

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

CRIMINAL APPEAL No.1330 OF 2010

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

The appellants were convicted in Sessions Case No.371 of 2009 on the file of the learned V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad, *vide* judgment dated 27.10.2010, in relation to the death of Nazia Begum, the wife of A1. A1 was found guilty of the charge under Section 302 IPC and Section 4 of the Dowry Prohibition Act, 1961. A2, the mother of A1, and A3, the brother of A1, were also found guilty of the offence under Section 4 of the Dowry Prohibition Act, 1961. A4, the brother-in-law of A1, and A5, a friend of A3, were both acquitted of the offence under Section 4 of the Dowry Prohibition Act, 1961. All the accused were also acquitted of charges under Sections 498A IPC and 304B IPC. A1, having suffered conviction under Section 302 IPC, was sentenced to undergo life imprisonment and pay a fine of Rs.1,000/-, in default of which, he was to undergo simple imprisonment for three months. As regards the offence under Section 4 of the Dowry Prohibition Act, 1961, he was sentenced to undergo simple imprisonment for six months and pay a fine of Rs.1,000/-, in default which, he was to undergo simple imprisonment for one month. A2 and A3, convicted of an offence under Section 4 of the Dowry Prohibition Act, 1961, were sentenced to undergo simple imprisonment for six months and pay a fine of Rs.1,000/- each, in default of which, they were to undergo simple imprisonment for one month.

Aggrieved by the conviction and sentences visited upon them, A1 to A3 filed this appeal under Section 374(2) CrPC.

By order dated 08.11.2010, this Court granted bail to A2 and A3 upon each of them executing a personal bond for Rs.10,000/- and furnishing two sureties each in a like sum to the satisfaction of the Chief Metropolitan Magistrate, Hyderabad. Thereafter, A2 died on 16.11.2011 and the appeal stands abated in so far as she is concerned.

The case of the prosecution, in brief:

The deceased, Nazia Begum, was the second daughter of Mahamooda Begum (LW.2). Nazia Begum was a graduate and married A1 without the consent of her immediate family. A1 is none other than the son of the uncle of the deceased. They lived happily together for some time, but thereafter the accused started raising demands for a house. At the time of the marriage, the parents of the deceased did not give anything to A1. Mahamooda Begum (LW.2), her younger brother (PW.1), the father of the deceased (PW.3), and a family friend (PW.2) went to the house of the accused and asked them to wait for some time to enable PW.3 to either give a new house or give a share in their house. However, the accused did not stop harassing the deceased though her relations visited them four or five times and requested them not to do so. As the accused did not stop the harassment and used to quarrel with the deceased for a house, at the request of her relations, A1 and the deceased started living separately. During this time, the deceased gave birth to a child. A2 to A4 used to visit the house of A1 and used to instigate him to harass the deceased for a house. On the intervening night of 17/18.10.2006, the deceased was killed by pouring kerosene and setting her on fire. She was admitted to Osmania General Hospital, Hyderabad, and died on 21.10.2006 at about 7.00 P.M. due to the burns.

The Head Constable, Kalapather Police Station (PW.10), received a telephone message from Osmania General Hospital on 18.10.2006 about the admission of Nazia Begum with burns and proceeded to the burns ward at the hospital. He recorded the statement of Nazia Begum. Ex.P8 is the said statement recorded by him in Telugu. PW.10 returned to the Police Station and handed over Ex.P8 statement to the Sub-Inspector of Police, Kalapather Police Station (PW.8). Thereupon, PW.8 registered a case in Crime No.103 of 2006 under Sections 307 and 498A IPC read with Section 34 IPC. Ex.P9 is the FIR. He took up investigation in the case and gave a requisition to the Special Judicial First Class Magistrate for Excise Cases, Hyderabad (PW.7), to record the statement of Nazia Begum. PW.7 recorded the dying declaration (Ex.P.6) of Nazia Begum at 10.15 AM on 18.10.2006. PW.8 went to the hospital and he also recorded the statement of Nazia Begum. Ex.P.10 is the said statement. PW.8 then went to the scene of the offence and in the presence of Shaik Jaffar (LW.9) and Mohd. Afzal (PW.9), he prepared the scene of the offence panchanama. Ex.P.11 is the said panchanama. He seized the partly burnt curtain (MO.4), a plastic Fanta bottle (MO.1), a match-box (MO.2), a burnt match stick (MO.3), a partly burnt salwar (MO.5), a partly burnt shirt (MO.6), a partly burnt petticoat (MO.7) and a partly burnt bedsheet (MO.8). These case properties were seized under cover of the scene of the offence panchanama (Ex.P.11). PW.8 returned to the police station at 4.00 P.M. and examined PWs.1 to 3 and Mahamooda Begum (LW.2) and recorded their statements. In the evening of the said day, he recorded the statements of Syed Haneef Hashmi @ Haneef (LW.6) and Syed Hassan Hashmi @ Mahaboob Hussain (LW.7). On 20.10.2006 at about 9.00 A.M., PW.8 went to the house

of A2 and apprehended A1 to A4. He also apprehended A5 on the way and brought all the accused to the Police Station. He arrested A1 to A5 at 12.00 Noon and sent them for remand. On 22.10.2006, he received intimation from the hospital that Nazia Begum had died due to the burns and altered the provisions of law from Sections 498A and 307 IPC to Sections 302 and 304B IPC read with Section 34 IPC along with Section 498A IPC. Ex.P.12 is the memo altering the provisions of law. He then handed over the case diary to the Assistant Commissioner of Police, Charminar Division (PW.12). PW.12 instructed PW.8 to requisition the Mandal Revenue Officer (PW.5) to hold an inquest over the dead body. PW.12 then visited the scene of the offence, the house of the deceased and A1 at Kalapather. He secured the presence of PWs.1 to 4 and four others and recorded their statements. After completing the investigation, he laid a charge sheet.

Upon committal, the Sessions Court framed four charges against the accused. The gravamen of the charges framed by the Sessions Court against the five accused was that firstly, they had by willful conduct of such nature harassed the deceased physically and mentally on the demand of dowry in the form of transferring the house of her father to their name and drove her to commit suicide and thereby committed an offence punishable under Section 498A IPC and secondly, that they, A1 to A5, on 17.10.2006 at about 11.00 P.M. in their house situated at Kalapather, Hyderabad, caused the death of Nazia Begum, wife of A1, within seven years of marriage by subjecting her to cruelty and harassing her to bring dowry from her parents in the form of transferring the house of her father in their name and thereby committed an offence punishable under Section 304B IPC, and thirdly, that A1

committed murder by intentionally or knowingly causing the death of his wife Nazia Begum and thereby committed an offence punishable under Section 302 IPC, and lastly, that they, A1 to A5, had demanded dowry from Nazia Begum's parents in the form of transferring the house of her father in their name and thereby committed an offence punishable under Section 4 of the Dowry Prohibition Act, 1961.

The accused pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined 12 witnesses and marked 12 exhibits. Case properties were marked as MOs. 1 to 8. The defence examined two witnesses and marked two exhibits.

Upon consideration of the material and evidence on record, the Sessions Court was of the opinion that the dying declarations of the deceased recorded by the Magistrate (PW.7), being Ex.P6, and the initial statement of the deceased recorded by the Head Constable, Kalapather Police Station (PW.10), being Ex.P8, were trustworthy and could be made the basis for convicting A1 and accordingly found him guilty of the offence under Section 302 IPC. However, opining that there was no actual evidence of the deceased being subjected to any harassment for dowry, all the accused were acquitted by the Sessions Court of the charge under Section 498A IPC. As regards the charge under Section 4 of the Dowry Prohibition Act, 1961, the Sessions Court found that sufficient evidence had been adduced in proof of the demand made by A1 to A3 for a house and accordingly convicted them of this charge. A4 and A5 were acquitted of these charges. Basing upon the convictions as stated above, the Sessions Court imposed sentences. The Sessions Court acquitted all the accused of the charge under Section 304B IPC.

The oral evidence in support of the prosecution's case was as under: PW.1 was the maternal uncle of the deceased. He stated that she got married to A1, who was the son of her other uncle, without informing family members. However, after some time, the accused started harassing her for dowry as nothing was given at the time of the marriage. He further stated that a promise was made to the accused that PW.3, the father of the deceased, would give a new house or at least a share in their house but despite the same, the accused continued to harass the deceased. He said that he came to know about the burning of the deceased during the intervening night of 17/18.10.2006 and immediately went to the hospital but was not allowed to see her till 2.30 P.M. or 3.00 P.M. on 18.10.2006. He said that the deceased had informed him that A1 had poured kerosene on her and lit fire to her. He confirmed that the deceased was alive for about three days but died thereafter due to the burns. In his cross-examination, PW.1 confirmed that the deceased and A1 started living separately away from the house of the parents of A1.

PW.2, a resident of Kamatipura, Hyderabad, stated that he knew the deceased and that PW.1 was his friend. He knew PW.3 since 25 years and he also knew all his children. He affirmed that the deceased and A1 got married by themselves and that they lived happily for about six months. He said that quarrels started thereafter as no dowry was given to A1 at the time of the marriage. The deceased was stated to have informed PW.1 about the harassment in this regard and requested him to come and settle the matter. The accused were stated to have demanded a house or plot and PW.2 said that they had requested the accused not to harass the deceased and promised that a house would be given

after some time. He spoke of the continued harassment of the deceased by the accused for a house. He said that he came to know on 18.10.2006 about the burning of the deceased through PW.1 at about 12.00 or 12.30 P.M. He said that he went to the hospital at 4.00 P.M. and met the parents of the deceased. He also said that he saw the deceased and talked to her and she informed him that on 17.10.2006, A1 went to the house of his parents and returned in the evening and started quarrelling with her in relation to the demand for a house. Thereafter, A1 poured kerosene on her and lit fire to her.

PW.3, father of the deceased, reiterated the gist of the testimony of PWs.1 and 2. He said that he was informed of the burning incident by two boys from the locality of A1 and found that the deceased had been shifted to the hospital by A1 and others. The police were present at the time he went to the hospital. He also said that the police and doctors did not allow him to talk to his daughter till 3.30 P.M. on 18.10.2006. The deceased told him that as he had delayed giving a house as demanded, A1 went to the house of his mother on 17.10.2006 and picked up a quarrel with her after returning. In that process, she said that he poured kerosene on her and set fire to her. In his cross-examination, PW.3 said that he had no personal knowledge about the harassment and demand of dowry by the accused.

PW.6, a Tutor in Osmania Medical College, Hyderabad, conducted the post-mortem examination of the dead body of the deceased. She found that the deceased had suffered 60% dermo-epidermal burns all over the body, except the waist, back of the right and left legs and back of the right thigh. She opined that

cause of death was due to 60% mixed flame burns. Ex.P3 was certified by her to be the post-mortem examination report.

PW.7, the Special Judicial First Class Magistrate for Excise Cases, Hyderabad, who recorded Ex.P6 dying declaration, stated that he received the requisition to record the said declaration from the Sub-Inspector of Police, Kalapather, at 9.30 A.M. on 18.10.2006. He said that he reached the hospital at 10.15 A.M. and identified Nazia Begum through the duty doctor, V.Nagabhushanam. The duty doctor issued a certificate about the mental fitness of the patient. Ex.P5 is the endorsement of the doctor about the state of mind and the patient being fit enough to give a statement. PW.7 stated that he put preliminary questions to the deceased to know her mental fitness and also disclosed his identity. After satisfying himself as to the mental condition of the patient, he recorded the declaration. PW.7 said that Nazia Begum stated that on 17.10.2006 at about 11.00 P.M., she and her husband had a dispute in relation to transfer of a house in his name. She further stated that her husband poured kerosene on her at about that time and set fire to her. PW.7 stated that he obtained the left leg toe impression on the statement as both her hands were burnt. Thereafter, the duty doctor again certified that the patient was in a fit state of mind. Ex.P7 is the endorsement of the doctor. PW.7 confirmed that Ex.P6 was the dying declaration recorded by him and that, at the time the statement was recorded, he and the duty doctor were alone present with the deceased.

PW.8, the Sub-Inspector of Police, Kalapather Police Station, investigated the case after receiving Ex.P8 statement and registering Crime No.103 of 2006. He spoke of the various steps taken by him during the investigation. He confirmed that he also

recorded the statement of Nazia Begum and that Ex.P10 was the said statement. In his cross-examination, he confirmed that Ex.P10 does not reflect that the doctor was present at the time of recording the said statement and that no certification was obtained on Ex.P10 as to the mental fitness of the deceased. Ex.P10 admittedly does not disclose the time at which it was recorded. He admitted that Ex.P8 statement recorded by the Head Constable, Kalapather (PW.10), also did not contain certification by the doctor.

PW.10, the Head Constable, Kalapather Police Station, affirmed that he recorded the statement of Nazia Begum and that Ex.P8 is the said statement. In his cross-examination, he admitted that he did not mention in the said statement that the doctor was present and that he took the permission of the doctor to record the statement. He however asserted that the doctor told him that the deceased was in a fit state of mind and was present throughout the recording of the statement. He conceded that there was no endorsement by the doctor on Ex.P8 statement about the mental condition of the deceased.

PW.12, the Assistant Commissioner of Police, Charminar Division, stated that he also recorded the statement of the deceased on 18.10.2006. However, this statement was not marked in evidence. He denied the suggestion that he had not recorded the statement of the deceased on the said day.

Now, a look at the oral evidence adduced by the defence:

DW.1 is a neighbour of A1. He said that Mahamooda Begum (LW.2), the mother of the deceased, came to the house of A1 and there was an altercation between her and the deceased as she was insisting that the deceased should leave A1. The deceased was stated to have informed DW.1 that her mother was continuously

quarrelling with her. At about 10.00 or 10.30 P.M., he heard the cries of Nazia Begum and rushed to the house of A1 and found Nazia Begum in flames. DW.1 said that he and his brother tried to extinguish the fire with a bucket of water and at that time, no other person was there. When he enquired about the incident, Nazia Begum was stated to have informed him that because of the harassment of her mother she had burned herself. DW.1 contacted A1 and informed him about the incident and A1 came to the spot within 15 minutes. DW.1 said that he accompanied A1 and his younger brother and they took Nazia Begum to Akberuddin hospital but as they refused to admit her, they took her to Osmania General Hospital. By that time, the mother of Nazia Begum was stated to have reached the hospital. In his cross-examination, DW.1 said that he had no relationship with A1 and did not have any friendship with him prior to the case. He admitted that he had not stated what he was deposing in Court in his Section 161 CrPC statement. He further admitted that his father's uncle's daughter, Naseem, had married A1 during the pendency of the case and that she was blessed with a daughter. He also conceded that as per Muslim customs, ladies and gents would sit separately and follow gosha and pardah; and that ladies would only communicate with other ladies.

DW.2 is a doctor at Osmania General Hospital. He stated that Nazia Begum was admitted to the hospital on 18.10.2006 at about 2.30 A.M. and that Ex.X1 is the OP ticket issued by the Chief Medical Officer. He said that when the patient was transferred to ABC ward at 3.15 A.M., his Assistant, Manjula, the Duty Surgical Officer, Plastic Surgery, recorded the history from the patient, who informed her that she had sustained burns due to

the kerosene poured by her husband upon a quarrel with her and that the patient herself lit the fire. As the deceased sustained 60% burn injuries, the police were informed and asked to get a dying declaration recorded by a Magistrate. Ex.X2, the case sheet, was marked through DW.2. In his cross-examination, DW.2 said that he was a Plastic Surgeon and that he was not the author of Ex.X1. He also admitted that he was not the author of Ex.X.2 and that he had not written any findings therein.

Smt.A.Gayatri Reddy, learned counsel for the appellants/A1 and A3, would contend that the number of dying declarations recorded in the present case cast a reasonable doubt on the issue as to whether an offence was committed by A1 under Section 302 IPC. She would point out that all the dying declarations were not produced before the Court and therefore, an adverse inference should be drawn against the prosecution. She would further contend that even if Ex.P6 dying declaration was believed to be trustworthy, it would not amount to murder under Section 300 IPC and that Exception 4 thereunder would have application. She would pray that the conviction of A1 be reduced to culpable homicide not amounting to murder under Section 304 Part-II IPC. As regards the conviction of A3 under Section 4 of the Dowry Prohibition Act, 1961, she would contend that there was no evidence worth the name to link him with any demand for dowry as he was not even residing with the deceased and A1 and assert that his conviction is not sound and in consequence, the sentence imposed upon him is equally unsustainable.

It is no doubt true that in this case the statements of the deceased were recorded by several persons. Ex.P8 was the first statement recorded by the Head Constable, Kalapather Police

Station (PW.10). It bears the left leg toe impression of Nazia Begum. No doubt this statement was the basis for initiation of proceedings by registration of the case, but as PW.10 did not take the precaution of obtaining proper certification from the duty doctor as to the mental status of the patient before recording her statement, this statement cannot be acted upon. The dying declaration recorded by PW.8 is Ex.P10. However, it was recorded by PW.8 in English and does not bear either the endorsement of a doctor certifying the mental status of the patient nor does it contain any toe impression of the patient. Even if Ex.P10 statement were to be believed, the fact that PW.8 translated whatever was said by Nazia Begum into English and thereafter transcribed it would mean that her actual utterances may have altered and changed in the course of such translation and transcription. Apart from these two statements, PW.12, the Assistant Commissioner of Police, Charminar Division, also recorded the statement of the deceased. This statement was not marked in evidence but is available in the case record. This statement was also recorded in English and does not bear either certification by the doctor as to the mental status of the patient or the toe impression of the patient in proof of her having made the said statement. All the three statements made by Nazia Begum however read to the effect that A1 poured kerosene on her, lit a match stick and offered it to her whereby she caught fire.

Ex.P6 dying declaration was recorded by PW.7, a judicial magistrate. Perusal thereof demonstrates that PW.7 meticulously followed the procedure while recording the dying declaration. He first obtained certification from V.Nagabhushanam, duty doctor, Osmania General Hospital, that the patient was conscious,

coherent and fit for recording of the dying declaration/statement. This certification was marked as Ex.P5 and forms part of Ex.P6 dying declaration. PW.7 then put questions to Nazia Begum to independently ascertain her mental status. When asked as to who brought her to the hospital, she said that her husband had her admitted to the hospital and went away and that her neighbours had also come to the hospital. She named the neighbours as Haneef, Hassan and Mahebob. She was able to answer as to where she was and named Osmania General Hospital. She also stated that she knew that PW.7 was a Magistrate. When asked as to how she had sustained injuries, she stated, 'my husband poured kerosene on me due to quarrel and set fire by using a match stick'. When asked as to when and where the injuries were sustained, she stated that at her house on 17.10.2006 at 11.00 P.M., her husband, Md.Ghouse, quarreled with her for transfer of her father's house in his favour and in that quarrel, he poured kerosene on her and set fire to her with a match stick. These answers were recorded in English and again PW.7 put questions to Nazia Begum in Telugu. Her answers in Telugu were recorded to this effect. 'Yesterday night, 17.10.2006 at 11.00 P.M., my husband, Md. Ghouse, quarreled with me. My father has a house at Kalapather. My husband wanted that house registered in his name and was quarrelling for the same for many days. When asked as to what other quarrel had taken place, she said to the effect that her marriage with A1 was a love marriage and because of that there was a loss of dowry and accordingly, Jamal (A3), her husband's brother, and Kaleem (A5), also used to quarrel with her and abused her. Mateen, her sister-in-law's husband, also used to scold her and abuse her badly; that on, 17.10.2006 at 11.00 P.M.,

her husband poured kerosene and set her on fire. She sustained injuries due to burns.’ She confirmed that because of her father’s house issue, she and her husband had quarreled. She also certified that the statement had been read over to her and that it was correct. Dr. B.Nagabhushanam, the duty doctor, certified after the recording of the statement that it was recorded in his presence and that the patient was conscious and coherent throughout and it was given in a fit state of mind. This endorsement was marked as Ex.P7 and forms part of Ex.P6 dying declaration.

Smt.A.Gayatri Reddy, learned counsel, placed reliance on **OGIBOYINA KOTAIAH V/s. STATE OF A.P. REP. BY ITS PUBLIC PROSECUTOR, HIGH COURT OF A.P., HYDERABAD¹**, wherein it was found that on the totality of the circumstances the conviction under Section 302 IPC was not sustainable and the same was reduced to one under Section 304 Part-II IPC. However, the facts of that case were materially different from those in the case on hand. The death in the said case was not caused by the burns suffered by the deceased but due to an intervening infection. There was therefore a possibility that the burns, by themselves, may not have been sufficient to cause the death or to infer an intention on the part of the accused to cause the death of the deceased. Further, the doctor who conducted the post-mortem examination of the deceased in that case was not even examined, unlike in the present case. The Division Bench, placing reliance on the judgment of the Supreme Court in **SHAM MADHAVRAO RUPVATE V/s. STATE OF MAHARASHTRA²** where the husband in an inebriated state flew into a rage and set fire to his wife who ultimately died

¹ 2007 (1) ALT (CrI.) 260 (D.B.)(A.P.)

² 2000 CrI.LJ 2389

not due to burns but due to septicemia, held in those circumstances that the conviction was liable to be reduced.

In **KALU RAM V/s. STATE OF RAJASTHAN**³, the Supreme Court was dealing with a case where the appellant, in a highly inebriated condition, doused his wife with kerosene and offered her a match-box. On her failure to strike a match stick, he took the match-box and ignited a match stick himself setting her ablaze. However, once the flames started flaring up, he poured water on her and tried to save her. As this act indicated that he had no real intention to cause her death, the Supreme Court reduced his conviction from Section 302 IPC to Section 304 Part-II IPC. This case is also distinguishable on facts.

It is no doubt true that there are many dying declarations recorded presently and one of them was not even produced before the Court, being the one recorded by PW.12.

In **P.MANI V/s. STATE OF T.N.**⁴, the Supreme Court affirmed that though a conviction could be recorded on the basis of a dying declaration alone, it must be found to be wholly reliable and in a case where suspicion could be raised as regards the correctness of the dying declaration, the Court would have to look for corroborative evidence before acting upon such a dying declaration. In the present case, perusal of the statements said to have been made by Nazia Begum to various police authorities and to PW.7 reflects that her statement essentially remained consistent throughout. This judgment is therefore of no avail to A1.

In **NALLAPATI SIVAIAH V/s. SUB-DIVISIONAL OFFICER, GUNTUR, A.P.**⁵, the Supreme Court was confronted with a conflict and inconsistency between two dying declarations and accordingly

³ 2000 SCC (Cri) 86

⁴ (2006) 3 SCC 161

⁵ AIR 2008 SC 19

held that the accused was entitled to the benefit of doubt. As stated *supra*, no such situation arises in the case on hand and this judgment also does not further the case of the 1st appellant/A1.

In **VADDE PALLEPU SEKHAR V/s. STATE OF ANDHRA PRADESH**⁶, this Court held that when there were material contradictions between two dying declarations and the one recorded by the Magistrate was too cryptic and the third dying declaration was suppressed by the prosecution, an adverse inference could be drawn under Section 114(g) of the Indian Evidence Act, 1872.

Smt.A.Gayatri Reddy, learned counsel, would contend that suppression of the dying declaration recorded by PW.12 in the present case would attract such an adverse inference being drawn and that the benefit of doubt should be given to her client.

However, as stated *supra*, the dying declaration recorded by PW.12 also formed part of the record but for some reason, it was not marked as an exhibit. Perusal of all the three dying declarations made before the police, though they are not worthy of being accepted in evidence as they were recorded without medical certification as to the status of the patient, demonstrates that the contents thereof remained essentially consistent with what the deceased stated before PW.7, the judicial magistrate, who recorded Ex.P6 dying declaration. The only difference pointed out by Smt. A.Gayatri Reddy, learned counsel, is that in the dying declarations made before the police, the deceased had stated that A1 had lit the match stick and proffered it to her which is not how Ex.P6 dying declaration reads. This is however too technical a point to be picked upon. The statements of the deceased in Exs.P10 and P8 no

⁶ 2011 (2) ALD (CrI.) 396 (AP)

doubt indicate that A1 lit the match stick and tried to give it to her hand and in that process as she was already doused with kerosene she caught fire. Before PW.7, the deceased stated that her husband poured kerosene and set fire to her. These two statements are not inconsistent or contradictory to each other and no ground is made out to discard Ex.P6 dying declaration on this count.

Ex.X1 is sought to be relied upon by Smt. A.Gayatri Reddy, learned counsel, and she would point out that the same records the fact that the patient was alleged to have put kerosene on herself at 11.00 P.M. This document is of no avail as it is an admitted fact that A1, along with neighbours, brought the deceased to the hospital and got her admitted. He would therefore be the person who would have given information to the hospital authorities to fill in the outpatient ticket, Ex.X1. The author of the document was not even examined to ascertain as to who gave this information. Similarly, Ex.X2 case sheet is also not worthy of credibility as the author thereof was not examined.

On the aforesaid analysis, this Court finds that notwithstanding the anxiety shown by the police in recording multiple statements of the deceased, Ex.P6 dying declaration recorded by PW.7, a judicial magistrate, is completely trustworthy having been recorded strictly in accordance with the due procedure. Medical certification was to the effect that the patient was conscious, coherent and in a fit state of mind both before and after recording of the said statement. There are no inconsistencies brought out to doubt the truthfulness of this declaration made by Nazia Begum just three days before her death. Admittedly, her

marriage with A1 was a love marriage and there is no reason why she would have uttered lies against him on the verge of her death.

We therefore find no irregularity or lacuna in the Sessions Court convicting A1 of the offence under Section 302 IPC and Section 4 of the Dowry Prohibition Act, 1961. We however find no evidence worth the name to convict A3 of an offence under Section 4 of the Dowry Prohibition Act, 1961. As pointed out, he was not even living with A1 and the deceased and a passing reference to him in the dying declaration to the effect that he used to quarrel with the deceased and abuse her is wholly insufficient to sustain the case against him. His conviction and sentence are therefore set aside.

We however confirm the conviction and sentence passed by the Sessions Court against the 1st appellant/A1 in relation to the charges under Section 302 IPC and under Section 4 of the Dowry Prohibition Act, 1961.

In the result, the appeal is allowed in part setting aside the conviction and sentence passed against A3 in Sessions Case No.371 of 2009 on the file of the learned V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad. Any fine paid by A3 shall be refunded. His personal bond and sureties shall stand cancelled upon expiry of the time for filing an appeal.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

8TH SEPTEMBER, 2016

PGS