

Dr. J.K.N.BjbjqPqP :CE::FBÿÿÿÿÿÿ= \$ \$ \$ \$ \$ \$ \$ 8 €€€8,l,\$8 XTÖ~"ÖÖÖ+++xSÜSÜSÜSÜSÜS\$*Vh'X'yS\$ ++yS\$ \$ ÖÖÜTö ö ö \$ Ö\$

ÔxSô xSô ô ÿ8p\$ \$ <◊Ö'AÉ€D€0-ó:S\$(TÖXT%◊..&YÜ'Y4<◊◊&Y\$ <◊+³,ö k'ÿ++ÿSyS d+++XT8 8 8 döä8 8 8 œ8 8 8 \$ \$ \$ \$

\$ \$ ÿÿÿHON'BLE SRI JUSTICE K.C.BHANU AND HON'BLE SMT JUSTICE ANIS CRIMINAL APPEAL No.124 OF 2010 J U D G M E

N T : (per Hon'ble Smt Justice Anis) This Criminal Appeal is filed by the appellant/accused, under Section 374(2) of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C'), against the Judgment dated 08.12.2008 passed in Sessions Case No.265 of 2008 on the file of the V Additional Metropolitan Sessions Court, (Mahila Court), Hyderabad, whereunder and whereby, the appellant/accused was found guilty of the offences punishable under Sections 302, 304-B & 498-A of the Indian Penal Code, 1860 (for short, 'I.P.C') and accordingly, convicted and sentenced to undergo life imprisonment and to pay fine of Rs.5,000/-, in default, to undergo rigorous imprisonment for six months; to undergo rigorous imprisonment for five years and to pay fine of Rs.2,000/-, in default, to undergo rigorous imprisonment for three months; and to undergo rigorous imprisonment for two years and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for two months for the said offences respectively, while acquitting for the offence punishable under Section 3 of the Dowry Prohibition Act, 1961.

2. The brief facts that are necessary for disposal of the appeal are stated as follows: On 04.12.2007, the police, Chatrinaka, received information from the Osmania General Hospital, Hyderabad, for recording of the statement of Smt.H.Vimala (hereinafter referred to as 'the deceased'), wife of Radha Krishna. Then, one M.Somalingam, Head Constable 3884, P.S Chatrinaka, was deputed by PW.9-Sub-Inspector of Police, Chatrinaka, for recording the statement of the deceased. After receiving the instructions, the Head Constable went to the hospital and recorded the statement of the deceased, in which she stated that her marriage was performed with the accused about eighteen months back; that the accused is her distant relative and was doing cloth business on his bicycle; that at the time of marriage, Rs.40,000/- of cash, three tulas of gold and house hold articles were given as dowry to the accused; that after few days of the marriage, the accused sold away the gold ornaments; that eight days prior to the incident, he took away her gold ear studs and not returned the same and on that, she went to her parents' house and informed to her parents; that after three days, accused came to her parents' house and brought her back by giving the ear studs; that thereafter, on 03.12.2007, accused came to house in an intoxicated condition, made a quarrel with her and at about 18:30 hours, he poured kerosene, which was kept in a plastic bottle, and set fire over her body due to which she sustained burn injuries; that after receiving the burns, she raised hue and cry and came out of the house and in the meantime, the accused extinguished the flames by pouring water on her; that after hearing the cries, the neighbours came there and on seeing them, the accused fled away from the spot; and that neighbours shifted her to Eshwar Prasad Memorial Hospital, later her brother shifted her to Hari Prasad Memorial Hospital and thereafter, again shifted to Osmania General Hospital for better treatment. PW.9 after receiving the statement of the deceased, registered the case in Cr.No.383 of 2007 for the offence punishable under Section 307 I.P.C and issued the First Information Report-Ex.P7. Thereafter, on the requisition sent by the Investigating Officer-PW.9, PW.6-the Metropolitan Magistrate, Hyderabad, went to the hospital and recorded the dying declaration of the deceased-Ex.P5. Thereafter, he handed over the investigation to his next officer PW.10, who visited the Osmania General Hospital, recorded the statement of the deceased, visited the scene of offence, conducted the scene of offence panchanama in the presence of PW.5 and another under Ex.P3, and seized the material objects MOs.1 to 3. PW.10 further recorded the statements of all the witnesses and after knowing about the death of the deceased, altered the section of law from Section 307 I.P.C to Sections 302 & 498-A I.P.C, issued alteration memo and thereafter, handed over the investigation to PW.11. PW.11 took up investigation, verified the investigation done by PWs.9 & 10, visited the Osmania General Hospital on 07.12.2007, conducted inquest panchanama over the dead body of the deceased in the presence of PWs.4 & 8 and later, sent the dead body for post-mortem examination. PW.7-doctor conducted post-mortem on the dead body of the deceased and gave opinion that the deceased died due to burns. On 11.12.2007, PW.11 arrested the accused, who admitted about committing the offence. PW.11 also sent the accused to hospital for medical treatment as he sustained injuries to his hands and legs and thereafter, produced him before the Court. Thereafter, the Investigating Officer-PW.11 on his transfer, handed over the investigation to PW.12, who took it, verified the investigation done by his predecessors and after collecting the post-mortem report and after completing the investigation, filed the charge sheet into the Court.

3. On appearance of the accused, the trial Court framed the following charges against him: "FIRSTLY: That you accused on and prior to 3rd day of December, 2007 in your house situated at Hanuman Nagar, Uppuguda, Hyderabad, being the husband of Smt. H. Vimala, aged 19 years by wilful conduct of such nature to wit by harassing her mentally and physically by taking and spending the dowry amount and gold for your personal use and when the same was informed by her to her parents you accused quarrelled with her and poured kerosene on her and set fire to her, drove the said Smt. H. Vimala to die and you thereby committed an offence punishable U/S.498-A of Indian Penal Code and within my cognizance. SECONDLY: That the deceased Smt.H.Vimala, Wife of you accused, aged 19 years died on 6th day of December, 2007 otherwise than under normal circumstances within seven years of her marriage that you accused before her death subjected her to cruelty and harassment by quarrelling with her on the issue of her informing to her parents that you accused taken away all her gold articles, her gold studs and dowry amount and used for your personal use, in connection with demand of dowry and that you thereby committed an offence punishable U/S.304-B of Indian Penal code and within my cognizance. THIRDLY: That you accused on or about the same day time and place as mentioned in the first charge supra and during the course of same transaction did commit murder by intentionally or knowingly causing the death of your wife and that you thereby committed an offence punishable U/S.302 of Indian Penal Code and within my cognizance. LASTLY: That you accused being the husband of the deceased Smt.H.Vimala have performed the marriage of you accused with her prior to 18 months from the date of incident by taking dowry of Rs.40,000/- cash, 3 tulas of gold and other household articles and you thereby committed an offence punishable U/S.3 of Dowry Prohibition Act and within my cognizance."

4. When the above charges were read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried. 5. To substantiate the charges, the prosecution examined P.Ws.1 to 12 and got marked Exs.P-1 to P-10, besides the case properties MOs.1 to 3. 6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same and reported no oral or documentary evidence on his behalf. 7. The trial Court after hearing both sides and taking into consideration, the oral and documentary evidence available on record, convicted and sentenced the appellant/accused as stated above. Aggrieved by the said conviction and sentence, the present appeal has been preferred by the appellant/accused. 8. The learned counsel for the appellant/accused stated that there is no sufficient material evidence available on record to convict the accused for the offences punishable under Sections 498-A 304-B & 302 I.P.C; that the trial Court convicted the accused basing on the highly interested evidence of PWs.1 to 3; that there is no direct evidence to prove the prosecution case; and that before the incident, there was a quarrel between the deceased and the accused. It is also argued by the learned counsel that there is no harassment made by the accused for demand of dowry; that the deceased sustained only 54% burn injuries and if proper treatment was given, she would have survived; that the accused also sustained injuries while saving the deceased; that the prosecution failed to prove the intention and motive behind the incident and therefore, the accused is entitled for benefit of doubt. It is further argued by the learned counsel that the evidence of the parents of the deceased is not supported by any other evidence and basing on their evidence, it is not safe to convict the accused; that prosecution failed to produce the independent witnesses and the other evidence produced by the prosecution is hearsay evidence and not corroborated and therefore prayed the Court to take a lenient view by converting the conviction from Section 302 I.P.C to 304 Part-I I.P.C as he has already undergone seven years imprisonment in jail. 9. On the other hand, the learned Public Prosecutor appearing for the State argued that basing on the evidence of PWs.1 to 3 coupled with the evidence of PW.6, who recorded the statement of the deceased prior to her death, and Ex.P5 dying declaration in which the deceased categorically stated that the accused poured kerosene and set fire to her, the trial Court rightly convicted the accused; that the Head Constable initially recorded the statement of the deceased in the hospital, wherein the deceased stated the same facts to him; that the accused was demanding gold ornaments of the deceased and from the beginning, he harassed the deceased; that by producing the evidence of PWs.1 to 12, the prosecution able to prove the guilt of the accused beyond reasonable doubt and as such, accused is not entitled for any lenient view and therefore, prayed the Court to dismiss the appeal. 10. Now, the points for determination in this appeal are as follows: 1. Whether the death of the deceased is a homicidal death? 2. Whether the prosecution is able to prove its case beyond all reasonable doubt against the appellant/accused of the offences punishable under Sections 302, 304-B & 498-A I.P.C? 3. Whether the Judgment of the trial Court is correct, legal and proper?" 11. P O I N T No.1: PW.7-doctor received the requisition from the police,

[illegible]

[illegible]

[illegible]