

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1662 of 2008

JUDGMENT:

1. This revision is filed by the de facto complainant against the Judgment dated 13.8.2008 passed by the Sessions Judge, Guntur, in S.C.No.82 of 2005.

2. Brief facts of the case are as follows:

A1 is practicing advocate at Hyderabad. One Anitha (for short, 'the deceased') is the wife of A1 and daughter of P.Ws.2 and 3, who are the residents of Nandigama. At the time of marriage, the parents of the deceased gave Rs.1,50,000/- towards dowry to the accused in addition to gold ornaments worth Rs.1,00,000/- and agricultural land of Ac.3.50 cents. The marriage was solemnized as per Hindu customs and rituals. When the deceased was sent to her matrimonial home, her parents gave Rs.45,000/- to the accused for purchasing house hold articles. By then, the accused used to practice as an advocate in the High Court at Hyderabad. He used to visit Nandigama regularly. The accused and the deceased led happy marital life for about one year after wedlock and they were blessed with a male child by name Lakshmi Bala Rama Krishna. By the date of occurrence, the child was aged about one year. The accused used to harass the deceased by asking her to go to her parents' house and get money. He used to comment that if he had married another girl, he would have got more dowry. The deceased used to visit her parents' house and narrate about the harassment meted out to her for dowry by the accused and they used to console her and send amount now and then. About three months prior to the occurrence, the accused set up family at Hyderabad with his

wife and son and started living there separately. Even there, he did not stop harassing the deceased for dowry. He used to beat her for no fault of her. He also developed illicit intimacy with another lady at Hyderabad and was trying to get rid of the deceased. He used to demand her to get money from her parents' house. On 16.5.2004, he brought the deceased and his minor son to his parents' house at Nandigama village, left them there for summer vacation and went back to Hyderabad. The deceased stayed in her in-laws' house for some time. On 29.5.2004, she came to her parents' house which is in the same village along with her child and was staying with them. She informed her parents and also her senior paternal uncle-P.W.1 about the harassment made by the accused for dowry. On 31.5.2004, during night time, the deceased, her child and her parents slept in the front yard of the house at Nandigama. At about 10 or 10.30 p.m. the accused took his dinner in his parents' house, came to the house of his in-laws. Afterwards, the deceased left the child with her mother and went inside the house along with the accused. In the house, the deceased questioned the accused as to why the land given by her parents to her was ploughed without knowledge of herself and her parents. It resulted in an altercation between the accused and the deceased. During the course of altercation, the accused beat her, abused her and pressed her throat. Though she raised cries, they were not audible to her parents. The accused brought kerosene tin from the kitchen, poured on the deceased and set her on fire. The deceased raised cries and became unconscious. The accused poured water on her body at about 2.30 p.m., opened the door of the house and woke up the parents of the deceased. He informed them that the deceased attempted to commit suicide. Immediately, they raised cries attracting the attention of P.W.1 and other neighbours. All of them rushed to their house and found the deceased lying with burn injuries on the floor.

She was shifted to Government General Hospital, Guntur for treatment, the deceased narrated the whole incident to her Senior paternal uncle-P.W.1. He presented a report to the police. On the basis of which, a case was registered and investigated into. In the absence of attendants by her side, the accused threatened the deceased to kill the child, if she discloses the offence committed by him. On receipt of hospital requisition, IV Additional Junior Civil Judge, Guntur visited the Government General Hospital, Guntur and recorded her dying declaration. The deceased stated before him due to threats hurled by the accused. On the same day, again intimation was sent to the self-same Junior Civil Judge and he recorded the 2nd dying declaration of the deceased. The deceased died on 5.6.2004 while undergoing treatment. After completion of the investigation, charge sheet was filed against A1 to A3. A2 and A3 were discharged.

3. The learned Sessions Judge framed charges under Section 302 IPC alternatively under Sections 304-B, 498-A IPC and Section 4 of the Dowry Prohibition Act against A1, read over and explained to him, for which he pleaded not guilty and claimed to be tried.

4. During the course of trial, P.Ws.1 to 18 were examined and Exs.P1 to P13 and M.Os.1 to 5 were marked on behalf of the prosecution. Exs.D1 to D6 were marked on behalf of the accused.

5. On appreciation of both oral and documentary evidence, the trial Court found A1 not guilty for the charges leveled against him, acquitted him. Aggrieved by the same, the de facto complainant-father of the deceased filed this revision.

6. Learned Counsel for the petitioner-de facto complainant submitted that the Court below grossly erred in acquitting the accused and the Court

below erred in disbelieving Ex.P7-dying declaration and that the Court below ought to have accepted the explanation given by the deceased as to what prompted her to give Ex.P5 dying declaration and that the Court below failed to draw legal presumptions and that the circumstances coupled with Ex.P7 would establish the case of the prosecution and that the Court below failed to appreciate the evidence in a proper perspective and the judgment of the Court below suffers from perversity.

7. Learned Counsel for the 1st respondent-accused submitted that the trial Court has rightly appreciated the evidence and that the judgment under revision needs no interference.

8. Now, the point for consideration is:

“Whether the Judgment of the trial Court needs any interference by this Court”.

9. It is the case of the prosecution that the accused harassed the deceased for additional dowry and on the night of 31.5.2004 he poured kerosene on her and set her ablaze. In order to substantiate its case, the prosecution examined P.Ws.1 to 18. P.W.1-paternal uncle of the deceased, P.Ws.2 and 3-parents of the deceased are the main witnesses.

10. It is a case where multiple dying declarations of the deceased were recorded. Two dying declarations were recorded by P.W.9 at different times and another is the statement given by the deceased under Section 161 Cr.P.C. to the police. It is well-settled that dying declaration can form the sole basis of conviction provided that it is free from infirmities and if it is consistent. A dying declaration should satisfy all the necessary tests and one such important test is that if there are more than one dying declaration they should be consistent particularly in material aspects. In a case where

there are more than one dying declaration and if some inconsistencies are noticed therein, the Court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinizing the contents of various dying declarations, the Court has to examine the same in the light of the various surrounding facts and the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, and the possibility of the tutoring.

11. In the instant case, the contents in the two dying declarations, are quite different and inconsistent with each other. In Ex.P5 dying declaration recorded at about 5.30 A.M. by P.W.9 at the earliest point of time, she stated that since two days, she was not keeping good health and was contemplating to consult a doctor and at about 12 mid night while her son was weeping for milk, she went to gas stove, and the kerosene tin which was by the side of gas stove fell down as her hand accidentally came into contact with it and consequently, flames engulfed her whole body and when she raised cries, her husband came, sprinkled water on her, extinguished fire and immediately took her to hospital.

12. In Ex.P7-2nd dying declaration recorded by P.W.9 at 11.45 a.m., she stated that her husband has been harassing her since three months prior to that day, having developed disliking towards her and he was frequently picking up quarrels with her. At 10 p.m., an altercation took place between her and her husband and during the course of it, her husband poured kerosene on her and set her ablaze with the help of match box and after some time, extinguished the flames by sprinkling water and later he went out and brought people and informed them that she attempted to commit suicide by setting her ablaze with the aid of kerosene.

13. In Ex.P13-statement recorded by the police, she stated that her husband and in-laws harassed her for dowry subsequent to marriage and on the date of occurrence, when she questioned her husband as to why the land given to her at the time of marriage by her parents was ploughed without the consent of herself and her parents, he picked up a quarrel with her, pressed her neck, brought kerosene tin from kitchen, doused her with kerosene, set her ablaze and as she lost consciousness, her parents brought her to the Government General Hospital.

14. A close scrutiny of these dying declarations goes to show that there are material contradictions as to the incriminating circumstances in all the dying declarations and there are also inconsistencies, which cannot be considered as that of the minor one. One declaration that was recorded in the first instance, is pointing out the innocence of the accused whereas the other statements which were recorded subsequently, are showing the incriminating material against the accused. Apart from that, no explanation is forthcoming to record the statement of the deceased by P.W.9 twice. Under these circumstances, the irresistible conclusion is that the dying declarations are inconsistent and in such a situation, this Court cannot pick and choose one statement, which is in favour of the prosecution. Furthermore, there was a gap of six hours after the first dying declaration and that itself is sufficient for the prosecution party to have deliberations for inviting 2nd dying declaration. The parents of the deceased were with the deceased. As such, the possibility as to the due deliberations besides the tutoring the deceased, cannot be ruled out as contended by the learned Counsel for the 1st respondent-accused. Therefore, this Court is of the view that it is highly unsafe to rely upon the inconsistent dying declarations.

15. Now, it is to be considered as to whether the evidence of prosecution witnesses establishes the case of the prosecution case.

16. P.W.1 gave report to the police about the occurrence on 1.6.2004 at 12 noon. He stated in his evidence that the marriage of the deceased with the accused was performed on 2.6.2002 in Nandigama village. At the time of marriage, P.Ws.2 and 3 gave cash of Rs.1,50,000/- as dowry in addition to the landed property of Ac.3.50 cents, gold ornaments worth Rs.1,00,000/- and household articles worth Rs.45,000/- to the accused. After marriage, the accused led happy marital life with the deceased for about one year by keeping her in his parents' house in the same village. The deceased and the accused were blessed with a male child. The accused used to shuttle between Hyderabad and Nandigama during those days as he was practicing lawyer in Hyderabad. One year after the marriage, the accused along with his parents started demanding additional dowry. On coming to know about the same, he chastised him on one or two occasions. The accused set up family at Hyderabad with the deceased and minor son and developed illicit intimacy with another woman and brought his wife and son to Nandigama village for Summer vacation and left them in his house and went to Hyderabad. On 29.5.2004, the deceased along with her child came to her parents' house and started staying with them. On 31.5.2004 he went to the house of P.Ws.2 and 3 and the deceased informed about the said dowry harassment. Thereafter he went to his home and slept. Around 2.30 a.m., having heard cries of P.Ws.2 and 3, he rushed there and found them weeping in the room. He noticed burn injuries all over the body of the deceased and when he questioned her as to how she sustained burns, she replied that her husband beat her, pressed her neck, poured kerosene and set her ablaze. Immediately, they took the

deceased to the hospital. At about 6.30 a.m., he went to the house of P.W.6, who is the brother of P.W.2, informed him as to what had happened and transpired on that night, received Rs.4,000/- from him and then, came to Sattenapalli and presented Ex.P1 report before the police.

17. If really, the incident took place as stated by P.W.1, he would have lodged the complaint immediately. But the complaint was lodged on the next day at 12 noon. There was delay in lodging the complaint. Further, in Ex.P1, he stated that having heard the cries of the deceased from inside the house, P.Ws.2 and 3 opened the door, went inside and saw the accused setting fire to the deceased by pouring kerosene on her. The evidence of P.W.1 is falsified by the evidence of P.Ws.2 and 3. There are no such contents as deposited by P.W.1 in any one of the dying declarations. It is also not the version of P.Ws.2 and 3. Furthermore, the deceased came to the house of her parents because of summer vacation, but not due to any disputes with the accused. Therefore, it can be said that the evidence of P.W.1 is exaggerative.

18. P.Ws.2 and 3, who are the parents of the deceased deposed on the similar lines as spoken to by P.W.1 with regard to dowry and other valuables and harassment for additional dowry. They deposed that the deceased used to inform them about the harassment of the accused for additional dowry. She came to their house for Summer vacation in May, 2004 after staying for some time in her in-laws' house in the same village. On 31.5.2004, when all of them were sleeping in the front yard of the house at 10 or 10.30 p.m., the accused came to their house, woke up the deceased and both of them went inside to sleep and during mid night at about 2.30 a.m., the accused raised cries calling them and they immediately opened the door of the house, went inside and found the deceased lying

on the floor in one of the rooms with burn injuries all over her person and as they raised cries, P.W.1 came from the house of Haribabu and other neighbours also came and all of them questioned the deceased as to how she sustained burns and she stated that he husband beat her, pressed her neck, poured kerosene on her person and set her ablaze. They took her to the hospital.

19. P.W.4-neighbouring house owner and sister-in-law of P.W.3 deposed that after marriage, the accused looked after the deceased well for one year and thereafter, he started harassing her for additional dowry and on one occasion, the deceased informed her about the said harassment. On the night of 31.5.2004 at about 2.00 or 2.30 a.m., while she was sleeping in the house, neighbours woke her up and went to the house of P.Ws.2 and 3 and found the deceased lying on the floor inside the house with burn injuries and then, herself, P.Ws.2 and 3 and others brought her in an auto to the Government General Hospital, Guntur.

20. P.W.5, who is the tenant of neighbouring house, deposed that the accused and his parents used to harass the deceased for additional dowry and on the date of occurrence, he heard cries from the house of P.Ws.2 and 3 and went there and found the deceased lying on the floor inside the house with burn injuries.

21. P.W.6, who is the elder brother of P.W.2 deposed that on 1.6.2004 at about 8 a.m., P.W.1 came to his house and informed him that the accused set the deceased on fire by drenching her with kerosene on the previous night. He deposed that he sent Rs.4,000/- through P.W.1 for medical expenses. He also went to the hospital along with his wife and children.

22. P.W.7 is the attesor to the mediator report. P.W.8 is the attesor to Ex.P3 inquest report.

23. P.W.9 is the then II Additional Junior Civil Judge, Eluru. He recorded two dying declarations of the deceased. On 1.6.2004 at 5 a.m., he received Ex.P4 requisition from the Government General Hospital, Guntur and immediately, proceeded there and in the presence of duty doctor, he recorded the statement of the deceased as in Ex.P5. At about 11.05 a.m., on the same day, he received another requisition from the hospital and again, he went to the hospital and recorded Ex.P7 statement from the deceased in the presence of duty doctor.

24. P.W.10-Dr. Vasavi, Medical Officer deposed that on 1.6.2004, the deceased was admitted in the hospital and she sent requisition Ex.P4 to the local Magistrate and in her presence, Ex.P5 dying declaration was recorded and the deceased was conscious to give statement at that time.

25. P.W.11-Dr. G.B. Raj Kumar, Professor of Forensic Medicine in Government General Hospital, Guntur, deposed that he conducted post-mortem examination over the dead body of the deceased and he found 98% burns on the body of the deceased.

26. P.W.12, the then M.R.O of Sattenapalli conducted inquest over the dead body of the deceased.

27. P.W.13-the then Assistant Sub-Inspector of Police, Sattenapalli stated that on 1.6.2004 at 12 noon, P.W.1 came there and presented Ex.P1 report to him. He registered it as Crime No.88 of 2004.

28. P.W.14-Sub-Inspector of Police deposed that he received copy of FIR from P.W.13 and went to the Hospital and recorded the statement of the deceased in the presence of Medical Officer.

29. P.W.15-Sub Divisional Police Officer deposed that on 6.6.2004 he verified the investigation of P.W.14, and examined P.Ws.1 to 6 and other neighbours and handed over the investigation to regular SDPO.

30. P.Ws.16 and 17 are also the police officials. P.W.18 –Medical Officer deposed that in his presence, the local Junior Civil Judge recorded the statement of the deceased at 11.45 a.m., in his presence.

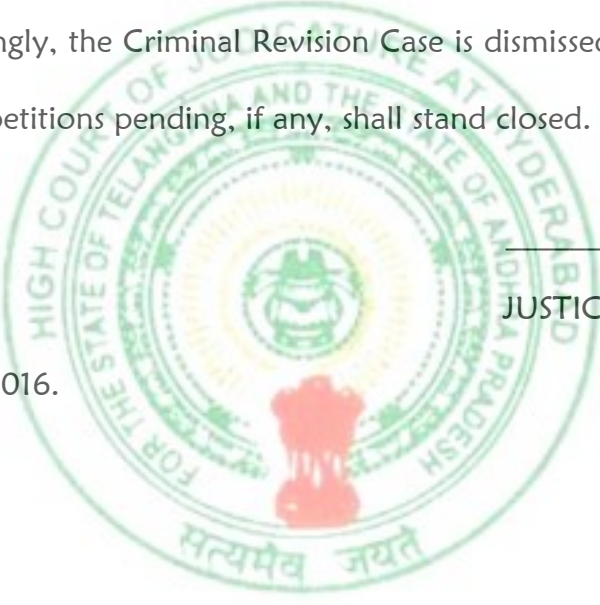
31. Insofar as the evidence of P.Ws.2 and 3 is concerned, they stated in their evidence that on the date of occurrence, during night, they heard cries of the accused, opened the door from outside, went inside and found the deceased lying on the floor in a room with burn injuries and on enquiry as to how she sustained those injuries, she stated that the accused having beat her, pressed her neck, poured kerosene on her and set her ablaze with the aid of a match box. It is their version that the accused also accompanied them in the same auto to the hospital and was present when Ex.P5 dying declaration was recorded from the deceased by P.W.9-Magistrate. If really, it is the evidence of P.Ws.2 and 3 who are no other than the parents of the deceased, the deceased would have stated the same facts as narrated by P.Ws.2 and 3 in her first dying declaration. Apart from that, the deceased came to their parents' house for summer vacation. But it is not the case of the prosecution that she came to her parents' house due to dowry harassment.

32. Generally, the order of acquittal shall not be interfered with by the appellate Court because the presumption of innocence of the accused is

further strengthened by acquittal. It will not reverse the decision of the trial Court merely because a different view is possible. Further, it is well settled that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted.

33. All the above circumstances do not support the case of the prosecution. Therefore, this Court is of the view that the judgment of the trial Court do not suffer from any perversity warranting interference by this Court.

34. Accordingly, the Criminal Revision Case is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand closed.



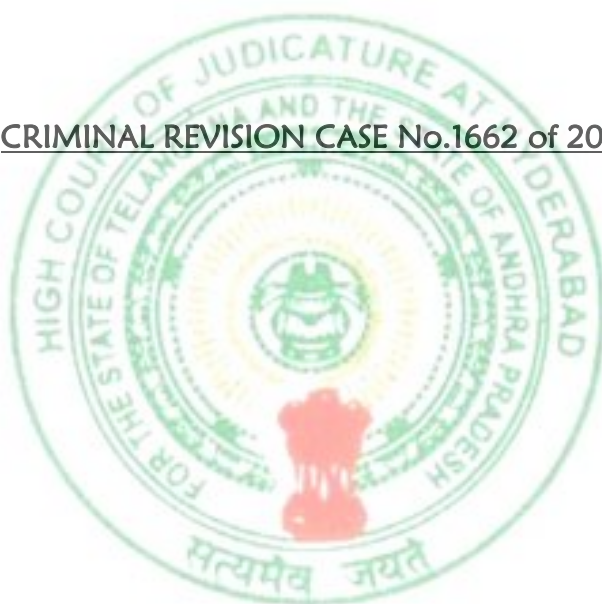
JUSTICE RAJA ELANGO

Dated: 14. 11.2016.

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14.11.2016

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