

JUSTICE K.C.BHANU AND HON'BLE SMT JUSTICE ANIS CRIMINAL APPEAL No.765 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 23.11.2009 passed in Sessions Case No.266 of 2008 on the file of the Additional Sessions Court, Hindupur, whereunder and whereby, the appellant/accused was found guilty and accordingly, convicted and sentenced to undergo life imprisonment and to pay fine of Rs.100/- for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for short, 'I.P.C'). 2. The brief facts that are necessary for disposal of the appeal are stated as follows: On 17.05.2007 one Dasari Padmavathi (hereinafter referred to as 'the deceased') and her children were sleeping in front of their hut. At about 10:00 p.m the accused, who was her husband, came to the house in a drunken state, started galata with her and asked to serve food. The deceased served food to the accused and after having the dinner, the accused again started galata suspecting the fidelity of the deceased with some others. In this regard, the deceased told the accused not to suspect her fidelity and she can swear oath to prove her chastity. For that the accused grew wild and in the meantime on hearing galata father of the accused-PW.1, who was residing by the side of the house of the accused, sent his wife PW.2 to pacify the matter. Accordingly, PW.2 came to the house of the accused and advised the accused and the deceased not to quarrel. In this regard, the accused grew wild and slapped his mother-PW.2. The accused having enraged, took kerosene oil from his hut, poured kerosene oil on the body of the deceased and lit fire saying that he would kill the deceased in the presence of PW.2. On seeing the act of the accused, his mother being afraid rushed to her house and informed the said fact to her husband-PW.1. Accused, in a fit of anger lit fire with a match stick to the deceased with an intention to kill her. Due to the said act, the deceased caught with fire over the body and raised hue and cry. Then, accused pushed the deceased from his hut while she was in ablaze and fell down on the ground. On hearing the cries of the deceased, PWs.1, 2 & 4 rushed to the place to put off the flames. PWs.5, 6 & 7, who are the neighbours also rushed to the spot after hearing the cries of the deceased and put off the flames. The minor daughter of the deceased and accused also witnessed the incident. The persons, who were present at the scene of offence, chastised the accused about his high handedness towards his wife and later, the accused ran away from the scene of offence. PW.1 along with other neighbours took the deceased to Government Hospital, Dharmavaram, and got admitted her. After receiving the hospital intimation, PW.18 recorded the statement of the deceased under Ex.P15, on which PW.20 registered the case in Crime No.39 of 2007 of Dharmavaram Rural Police Station for the offence punishable under Section 307 I.P.C. PW.17-the Judicial Magistrate of First Class, Dharmavaram, recorded the dying declaration of the deceased under Ex.P13. Thereafter, the deceased was shifted again to Government General Hospital, Kurnool, for better treatment and while undergoing treatment, she succumbed to burn injuries. After hearing the death intimation, the section of law was altered from Section 307 I.P.C to 302 I.P.C. PW.16 examined the accused and issued wound certificate-Ex.P11. The Investigating Officer-PW.19 took up investigation, recorded the statements of all the witnesses, conducted the scene of offence panchanama and inquest panchanama in the presence of mediators and sent the dead body for post-mortem examination. After receiving the post-mortem report and other reports and after completing the investigation, PW.19 filed the charge sheet into the Court. 3. On appearance of the accused, the trial Court framed the following charge against him: "That you on 17.05.2007 at about 10 p.m. altercated with your wife the deceased Dasari Padmavathi suspecting her fidelity and did commit murder of by intentionally and knowingly causing death of Dasari Padmavathi, poured kerosene on her body and set fire to her and ran away and subsequently, the deceased died due to the burn injuries while undergoing treatment and that you thereby committed an offence punishable under Sec.302 of the Indian Penal Code and within my cognizance." 4. When the above charge was read over and explained to the accused in Telugu, he pleaded not guilty and claimed to be tried. 5. To substantiate the charge, the prosecution examined P.Ws.1 to 20 and got marked Exs.P-1 to P-20, besides the case properties MOs.1 & 2. 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. Accused 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 argued that it is not a case of homicide, but it is a case of suicide; that there is no intention on the part of the accused to kill his wife without any reason; that the crucial material witnesses turned hostile and not supported the case of prosecution; that the prosecution is only relying on Exs.P13 & P15 and those statements were given orally by the deceased before PWs.17 & 18 after being tutored by the relatives. It is also argued that there is no corroborative evidence to prove that Exs.P13 & P15 were given voluntarily by the deceased and in fact the accused also tried to save the life of the deceased and suffered injuries and the deceased poured kerosene on herself and lit fire in order to commit suicide; that there is a time gap between the recording of Ex.P13-dying declaration and Ex.P15-complaint statement and finally stated that the accused has not committed any offence, there is no evidence to show that accused had committed the offence and therefore, prosecution not able to prove the guilt of the accused beyond reasonable doubt and prayed the Court to allow the appeal by acquitting the accused. 9. On the other hand, the learned Public Prosecutor appearing for the State argued that immediately after receiving the hospital intimation-Ex.P14, Head Constable-PW.18 went to the hospital and recorded the statement of the deceased under Ex.P15; that PW.17-Judicial Magistrate of First Class, Dharmavaram, recorded the dying declaration of the deceased under Ex.P13 and the contents of Exs.P15 & P13 clearly shows that accused poured kerosene and set fire to the deceased and due to the said burn injuries she died; that the medical evidence is supported by the ocular evidence; that though there are material discrepancies in the evidence of PWs.1 to 9, it will not be fatal to the case of prosecution; that on the other hand, PWs.10 to 12-the mother, sister and brother of the deceased categorically stated that accused used to harass the deceased and demand for dowry and that the accused is responsible for the death of the deceased. The learned Public Prosecutor also argued that the dying declaration-Ex.P13 given to PW.17-the Judicial Magistrate of First Class and Ex.P15 statement given to the police (PW.18) are corroborated with each other and the deceased was conscious and coherent while giving these two statements, therefore, the trial Court after considering all these aspects rightly convicted the accused for the offence punishable under Section 302 I.P.C and the said finding of the trial Court needs no interference and prayed the Court to dismiss the appeal. 10. Now, the points for determination in this appeal are as follows: 1. Whether the prosecution is able to prove its case beyond all reasonable doubt against the appellant/accused of the offence punishable under Section 302 I.P.C? 2. Whether the Judgment of the trial Court is correct, legal and proper? 11. P O I N T S: A perusal of the evidence shows that PW.18-Head Constable of Dharmavaram Rural Police Station received Medical M.L.C Intimation-Ex.P14 on 17/18.05.2007 from the Government Hospital, Dharmavaram, and after receiving the same, he immediately rushed to the hospital and found the deceased with burn injuries. He recorded the statement of the deceased under Ex.P15 in the presence of the duty doctor, who endorsed her state of mind as fit. PW.20-Sub-Inspector of Police received the said statement of the deceased on 21.05.2007, registered the case in Cr.No.39 of 2007 for the offence punishable under Section 307 I.P.C, issued the First Information Report-Ex.P16 and thereafter, recorded the statements of the deceased and also some of the witnesses. The deceased in her statement-Ex.P15 stated that on the date of incident at about 10:00 p.m accused came to house by consuming alcohol and she served food to him; that after taking food, the accused started quarrelling with her suspecting her character and when she sworn on her children, immediately he poured kerosene on her and set fire to her; that then, she raised hue and cry and her neighbours came and put off the flames; and that thereafter, she was shifted to Government Hospital, Dharmavaram. PW.18-the Head Constable, who recorded the statement, denied that Ex.P15 is a fabricated document and at the instance of the relatives of the deceased, he registered a false case against the accused. PW.20-Sub-Inspector of Police after registering the case, recorded the statement of the witnesses, sent a requisition to PW.17-Judicial Magistrate of First Class, Dharmavaram for recording of dying declaration of the deceased, and in the meanwhile, proceeded to the scene of offence, prepared the rough sketch of the scene of offence under Ex.P18 and seized MOs.1 & 2 in the presence of the mediators. On receiving the requisition, PW.17-Judicial Magistrate of First Class, Dharmavaram recorded the dying declaration of the deceased under Ex.P13 after putting some simple questions and after satisfying that the deceased was conscious and coherent and in fit state of mind to give declaration. Thereafter, the deceased was shifted to Government General Hospital, Kurnool, where, while undergoing treatment, she died. In the statement, the deceased clearly

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