furlongs. P.W. 7 was neighbour of P.W. 4. P.W. 8 was also neighbour of P.Ws. 4 and 7. The distance

between the house of P.W. 1 and A1 is less than a kilometre.

14. P.W. 10 is also a witness to the fact that P.W. 1 was persuaded to send his daughter to A1 to join her husband. After 4 days he came to

know that Kalavathi was burnt by somebody. He did not know when Kalavathi died.

15. P.W. 11 is another witness. The house of A1 to A3 was separated by a pathway from the house of this witness. While he was sitting in front of

his house at about 8 or 8.30 a.m. Kalavathi took Kandiporuka inside her house for cooking, at that time A1 to A3 were not there in the house.

Within a minute she came outside the house with burns. P.W. 6 covered Kalavathi with a blanket. Chandramouli and his wife extinguished fire. A1

and others rushed to see Kalavathi. A1 and P.W. 1 were talking at a bunk away from Kalavathi. Kalavathi died after she was shifted to hospital.

This witness was declared hostile.

16. P.W. 12 is another witness who informed P.W. 1 on hearing that Kalavathi was burnt. P.W. 13 was mediator to inquest. P.W. 14 is an

Executive Magistrate who conducted inquest. P.W. 15 is the Magistrate who recorded the dying declaration. He got requisition from the police

station at 1.10 p.m., reached hospital and started recording the dying declaration at 1.30 p.m. in presence of duty doctor Dr. Karunakar Reddy.

He stated that he put some general questions to know the state of mind of the declarant. He was satisfied with the answers given by the declarant

that she was in fit state of mind to give statement. He denied the suggestion that parents of Kalavathi were present at the time of recording the

statement.

17. P.W. 16 is the Panch witness to the seizure. He stated that at the house of A1 to A3 police had seized burnt blanket, burnt saree, burnt blouse,

etc. under Panchanama Ex. P8. He did not remember how many days after the occurrence the seizure was conducted.

18. P.W. 17 is the doctor who conducted the post-mortem. He saw antemortem superficial unhealed burn injuries over the neck, front of chest,

back of chest, both upper limbs, perineum, both lower limbs, front of abdomen. The surface layers of skin lost at places sparing upper back of

chest lateral objects of both arms and both soles. The cause of death, according to him, was due to burns. He did not record percentage of burns

suffered by the deceased. According to him, normally even 30 to 40% burns could cause death depending upon the parts of the body which are

affected by the burns and also depending upon the facilities which are available at a particular place.

19. P.W. 18 is SI of Police. He received complaint Ex. P1 on 22.4.2000 at about 10 hours from P.W. 1. On the basis of this complaint he

registered case in Cr. No. 26/2000 and issued express FIR to all concerned. He informed CI of Police about the FIR as he was on VIP duty. He

proceeded to MGM Hospital and gave requisition to Executive Magistrate to conduct inquest. He seized the burnt saree pieces, blanket, petticoat

M.Os. 1 to 3 under Ex. P3 in presence of mediators. He then handed over the file to C.I. of Police for further investigation. Ex. P11 was rought

sketch prepared by him at the scene of offence. In cross-examination he stated that he had received the complaint Ex. P1 on 22.4.2000 at 10 a.m.

On the complaint the date was written as 23.4.2000. On 22.4.2000 he sent express FIR through PC 2443 to the Court. He did not mention the

time when he handed over the express FIR to PC 2443. On the same day he proceeded to MGM Hospital at 11.45 a.m. He did not examine the

doctor who had admitted the deceased with burn injuries in the MGM Hospital. He did not mention the name of the doctor on duty in the memo of

evidence. He did not examine the doctor who had given requisition for recording the dying declaration by the Magistrate. He did not examine the

doctor who was present at the time of recording the dying declaration by the Magistrate. He did not even mention the name of the doctor in the

memo of evidence. On the same day at about 4 p.m. he went to Uppugal village. He did not visit the house where the deceased received burns as

it was found locked up. He did not mention in his diary that, when he went to the house of the deceased the house was locked. He did not seize

kerosene tin or the match box from the house where the deceased received burn injuries. It is true that in Ex. P1 date 20 has been altered to 22

and there is no signature beneath the altered date. He denied the suggestion that he had drafted Ex. P8 after collecting M.Os. at police station.

20. P.W. 19 is the CI of Police. He verified the investigation done by P.W. 18, examined other witnesses. After completion of investigation and

arrest of the accused who had surrendered before him, he filed charge-sheet.

21. Now coming to the offence u/s 302, I.P.C., the main evidence is of dying declaration on which the learned Sessions Judge has also relied. The

learned Senior Counsel for the appellant Mr. Padmanabha Reddy submitted that there are four dying declarations and atleast two versions with

regard to the incident have been pressed into service. He submits that P.Ws. 1, 2, 3, 4 and 5 all claim that the deceased made an oral dying

declaration before them and they consistently stated that the deceased had told them that A1 lit the match stick, A2 was watching whereas A3

poured kerosene, but in the dying declaration which was recorded by the Magistrate (Ex. P5) the deceased stated to the Magistrate, ""My marriage

took place 3 months ago. A1ways my husband, my father-in-law and mother-in-law used to abuse me. Since three days I am suffering with fever,

nobody bothered about me. Today my husband morning time at 8.00 hours he set fire to my saree, hence I received burn injuries to my body. My

husband always used to abuse me"". There is no mention of accused Nos. 2 and 3 except that they used to abuse her. With respect to death or

cause of death the deceased did not attribute anything to accused 2 and 3. She did not even state that accused 2 and 3 were present at the scene

of occurrence. She only stated that her husband set fire to her saree, therefore, she received burn injuries. Obviously, it appears that this theory of

putting kerosene and setting fire has been invented afterwards. The Police Officer (P.W. 18) who investigated the case had not even opened the

house of A1 to A3. If kerosene was poured over the body of the deceased atleast one could find a container. Even in post-mortem report there is

no mention of even smell of kerosene. No doctor has even stated that kerosene was found on the body. Therefore, it appears that this theory of

pouring kerosene over the body of the deceased was invented much after. It becomes more suspicious because of the conduct of P.W. 1 and

other relatives of the deceased and also the investigation that had been conducted in the matter. Admittedly intimation was given to the police on

20th April, 2000 from the hospital which is contained in Ex. P7 which is titled as "Intimation" to Accident and Injuries to Police". This gives the

name and address of the deceased. It also gives the description of the person who brought the injured to the hospital. This was dispatched on 20th

April, 2000 at 10.35 a.m. and was sent to police and the Magistrate. Police did not act on this. They did not even register a case till 22nd April,

2000 when P.W. 1 gave a report after the death of the deceased. The Magistrate received the intimation by 1.10 p.m. through a police constable

and proceeded to record the dying declaration on 20th itself but the police did not know till 22nd. This is surprising. Under the column of "Nature

of injury or accident'' in Ex. P7 it is stated to be ''Grievous'', under column of ''Alleged cause'' it is stated as ""suicidal attempt..... Burns"". When Ex,

P7 was drafted the father of the deceased was in the hospital and he had admitted the deceased in the hospital. The information that the injuries

suffered were due to suicidal attempt must have either been given by the injured (deceased) or by the father himself. This is the first version

available on record about the occurrence.

22. Now coming to the report filed by the P.W. 1, he stated in his examination-in-chief that when his statement was recorded by the police he was

in the police station and he was reporting the matter to the police and in fact at the time of death of Kalavathi he was in police station and the SI of

Police had informed him that his daughter had died in hospital. The deceased died at 5.30 p.m. on 21.4.2000, report was given on 22.4.2000 at

10.00 a.m. i.e., about 17 hours after the death of the deceased. The whole thing shrouds in mystery and the suggestions put forth by the defence

that there had been an agreement between the parties of paying some money to the complainant so that he will not proceed in the matter gives

more room for suspicion. On 20th incident occurred, on 20th the deceased was admitted in the hospital, on 20th police knew that the incident had

taken place, the father, the sister, the mother and brother-in-law of the deceased did not report to the police but police come to know about it

through information from the hospital, still they do not act in the matter. The deceased dies on 21st, but thereafter also report was not given for

another 17 hours to the police station which is nearby and P.W. 1 who is the star witness submits that he gave the report at the time when the

deceased was dying in the hospital and in fact he came to know about the death of the deceased through SI in the police station. The whole thing is

shrouded in mystery and it appears that true picture of the events has been suppressed from the Court. Therefore, the oral dying declarations

become suspicious. The dying declaration recorded by the Magistrate does not, as has been pointed out, implicate accused 2 and 3. In all, two

versions of dying declarations are available where before the Magistrate the deceased blamed A1 only for burning her and whereas in oral dying

declarations she blamed all the three. Therefore, on the basis of these dying declarations one cannot convict accused 2 and 3 for the murder of the

deceased. The conviction of A2 and A3 u/s 302, I.P.C. has to be set aside.

23. Coming to the conviction of A1 u/s 302, I.P.C. there is again a difficulty that there are two versions. One version was that kerosene was

poured but there is no evidence to show that kerosene was at all used. There was no seizure of any container of kerosene. There was no smell on

the body of the deceased and the deceased in the dying declaration recorded by Magistrate did not speak of kerosene. The deceased only stated

that A1 set fire to her saree and she received injuries. When two versions of dying declarations are available then it becomes difficult to believe

either of them. There is an additional ground also not to believe such a dying declaration. P.W. 6 has not been even declared hostile and the

prosecution has not objection even to his statement. He is an independent witness and a neighbour and admittedly he was the person who brought

a blanket from his house and covered the deceased when he saw her burning outside her house. He must be one of those whose had seen the

deceased first admittedly much before her relations like P.Ws. 1, 2, 3 and 4 came to the place of occurrence. He stated that his house was a

pathway away from the house of the accused persons. When he saw the injured Kalavathi and put a blanket over her he noted that her condition

was hopelessly bad and she was unable to speak. It is possible that after some treatment temporarily she might have gained conscience and

capacity to speak because the Doctor had certified on 20th April, 2000 at 1.30 p.m. that the patient was conscious, coherent and fit, but still it

may not safe to rely on this dying declaration as well i.e., Ex. P5. The deceased had emphatically stated that her marriage had taken place three

months before whereas admittedly her marriage had taken place three years before. We are not holding that since she answered a question

wrongly which she was supposed to know definitely that her marriage had taken place three years before, therefore, she was not in a fit state of

mind, but we are only pointing out the fact that there are two versions mentioned in two sets of dying declarations. Then, one of the witnesses who

had occasion to first see the deceased after she got burn injuries had stated that she was not able to speak. Therefore, we do not consider it safe

to rely on Ex. P5 to convict A1 u/s 302, I.P.C. Since there are two versions which cannot be reconciled because in the first set of versions the

deceased blamed all the three whereas in the second version she blamed only one, it would be dangerous to rely on either of the versions. We are

fortified in our view by the judgment of Supreme Court in Kishan Lal Vs. State of Rajasthan, .

24. Coming to the other offences, the evidence has been discussed herein above. We have no doubt in our mind that offence u/s 498-A, I.P.C.

has been proved against A1 and there have been demands for dowry. A1l the witnesses including the relatives of the deceased and the Panch

witnesses have accused only A1 of demanding the dowry. There is not sufficient evidence to show that A1 and A3 subjected the deceased to

cruelty in order to receive any additional dowry, but going by the evidence of the Panchas and also the conduct of the accused throughout, as

narrated by the witnesses, we are convinced that a demand had been made and the deceased was put to cruelty and an offence u/s 498-A is

proved against A1. Accordingly, we uphold his conviction u/s 498-A of I.P.C. and set aside the conviction of A2 and A3 on this count also.

25. Since we have upheld the conviction of A1 u/s 498-A of I.P.C., we also uphold his conviction under Sections 3, 4 and 6 of the Dowry

Prohibition Act. The conviction of A2 and A3 is set aside on this count also.

26. Since the conviction of A1 u/s 498-A has been upheld and it has also been proved by the prosecution that the death of the deceased occurred

within 7 years of the marriage and the death was a dowry death, therefore, we are also upholding the conviction of A1 u/s 304-B, I.P.C. The

conviction of A2 and A3 u/s 304-B is set aside. The Trial Court has not awarded any sentence for this offence. We sentence A1 to undergo 10

years" rigorous imprisonment for the offence u/s 304-B of I.P.C. In view of this sentence, we are not awarding separate sentence to A1 for

offences under Sections 3, 4 and 6 of Dowry Prohibition Act and also u/s 498-A, I.P.C.

27. In result, the conviction and sentence against A1 to A3 for the offence u/s 302 of I.P.C. is set aside and they are acquitted of the charge. The

conviction and sentence against A2 and A3 under Sections 498-A, I.P.C. and Sections 3, 4 and 6 of the Dowry Prohibition Act is set aside and

they are acquitted of the same. The conviction of A1 u/s 304-B, I.P.C. is upheld and he is sentenced to undergo 10 years" rigorous imprisonment.

The conviction of A1 u/s 498-A, I.P.C., Sections 3, 4 and 6 of Dowry Prohibition Act is also upheld but no separate sentence is awarded. A2

and A3 shall be released from custody forthwith, if not involved in any other case. The fine amount paid, if any, be refunded. Accordingly, RT No.

1 of 2003 is dismissed, Crl. A. No. 362 of 2003 is allowed and Crl. A. No. 361 of 2003 is partly allowed.

28. Before parting with the case, we would like to remind the Judicial Officers that, before awarding death sentence they must ensure themselves

that a case is made out first u/s 302, I.P.C. and secondly after conviction u/s 302, I.P.C. the case is ''rarest of the rares'' as defined by the

Supreme Court in various judgments. The learned Sessions Judges should go through the judgment of Supreme Court reported in Bachan Singh

Vs. State of Punjab, , which was a judgment of Constitution Bench wherein the validity of provision of death sentence was challenged on the

ground that it was violative of fundamental rights. This judgment has recently been again emphasized and interpreted by the Supreme Court in

Krishna Mochi and Others Vs. State of Bihar, . The Supreme Court in para-41 stated :

In the case of Bachan Singh Vs. State of Punjab, , before a Constitution Bench of this Court validity of the provision for death penalty was

challenged on the ground that the same was violative of Articles 19 and 21 of the Constitution and while repelling the contention, the Court laid

down the scope of exercise of power to award death sentence and the meaning of the expression ""rarest of the rares"" so as to justify extreme

penalty of death and considered that Article 6 Clauses (1) and (2) of the International Covenant on Civil and Political Rights to which India has

acceded in 1979 do not abolish or prohibit the imposition of death penalty in all circumstances. All that they required is that, firstly, death penalty

shall not be arbitrarily inflicted; secondly, it shall be imposed only for the most serious crimes in accordance with a law, which shall not be an ex

post facto legislation. The Penal Code prescribes death penalty as an alternative punishment only for the heinous crimes which are not more than

seven in number. Section 354(3) of the Criminal Procedure Code, 1973 in keeping with the spirit of the International Covenant, has further

restricted the area of death penalty. Now according to this changed legislative policy, which is patent on the face of Section 354(3), the normal

punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of year) and death

penalty is an exception. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of

punishment or making the choice of sentence for various offences, including one u/s 302 of the Penal Code, the Court should not confine its

consideration ""principally"" or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances

of the criminal. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved

character of the perpetrator. And it is only when the culpability assumes the proportion of extreme depravity that ""special reasons"" can legitimately

be said to exist. Judges should never be blood thirsty. It is, therefore, imperative to voice the concern that Courts, aided by the broad illustrative

guidelines indicated, will discharge the onerous function with ever more scrupulous care and humane concern, directed along the high road of

legislative policy outlined in Section 354(3) viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an

exception.

In para-42 they quoted Machhi Singh and Others Vs. State of Punjab, , which was a judgment following Bachan Singh''s case wherein it had been

observed that the ''rarest of the rate'' cases would be a case where the collective conscience of the community is so shocked that it will expect the

holders of the judicial power to inflict death* penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death

penalty.