

HON' BLE SRI JUSTICE S. V. BHATT
AND
HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL APPEAL No. 551 OF 2012

JUDGMENT (per Hon' ble Dr. Justice B. Siva Sankara Rao)

The Criminal Appeal is filed by the sole accused (Gadpale Bhutan) against the conviction judgment, dt.15.02.2012 in S.C.No.423 of 2010 passed by the learned 1st Addl. Sessions Judge, Adilabad, where he was charged for the offences punishable u/ secs.302 and 498-A IPC, pursuant to Cr.No.136 of 2008 of P.S. Bhainsa Rural and from the investigation filed final report by the police and the learned committal Magistrate therefrom has taken cognizance for the offences supra in PRC No.19 of 2009 and on committal, the Sessions Division allotted the Sessions Case Number by taken on file and made over to the learned 1st Addl. Sessions Judge Adilabad, who after hearing and from prima facie material framed the charges on facts covering of the offences supra and after hearing from plea of innocence conducted full-fledged trial and from the evidence of P.Ws.1 to 14 with reference to Exs.P.1 to P.18 and MOs.1&2, viz.,-(P.W.1-Kamble Tukaram- father of deceased, on whose Ex.P.1-report the SHO-P.W.12-K.Rangaiah, registered the Cr.No.136 of 2008, dt.26.11.2008 and issued Ex.P.11-express FIR and taken up investigation; P.W.2-Kamble Gayabai-mother of the deceased; P.W.3-Neelabai-sister of the deceased, also the Ex.P.2-inquest witness; P.Ws.4-Bharathibai and P.W.5-G.Babu-neighbours of deceased and circumstantial witnesses, whose Section161 CrPC statements are Exs.P.3 & P.4; P.W.6-G.Gangaram-panch witness to scene of offence rough

sketch-Ex.P.6 and panchanama Ex.P.5-in Crime details form(CDF); P.W.7-G.Paghul and P.W.8-G.Dayanand-panchas to the confession and seizure of Material Objects-M.O.Nos.1&2-empty match box and empty kerosene dabba under Ex.P.13-panchanama, whose signatures therein are Exs.P.7&8 and Ex.P.12-are the positive photographs of the scene of offence along with CD; P.W.9-Dr.S.K.Basha-who treated and issued Ex.P.9-Medical certificate of the deceased; P.Ws.10&12-V.Pavinder Reddy and K.Rangaiah-Investigating Officers; P.W.11-Ganesh Allewar-Head Constable-who conducted Ex.P.2-Inquest in the presence of P.W.3 and others(Ex.P.10 it the true translation of the inquest); P.W.13-M.Srinivasa Chary-learned Magistrate, who based on Ex.P.17-requisition given by P.W.12, recorded the Ex.P.18-dying declaration of Jaimala(deceased, before she breathed last) after obtained Ex.P.18(a)&(b)-certificates of P.W.14 before recording the dying declaration certifying the condition of the injured-Jaimala and Ex.P.18(c) is the endorsement of P.W.14 thereafter; and P.W.14 is said Dr.Sanjay Maruti Rao Kadam-Duty Doctor-who certified fit condition to record DD by Magistrate and speaks also of the Ex.P.15-provisional post mortem report-cum-death certificate of deceased issued by L.W.17/Dr.D.V.Donge and P.W.14 who conducted postmortem examination and issued Ex.P.14-postmortem report and Ex.P.16-memo of alteration of Section of law filed by P.W.12 before the P.W.13 Magistrate and from said incriminating material examined the accused under Section 313 CrPC and recorded his answers and from closure of prosecution evidence with the above, from no independent defence evidence

let in by the accused and after hearing the arguments and from consideration by appreciation of the entire material on record; having found the accused guilty on all the two charges for the two offences supra and after hearing the accused on quantum of sentence also by sentenced him as per Section 235(2) CrPC, on charge No.1 for the offence punishable u/ sec.302IPC, with Rigorous Imprisonment for life and on charge No.2 for the offence punishable u/ sec.498-A IPC, with Rigorous Imprisonment for one year and to pay fine of Rs.500/-with default sentence of one(1) month Simple Imprisonment for both the offences respectively and that both the sentences held to run concurrently and by giving set off of the period of remand.

2. It is said conviction judgment impugned in the appeal with contentions in the grounds of appeal vis-à-vis the oral submissions of the learned counsel for the appellant/ accused that though the prosecution witnesses did not depose of their witnessing the appellant/ accused committing the offences of subjecting to cruelty the deceased-Jaimala for additional dowry etc., and of the murder of deceased and the prosecution failed to prove the case beyond reasonable doubt, the trial Court erred in convicting the appellant-accused basing on theory of probability; that the trial Court failed to observe that even in the Post Mortem report, there was no incriminating evidence against the appellant/accused, that the trial Court failed to observe that there is no corroboration, instead contradictions, in the evidence from statements of the witnesses; that the trial Court failed to observe that P.W.1 did not depose anything of the allegations made by her in her complaint to police

including any demand for additional dowry by the appellant/ accused and also failed to examine the parents of the deceased who are alleged eye witnesses to the incident and admitted the deceased in the hospital on 108 ambulance and the reasoning of the trial Court is unsound and unsustainable in the eye of law, thus sought for setting aside the conviction judgment by acquitting the accused/ appellant on both the charges with finding of not guilty.

3. Whereas, submission of the learned Public Prosecutor on behalf of the State and the prosecution agency is that the trial Court's judgment is a reasoned one to its every conclusion by well-appreciation of the facts with reference to law having fresh in mind by recording the evidence in proving guilt of the accused beyond reasonable doubt and as such for this Court while sitting in appeal, there is nothing to interfere and hence to dismiss the appeal.

4. Heard both sides and perused the material on record.

5. Before going further into the factual matrix, in appreciation of evidence, it is the settled law that, minor contradictions or inconsistencies cannot be used to jettison the evidence in its entity. The rule is that, corroboration cannot be expected with mathematical niceties in criminal cases. It is also the settled law that, discrepancies due to normal errors of perception and observation should not be given importance. It is also the settled law that mere lapses in investigation cannot be of any help to the accused unless prejudice shown caused to him. Further, evidence of a witness can be partly rejected and partly

accepted for the doctrine of *falsus in uno falsus in omnibus* does not apply in India and it is the duty of the Court to separate the grain from the chaff in arriving truth from the reliability of the version of a witness by ignoring any minor discrepancies, omissions, exaggerations and embellishments and even evidence of a hostile witness cannot be discarded as a whole but for to consider where it corroborates the other evidence by appreciation of credibility of the witness to that extent in arriving at truth by calling him into aid the experience of the Court in men and matters in different cases in evaluating by excluding exaggerated versions rather disbelieving evidence of the witnesses altogether for the reason even major portion of evidence of a witness found to be deficient where in case residue is sufficient to the relevancy and admissibility, it is the duty of the Court to separate the grain from the chaff, otherwise administration of criminal justice would come to a dead stop and it cannot be overlooked that witnesses just cannot help in giving embroidery to a story, however, truth is the main, as held in *Sukhdev Yadav Vs. State of Bihar*¹, *State of Maharashtra Vs. Tulshiram Bhanudas Kamble*² and *Paulmeli Vs. State of Tamilnadu*³. The law in appreciation of evidence from the fundamental principle is that no one can incriminate himself but for truth. It is also the principle to draw the ordinary presumption as laid down in *State of Punjab Vs., Harisingh*⁴ that, *a witness is speaking under an oath is truthful unless and until it is shown from test of cross-examination and with other attending*

¹ (2002) 1 ALD CrI.36 SC

² (2007) AILD 169 (SC) (DB)

³ (2014) 13 SCC 90

⁴ (AIR 1974-SC-1168)

circumstances brought on record to be unbelievable or untruthful and it should not be assumed that the witnesses are untruthful generally; unless, it is proved that they are telling the truth.

6. From the above, coming to the further factual matrix of the case on hand from the entire material including with reference to the respective submissions as gleaned and perused in nutshell is as under:-

a). The deceased Jaimala was daughter of P.W.1-Kamble Tukaram and P.W.2-Kamble Gayabai, P.W.3-Neelabai is sister of deceased, P.W.4-Bharatibai and P.W.5-G.Babu are neighbours of deceased. The deceased was blessed with one son and one daughter out of the wedlock with appellant/accused. The appellant/accused gave Rs.5000/- to the P.Ws.1 and 2-parents of the deceased as a loan for agricultural expenses and they failed to return the same to him in spite of demands and due to that he started harassing the deceased physically and mentally with a demand to get back the amount supra from her parents. While so, on 25.11.2008 during night, the appellant/accused in a drunken state went home and quarreled with the deceased on the issue of loan amount and beat her and threatened to kill her. After having dinner in between 10 and 11 p.m. the appellant/accused poured kerosene on her and set fire with an intention to kill her and left the house. On hearing the cries of deceased out of inflammation and pain, her in-laws and P.W.5-neighbour and others rushed to the spot and extinguished the fire and shifted to Government hospital, Bhainsa in 108 ambulance immediately. L.W.6-Shesha Rao-father of the appellant/accused informed the same to the

parents of the deceased on which the P.Ws.1 to 3 and L.W.4-S.Bhojaram rushed there on 26.11.2008. On 26.11.2008 at about 10.00 A.M., P.W.12-Sub Inspector of Police of P.S Bhainsa on receiving intimation from the Government hospital, Bhainsa of recording of dying declaration is necessary, gave requisition to P.W.13-Judicial Magistrate of First Class, Bhainsa, who immediately rushed to the hospital and recorded the dying declaration of deceased in the presence of the P.W.14-Sanjay-duty doctor. P.W.1-father of the deceased gave oral complaint to P.W.12-Sub Inspector of Police against the accused which he reduced into writing and registered crime for the offences supra. Then P.W.12-Investigating Officer recorded the statement of P.W.1-defacto-complainant at the police station and then visited the Government hospital, and recorded the statements of P.Ws.2,3 and L.W.4 S.Bhojaram and then visited to the scene of offence-house of the accused in Chuchund village and prepared rough sketch in the presence of P.W.6-G.Gangaram and L.W.10-G.Pothanna and got the scene of offence photographed by L.W.8-B.Sudhakar and then recorded the statement of P.W.4-Bharathibai-neighbour. On 27.11.2008 Jaimala was discharged from hospital and admitted in GMC and SGGM hospital, Nanded. On 02.12.2008 P.W.12-Investigating officer arrested the appellant/ accused and recorded his confession in the presence of P.W.7-G.Raghul and P.W.8-G.Dayanand and on said confession, seized the empty kerosene tin and match box from the newly constructed unroofed room of brother of the appellant/ accused under confession-cum-seizure panchanama and then sent the accused to Court for judicial

custody. The deceased succumbed to burn injuries on 06.12.2008, on that P.W.11-Head Constable of P.S. Vazeerabad of Nanded, conducted inquest over the deadbody of the deceased in the presence of L.W.13-Tharu Bheem Rao and L.W.14-J.Chandrakanth. L.W.17-Dr.D.B.Dange from GMC and SGGM hospital, Nanded conducted autopsy over the deadbody of the deceased and issued postmortem report and opined that the deceased died due to septicemia and shock due to burn injuries. On receiving Ex.P.2-inquest report and Ex.P.14-postmortem report, the P.W.12-Investigating Officer, on obtaining permission from the learned Magistrate, altered the section of law from 307 IPC to 302 IPC. Then P.W.10-Circle Inspector of Bhainsa took up investigation and visited Parva village and recorded statements of P.Ws.1 and 2 and then visited to Chuchund village and then recorded statements of P.W.3, L.W.4-S.Bhojaram, P.W.4, L.W.6-G.Shesharao and P.W.5 at his office and after completion of investigation, filed chargesheet against the accused for the offences supra.

b). Initially on the two charges framed against the accused for the offences supra, his answer is that he is not guilty and claimed to be tried.

7). The trial Court findings are as follows:-

a). It is held that accused killed his wife Jaimala. It is also held that accused subjected his wife Jaimala to cruelty by harassing her physically and mentally not only on 25.11.2008 but since about a year prior to that date.

b). There was no delay in giving complaint and also in registering the case by P.W.12 against the accused from the evidence of P.Ws.1 to 3, 12 and 13.

c). The deposition of P.W.1-defacto-complainant shows that he stated that his wife only would give answers to the questions and except that he was not giving any answer. The said observation was recorded by the Court on the request of the Public Prosecutor in the deposition, P.W.2 who is the wife of P.W.1 offered an explanation in her evidence that since the death of Jaimala her husband became mentally ill and since then he is unable to understand the things and unable to speak out anything. This explanation offered by the P.W.2 is not disputed by the accused as seen from her cross-examination. Therefore, it is a fact that P.W.1 has not given any evidence touching the allegation of the prosecution against the accused and from the evidence of P.W.2, it is proved that P.W.1 is mentally ill and he was unable to speak out anything and he was unable to understand the things.

d). It is crystal clear that P.Ws.2 and 3-parents of the deceased deposed as per their earlier statements to the police and in support of the prosecution case and there are no improvements and their evidence is not a development over the prosecution case.

e). A careful consideration of the evidence of P.Ws.4 and 5 and the other material on record very well establish that wantedly and to help the accused, P.Ws.4 and 5 deposed false by resiling from their earlier statements Exs.P.3 and P.4 to the police and the same is deposed by P.W.10-the Investigating Officer who recorded their statements.

f). The evidence of P.Ws.2 and 3 is absolutely in corroboration to the Ex.P.18 dying declaration of Jaimala without any contrary evidence or discrepancy between Ex.P.18 statement and the evidence of the witnesses. Ex.P.5 is crime details form and Ex.P.6 is rough sketch of the scene of offence. P.w.6 is one of the panchas to the Ex.P.5 who stated that on one day at about 2½ years back police conducted scene of offence panchanama at the house of the accused in the presence of him and L.W.10-Pothanna in the shape of crime details form prepared rough sketch of scene of offence and the P.W.6 was not cross-examined. This clearly shows that the accused has not disputed the Exs.P.5 and P.6. As per the Ex.P.5, house of the accused is a tin sheet roofed one and it consists two rooms and the P.W.12 and panchas found a chimney seesa (lantern) on the kitiki (window) and they found poyye (fireplace) and they found a burnt saree in between the cot and poyye. Ex.P.6-rough sketch shows that the chimney, poyye, burnt saree, cot and other things are shown as mentioned in Ex.P.5 and the positive photographs which are not denied, reflect the things shown in Ex.P.5 and Ex.P.6. The defence of the accused that as can be seen from the cross examination evidence of P.W.2, P.W.3, P.W.10 and P.W.12 is that, Jaimala caught fire when accidentally the burning chimney fell on her, is denied by the witnesses. If the defence of the accused is true, panchas and the P.W.12 should have found the chimney on the ground or on the floor somewhere near the burnt saree or near the cot etc. but not on the window. It is not the defence of the accused as seen from the record that after the chimni fell on her accidentally; either himself or

somebody picked up or lifted that chimni and kept the same on the window. According to the prosecution, immediately after the deceased caught fire she was shifted to Government hospital and the accused was not there at the house at that time and on 26.11.2008, P.W. 12 along with panchas visited the scene of offence and observed the same and prepared Exs.P.5 and P.6 and in between nobody entered the scene and nobody disturbed the scene of offence and the items in the room. Therefore, the presence of chimney on the window intact, falsifies the very defence of the accused that accidentally the burning chimney fell on his wife Jaimala and due to that Jaimala caught fire. It is the case of the prosecution that after pouring kerosene and setting ablaze the Jaimala, accused left the house and only the parents of the accused and neighbours shifted Jaimala to Government hospital in 108 ambulance and at that time the accused was not there in the house. If really the accused did not pour kerosene and set fire to his wife as alleged by the prosecution and if really Jaimala caught fire accidentally when chimney fell on her and when it was to the knowledge of the accused, question of his leaving the house does not arise. The absence of the accused at the house is an indirect indication and it is a circumstance to prove the allegation of the prosecution that accused attempted to kill his wife by pouring kerosene and by setting fire to her. So Exs.P.5 and P.6 documents very well support the prosecution case against the accused that he poured kerosene on his wife and set fire to her and they falsifies the defence of the accused.

g). The evidence of P.W.12-Sub Inspector categorically speaks that on 26.11.2008 at 10.a.m. he received information from the hospital about admission of Jaimala with burn injuries and about the necessity of recording the dying declaration of Jaimala and on that he gave a Ex.P.17-requisition to the P.W.13-Magistrate and immediately Magistrate went to the hospital and recorded dying declaration of Jaimala with the help of P.W.14-Dr.Sanjay-duty doctor who knew both Marati and English for translating the words of Marati of the deceased to Magistrate who does not know Marati, and the Magistrate only after satisfying her mental and physical condition is coherent and conscious and in a fit condition to give answers only, he recorded the statement duly following procedure of translating her answers and after she admitted the same as correct and true and after thumb impression of her on every page of the statement, he made a foot note at the bottom of the statement and then he signed it and then he again obtained the certificate of Dr.Sanjay about the condition of Jaimala while recording the statement and Ex.P.18 is the dying declaration, 18(a & b) are the certificates of the Doctor-Sanjay, and Ex.18© is the endorsement of the Doctor to the effect that he acted as translator. Thus, the evidence of P.W.13 Magistrate is fully in support and in corroboration of the prosecution case and his evidence is totally corroborated by the Ex.P.18 statement of Jaimala and Ex.P.18 (a, b & c). In his cross-examination, P.W.13 denied all the suggestions with regard to the above manner of his recording Ex.P.18-dying declaration. Except the evidence of P.W.4-the neighbor that the deceased was not in a position to talk at the

hospital, there is no other evidence on record. The evidence of P.W.13 goes to show that no *mala fides* are attributed to him by the accused as being Judicial Officer he had no prior acquaintance either with the accused or the deceased or P.Ws. 1 and 2 and absolutely no necessity either to record the false statement of Jaimala or to depose false. Even the evidence of P.W.12- Investigating Officer is fully in support of prosecution case. The cross-examination of P.W.12 goes to show that his evidence in chief that about the receipt of information from the hospital and his giving requisition to Magistrate and the Magistrate going to hospital etc., is not denied. A suggestion that by the time he went to hospital, some of the blood relatives and parents of the deceased were there is admitted by the P.W.12. The evidence of P.W.14-Dr.Sanjay-duty doctor is also in corroboration with the P.W.13 and the accused failed to prove his defence that deceased was not conscious and she was not in a position to give any statement. The suggestions given to P.W.14-Sanjay that at the instance of her parents only she gave false statement in Marati to the P.W.13 and P.W.14 did not properly translate into English are totally contrary to the suggestions given to P.W.13. the above evidence on record clearly establishes that there is no necessity to prepare a false statement and issue false certificates to P.Ws.13 and 14 instead their evidence is highly cogent, believable and trustworthy and Ex.P.18 is recorded when the deceased was fully conscious and there is no evidence to prove that the same is tainted. Moreover, if the accused never harassed the deceased and attempted to kill her when the children were minors and when

the accused is the only person to look after minors and she is with deep burns and the possibility of her survival was very less, she was not expected to give false statement to P.W.13. The tenor in which the Ex.P.18 statement was made by the deceased and the tenor in which she told her parents, sisters and others that her husband poured kerosene on her body and set fire to her on the night of 25.11.2008 and her husband also subjected her to cruelty by harassing her physically and mentally shows that the accused is not innocent and just because he harassed his wife and attempted to kill her, Jaimala made Ex.P.18 statement to the Magistrate.

h). Though the P.Ws. 2 and 3 and L.W.4 reached the hospital even before P.W.13 reached the hospital, there is no evidence on record to prove the defence of the accused that P.Ws.1 and 2 asked Jaimala to give a false statement against her husband or to give the statement under Ex.P.18.

i). Admittedly the marriage of deceased was performed with accused nearly ten years prior to the death of the deceased. According to the prosecution for a period of nine years, accused and deceased led a peaceful and happy conjugal life and only since one year prior to the death of the deceased, the accused was addicted to alcohol and toddy and under which influence he started beating and abusing his wife with a demand to get back Rs.5000/- from her parents and in that connection only on 25.11.2008 he set fire to his wife. According to the accused as seen from the evidence on record that he never gave Rs.5,000/- to his parents-in-law and never demanded to return, therefore there is no necessity to harass his wife. So according to the accused he

never harassed his wife and his parents-in-law for due of any amount and relations between two families were very cordial. If the defence of the accused is correct, absolutely there is no necessity to the P.Ws.1 and 2 to force the deceased to make false statement against the accused. It is not the case of the prosecution even and the accused that earlier to 25.11.2008 P.Ws.1 and 2 made any complaint against the accused either to the police or to the elders of Parva village or Chunchund village and similarly even the deceased Jaimala also did not make any complaint to anybody against the accused. When that was so, if the accused did not pour kerosene on the body of Jaimala and did not set fire, absolutely there was no necessity for P.Ws. 1 and 2 to tell their daughter and force her to give a false statement. Hence, there was no motive to make false statement. The defence of the accused is he has not made any Ex.P.13-confession to P.W.12 at his house in Chuchund village in the presence of P.W.7 and 8 and M.Os.1 and 2 match box and empty kerosene dabba were not produced by him but they are planted. In this regard, P.Ws.7 and 8 though not supported the prosecution case with regard to their presence at the house of accused, the confession of accused and seizure of M.Os.1 and 2, they stated that L.W.12 obtained their signatures on blank papers. In this regard, admittedly, the P.Ws.7 and 8 are literates and they are the worldly-wise persons and not under the force or threats by the P.W.12 or any other police officer to endorse their signatures Exs.P.7 and 8 on blank papers but they simply stated that their signatures were obtained at the house of the accused. Admittedly, their houses are not abutting or nearer to the house of the accused

but they admitted their presence at the house of the accused when P.W.12 went there on 02.12.2008.

j). Hence, the evidence of they signed on blank papers being literates is absolutely false in the absence of any force or threats and it is also clear from the Panchanama-Ex.P.13 that the signatures were obtained only after preparation of panchanama. This tenor of P.Ws.7 and 8 clearly shows that they being the people of same village, only to help the accused deposed falsely. The Ex.P.6 rough sketch clearly shows that after setting fire to his wife, the accused threw M.Os.1 and 2 into the room under construction of his brother and went away. Therefore, prosecution proved the confession of the accused and seizure of M.Os.1 and 2.

k). The evidence of P.W.9-Civil Asst. Surgeon in Bhainsa area hospital that on 26.11.2008 he examined the deceased as in – patient on receiving requisition from the P.W.12 and she was in the hospital till 5.30p.m. of 27.11.2008 at the request of mother of Jaimala was unchallenged by the accused. Even the evidence of P.W.11-Head Constable in P.S. Vazeerabad of Nanded of his conducting inquest-Ex.P.2 over the deadbody of Jaimala in the presence of L.W.13-Tharu Bheem Rao and L.W.14/J.Chandrakanth and P.W.3 and on his requisition L.W.17-Dr.Dange conducted autopsy and issued post mortem report is also unchallenged by the accused.

l). The trial Court, from the above evidence on record supra by its appreciation, observed that on careful scanning and consideration of oral and documentary evidence on record and in view of the above findings, held that prosecution beyond all

reasonable doubt proved and established that on 25.11.2008 in between 10 to 11p.m., the accused with an intention to kill his wife Jaimala @ Vijayamala poured kerosene from M.O.2-dabba on his wife in his house and set fire to her by lighting match stick from M.O.1/ match box and threw the M.Os. 1 and 2 into a room under construction of his brother and went away and due to that Jaimala received deep and superficial burns and due to those burns she suffered with shock and septicemia and died on 06.12.2008 at Nanded hospital and thereby liable for the offences supra.

8). From the above, in deciding the appeal by sitting against the legality and correctness of the Trial Court's conviction judgment and the sentence awarded and referred supra, the following points arise for consideration:

i). whether the prosecution case of the deceased-Jaimala@ Vijayamala was killed by her husband-the accused by ill-treatment by pouring kerosene and setting ablaze is not proved beyond reasonable doubt?

iii). If so, whether the trial courts conviction judgment finding the accused appellant guilty for both the offences u/ sec. 498-A and 302 IPC charged as proved is unsustainable and requires interference by this court sitting in appeal by re-appreciation of the facts and law to set a side the findings of conviction and sentence respectively?

iii). To what result?

9). Point Nos.1&2: The fact that said Gadpale Jaimala @ Vijayamala (deceased), wife of the accused-Gadpale Bhujang of Chuchund village of Adilabad district, while they were residing together at the matrimonial home, sustained kerosene burn injuries on 25.11.2008 and was admitted at 11.00 a.m. on that date at the area hospital, Bhainsa as inpatient-I.P.No.5205 is not in dispute. Evidence of PW9-the duty doctor of the area hospital, Bhainsa; who issued the Ex.P9 medical certificate (opined therein

and deposed also therefrom of the kerosene burn injuries sustained by said Gadpale Jaimala @ Vijayamala are grievous and about 63% (superficial and deep) and was treated as inpatient from 25.11.2008 till 27.11.2008 at 5.30 p.m., when the injured was referred to Nanded Govt. hospital at the request of mother of the injured as proved from above evidence of PW9 and Ex.P9 medical certificate, with no cross examination in this regard also not in dispute of above facts. The Evidence of PW12-then Sub Inspector of police, Bhainsa in this regard is that he received phone call from the area hospital, Bhainsa on 26.11.2008 at 10.00 a.m. of said Gadpale Jaimala @ Vijayamala, was admitted at the area hospital, Bhainsa as inpatient with burn injuries and her condition is serious and there is a necessity of her dying declaration to be recorded and he therefrom made entry in G.D. and rushed to the hospital verified her condition and issued Ex.P.17-requisition to the JFCM, Bhainsa-PW13 to record her dying declaration. PW13-M. Srinivasa Chary-learned Magistrate, Bhainsa, deposed that based on Ex.P.17-requisition received from P.W.12 on 26.11.2008 at 11.05 a.m. while he was holding court and on bench, to record dying declaration of said Gadpale Jaimala @ Vijayamala, was admitted at the area hospital, Bhainsa as inpatient with burn injuries, he rushed to the hospital and found her in the burns ward as inpatient and with the identification by the duty Doctor-PW14-Dr.Sanjay Maruti Rao Kadam-(for short-Dr.Sanjay) and after obtained Ex.P.18(a)-certificate of PW14-Dr.Sanjay before recording the dying declaration certifying the fit condition of the injured-Jaimala and as she was not understanding and speaking in Telugu

fully, but Marathi, he took the help of the duty Doctor-PW14-Dr.Sanjay for translation of his questions to her and her answers to him from Telugu to Marathi and vice versa and for that he also after the process obtained Ex.P.18(b)-certificate of PW14 and by satisfying of the fit condition of said injured-Jaimala, recorded the Ex.P.18-dying declaration of said Jaimala and also thereafter obtained from PW14-Dr.Sanjay, the Ex.P.18(c) endorsement of PW14-Dr.Sanjay.

10). PW13-M.Srinivasa Chary-the learned Magistrate, Bhainsa, deposed further that for his questions the said burns injured Jaimala(deceased) deposed as wife of Gadpale Bhujang (accused) of Chuchund village of Adilabad district and she was brought to the Bhainsa area hospital by her father in law, where she is undergoing treatment and also having satisfied himself of her fit state of mind in understanding questions and giving answers, that is certified by the duty doctor, he recorded the Ex.P.18-dying declaration of said Jaimala, where she stated that on 25.11.2008 at 10 p.m. at her matrimonial home in Chuchund village, her husband-Bhujang pored kerosene on her body and set fire with match stick and the reason she stated was he came to home at 5 p.m. and she served him tea, later at about 7.30p.m. he beat her with stick on her head and abdomen and afterwards she prepared and served him food. Later at about 10.00 P.M., he set fire by pouring kerosene on her. Her husband gave Rs.5000/- to her parents for seeds and fertilizers but her parents did not pay back to him and therefrom he picked up a quarrel and did this. At that time, her husband was in drunken state, he took a quarter liquor in

the house before dinner and it was after dinner he started abusing and beating and committed the acts. By then, except herself and her husband nobody was there in the house as her son Naveen and daughter Akhila 5 years were at her in-laws house who were living separately in the same village. She stated to the question as to anybody see the incident her answer is an old man whose name she cannot say but her neighbor on hearing her cries and on seeing her he raised shouts and called the neighbours who called ambulance and brought her to hospital. Her reply of when her marriage took place is 10 years prior to that. For the question of what further she can say, her reply is except her husband's harassment she does not have anything to say as her in-laws and brothers-in-law are all good towards her.

11). This dying declaration clearly speaks the accused and the deceased were alone in the house and he came to home at 5.00 P.M. on 25.11.2008 (the previous day to the recording of the D.D.) and consumed tea served by her and he even beat her with stick on head and abdomen before she prepared food and before serving food he consumed liquor and after taking food he started abusing and beating and ultimately at 10.00 P.M. poured kerosene and set her ablaze while they both alone were in the house. He did not even save her by make attempts to extinguish the fire after he set her ablaze. He did not even admit her in hospital to save her, but left the house and it is only one of the neighboring old man on her hue and cry and on seeing her raised shouting in calling neighbours and who secured ambulance and her father-in-law brought her to hospital.

12). The cross-examination evidence of P.W.13-learned Magistrate deposed that at the time of his recording dying declaration of the victim, but for himself and his attender there was no other person. He denied the suggestion of the declarant was not conscious and not in fit condition. There is nothing to impeach the sanctity, truth and genuineness of the dying declaration of the injured and her fit state of mind and the probative value of it and credibility of the statement of her. It is also corroborated by said evidence of P.W.13 and the duty doctor P.W.14-Dr.Sanjay who also deposed about the Magistrate and himself as duty doctor were alone at the time of the recording the dying declaration by the Magistrate on his certificate of fitness and from his translation of the questions of the Magistrate to the victim and the answers of the victim to the Magistrate. P.W.14-Dr.Sanjay denied the suggestion of he did not properly translate.

13). The P.W.1-father of the deceased and husband of P.W.2 was not in a fit state of mind to answer for any questions or to give any replies as observed by the learned Magistrate in recording his evidence and P.W.2-mother of the deceased also deposed about his mental ill-health after the accidental death of their daughter. P.W.2 further deposed that the marriage of accused and the deceased was performed ten years back and deceased died two years prior to the evidence. She received burn injuries at the matrimonial home at Chuchund village and she was admitted in Government hospital in Bhainsa as inpatient and later she was shifted therefrom to Nanded Government hospital where she died. The evidence of P.W.2 in this regard corroborates to the evidence

of P.W.9 supra of shifting from Bhainsa hospital of the injured to the Nanded Government hospital on 27.11.2008 evening.

14). What P.W.2 further deposed was that on the date of the burn injuries at about 12 O'Clock(midnight) the father of accused told her over phone that Jaimala received burn injuries when lantern (Chimney) fell on her. She deposed that they reached by 26.11.2008 morning to the hospital at Bhainsa and the injured Jaimala was conscious and she stated that her husband on the previous night beat her even requested by her with folding hands by unheeding her and after she prepared food, from his refusal to take, when she was taking dinner he poured kerosene on her which was there in a dabba (tin) and set her ablaze and left the house. In this regard, version of P.W.2 corroborates to the dying declaration and evidence of P.W.13 supra and also that of P.W.9 and Ex.P.9 certificate. Ex.P.9 shows head and neck is with 8%burn injuries, upper limb-left and right about 9% each, abdomen 9%, back 9%, lower limbs-right and left 9%each. The Exs.P.14 and 15 dying declarations proved from the evidence of P.W.12- Investigating Officer that was issued by Doctor D.B.Bange shows the injured died on 06.12.2008 while under treatment at Nanded hospital, resident of Chuchund and wife of Gadpale Bhujang and the injuries are ante-mortem and death is due to septicemia shock and due to superficial and deep burn injuries of 79% There is nothing even by any suggestion in the evidence of PW14 of said injuries possible by accidental fall of lantern on the victim. The nature of injuries referred in Ex.P.9 of P.W.9 of head and neck back and on upper limbs etc., correlates what P.W.2 deposed also

and it clearly proves that the accused deliberately and not under any fit of anger and grave and sudden provocation but intentionally and with knowledge poured kerosene and set ablaze and left the home without even putting out the fire and without even making attempts to save the victim and without even attempts to admit in the hospital. P.W.2 deposed that the accused was at Government hospital, Bhainsa when she visited in the cross-examination by accused. Even taken the same as a true version a subsequent and next day visit to the hospital will not absolve him of his complicity to the crime from the facts referred above which consistently prove the accused not only ill-treated the deceased but also killed by pouring kerosene and set ablaze.

15). Once such is the case, even P.Ws.4 and 5 did not support prosecution version and they stated they do not know anything or they came to know about the occurrence, that no way disproves above evidence of the prosecution. The abscondance of the accused having poured kerosene and set ablaze of his wife while they were in the house by not making attempts to save her and no explanation from him of the facts with in his exclusive knowledge for burden lies on him u/ sec.106 of the Indian Evidence Act at least to draw adverse inference against him and of his conduct in this regard also with reference to Section 114 of the Evidence Act, the trial Court is right in its conclusion and for this Court while sitting in appeal there is nothing to interfere with the findings of the trial Court of the two charges proved against the accused as guilty and on the sentence passed against him.

Point No.3:

16). Accordingly and in the result, the appeal filed by the accused-convict-appellant is dismissed by confirming his conviction and sentence passed by the trial court having been found guilty for the offences punishable under Sections 302 & 498-A I.P.C., on both the charge Nos.1&2 under Section 235(2) Cr.P.C. respectively for nothing to interfere.

Consequently, miscellaneous petitions pending in this Criminal Appeal, if any, shall stand closed.

S.V. BHATT, J

Dr. B.SIVA SANKARA RAO J,

Date:25.11.2017

vvr

