

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT  
AND  
HON'BLE SRI JUSTICE P. KESHA RAO**

**CRIMINAL APPEAL No.646 of 2011**

**JUDGMENT** : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the appellants have assailed the judgment dated 2<sup>nd</sup> June 2011, in S.C.No.462 of 2009 on the file of VI Additional Sessions Judge (III FTC), Warangal at Mahabubabad.

2. By the aforesaid judgment, the appellants/A-1 to A-4 were found guilty for the offences under Sections 498-A and 302 of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961. Consequently, they were convicted and sentenced to undergo Rigorous Imprisonment (R.I.) for a period of one year each and also to pay a fine of Rs.100/- each, in default, to suffer Simple Imprisonment (S.I.) for one month each, for the offence under Section 498-A of IPC. They were sentenced to undergo imprisonment for life and to pay a fine of Rs.100/- each, in default, to suffer S.I. for one month each for the offence under Section 302 of IPC. Appellants were also sentenced to undergo R.I. for six months and to pay a fine of Rs.100/- each, in default, to suffer S.I. for one month each for the offence under Section 3 of Dowry Prohibition Act, 1961. They were further sentenced to undergo R.I. for a period of Six months and to pay a fine of Rs.100/- each, in default, to suffer S.I. for one month each for the offence under Section 4 of Dowry Prohibition Act, 1961. All the sentences are to run concurrently.

3. The prosecution case against the appellants is that the *de facto* complainant by name Byraboina Mallaiah of Amangal village of

Mahabubabad Mandal, Warangal District, who is the father of the deceased, made a report to Police on 23.04.2008, alleging that he performed the marriage of his daughter by name Sumalatha with Neelam Pullaiah (Appellant No.1) and he paid an amount of Rs.1,00,000/- as dowry at the time of marriage. Immediately after the marriage, deceased joined her husband to lead marital life. They lead their marital life happily and amicably for a period of Six months. Later on, her husband, who is appellant No.1 and her parents-in-law/appellants 2 and 3 and her sister-in-law/appellant No.4 started demanding the deceased to bring additional dowry. In that connection, mediations were held before elders. On the advice of elders, an additional amount of Rs.20,000/- was also paid to the appellants. Even then, the appellants did not stop their unlawful demand for additional dowry and started harassing the deceased by abusing and beating her.

4. On 22<sup>nd</sup> April 2008, in the morning, the appellants started harassing the deceased both mentally and physically for further additional dowry and in that connection, they also beat the deceased. This was witnessed by Gundla Mallaiah (PW-4), who informed the same to Byraboina Naresh (PW-5) over telephone. On receipt of information, PW-5 informed the same to his parents i.e. PWs.1 and 2. Thereafter, PWs.1 and 2 engaged an auto and reached the house of appellants during that night. On seeing them, the appellants fled away by locking the house. The deceased informed them that appellants beat her, sprinkled chilly powder on her private parts and forcibly poured pesticide poison in her mouth. Immediately, PWs.1 and 2 shifted the deceased to Area

Hospital, Mahabubabad in the auto belonging to one G.Srinivas (LW-3).

On the way to hospital, the deceased Sumalatha lost her breathe.

5. The above report was registered as a case in Crime No.65 of 2008 for the offences under Sections 498-A and 302 or in alternative, 304-B of IPC and under Sections 3 and 4 of Dowry Prohibition Act, 1961.

6. The charge sheet was taken cognizance by the Judicial First Class Magistrate, Narsampet as a case in P.R.C.No.63 of 2008 under Sections 498-A and 302 of IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961. After following the procedure contemplated under law, the Judicial First Class Magistrate committed the case to the Court of Sessions, Warangal, under Section 209 (a) Cr.P.C. After receipt of case material, the learned Sessions Judge has taken the matter on file as S.C.No.462 of 2009 and madeover the same to the Court of VI Additional Sessions Judge (III FTC), Warangal at Mahabubabad.

7. On appearance of the appellants, the aforesaid Court examined them under Section 228(1)(b) Cr.P.C., in which, they pleaded not guilty. On hearing both sides, the trial Court framed charges against the appellants on 1<sup>st</sup> February 2010 for the offences under Sections 498-A and 302 of IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961. The appellants denied to the charges and claimed to be tried.

8. To prove its case, the prosecution examined PWs.1 to 11 and got marked Exs.P-1 to P-8. On behalf of appellants, DWs.1 to 3 were examined and the contradictory portion from 161 Cr.P.C. statement of PW-4 was marked as Ex.D-1.

9. After closure of the prosecution evidence, the appellants were examined under Section 313 Cr.P.C. They denied the incriminating material appeared against them. Appellant No.1 stated that the paternal grandfather of deceased Sumalatha died, on that, himself and his wife Sumalatha went to his inlaws' house and attended the ceremony function and later returned to his house. Her brother came to their house and asked them to send Sumalatha. On that, he refused to send. Except that, he has not committed any offence. He further stated that he never demanded any dowry or additional dowry. His wife Sumalatha consumed pesticide poison, but he does not know the reason for the same. Appellants 2 and 3 stated that they never harassed Sumalatha, they never demanded any additional dowry and they are not responsible for the death of Sumalatha. Appellant No.4 stated that she has not committed any offence and she never harassed the deceased by demanding her to bring additional dowry. By the relevant time, she was studying Senior Intermediate at Gudur and used to reside at said place. She is a writer of books pertaining to DWACRA group people and during the relevant time she had been to Vizag in connection with DWACRA group meeting and while she was returning from Vizag, she came to know that Sumalatha died. She is not responsible for the death of Sumalatha.

10. Learned counsel appearing on behalf of appellants argued that at first instance, FIR was registered under Section 304-B of IPC. But, as no evidence was available for the said offence, the committal Court took cognizance of the offence under Sections 498-A and 302 of IPC and

Sections 3 and 4 of Dowry Prohibition Act, 1961. The prosecution failed to adduce any cogent and corroborative evidence to show that appellants harassed the deceased by demanding her to bring more dowry. The evidence adduced by the Prosecution through PWs.1 to 6 cannot be taken into consideration as they are interested and partisan witnesses. There is no evidence on record to show that the deceased stated to PWs.1 and 2 that the appellants harassed her by beating and they poured chilly powder on her private parts and also poured pesticide poison in her mouth. Therefore, the alleged statement, which is not corroborated by any evidence either direct or circumstantial, cannot be considered as a statement under Section 32(1) of the Indian Evidence Act. There is no direct evidence available on record. The defence raised by the appellants at the time of examination under Section 228(1)(b) Cr.P.C. and also at the time of 313 Cr.P.C. examination, and the defence raised through the evidence of defence witnesses and the contradictory portion in 161 Cr.P.C. statement of PW-4 which is marked as Ex.D-1, clearly substantiated the case of the appellants that it was not a homicidal death, but was a suicidal death. The appellants took the defence that on the earlier day the brother of the deceased went to their house requesting the appellants to send the deceased to Bhadrachalam in connection with death ceremony of grand mother, for which, they refused. Hence, the deceased swallowed pesticide poison. Therefore, it was a suicidal death. The appellants are in no way responsible for the death of the deceased. The evidence of investigating officers PWs.10 and 11 is in no way useful

to the case of the prosecution in the absence of any direct or circumstantial evidence.

11. Learned counsel for appellants further argued that on the relevant day, appellant No.1 went to another village, appellants 2 and 3 were not present at the house, and the evidence of DW-1 that appellant No.4 went to Vizag, clearly establishes that the appellants were not available in the house on the relevant day. Moreover, appellants 2 and 3 shifted the deceased to the hospital and first aid was rendered by an RMP doctor in the village. The said fact is established by the evidence of DWs.2 and 3. Therefore, appellants 2 and 3 were only available in the village and immediately on coming to know that deceased was in a sick mood, they shifted her to the hospital. It clearly establishes that the appellants are in no way connected with the death of the deceased. However, the trial Court has ignored the aforementioned material evidence and erroneously convicted the appellants.

12. In addition to above, learned counsel for appellants argued that the alleged incident took place on 22<sup>nd</sup> April 2008 and the FIR was lodged on 23<sup>rd</sup> April 2008 at 11 a.m. Thus, there is delay in lodging the FIR, which is not properly explained by the prosecution. Therefore, the benefit of the same should be given to the appellants. Moreover, the inquest report (Ex.P-2) does not say anything regarding pesticide administered in the mouth of the deceased. Postmortem report (Ex.P-4) does not say anything regarding sprinkling of chilly power. It only says that the deceased expired due to Organochloro, an insecticide poison. Thus, he

submitted that the statements of PWs.1 and 2 are contrary to inquest and postmortem reports. Thus, the oral disclosure of deceased to PWs.1 and 2 is proved to be false, for the reason that both the said reports does not speak about the traces of chilly power. It establishes that the deceased did not disclose anything to PWs.1 and 2 as to what had happened to her. Moreover, there are no eyewitnesses to the incident. PW-4 gave information regarding this incident to PW-5, who further informed to PWs.1 and 2. There is no last seen theory also in the present case. Therefore, the appellants deserve to be acquitted from this case.

13. It is further submitted by the learned counsel for appellants that appellant No.4 was born on 3<sup>rd</sup> June 1991 as is evident from her study, conduct and date of birth certificate filed at page No.47 of the material papers, which was issued by the Zilla Parishad Girls High School, Gudur on 14.06.2006. It says that N.Vasantha had studied from Classes 8<sup>th</sup> to 10<sup>th</sup> during the period from 2003 to 2006 and her date of birth is 03.06.1991. In addition to above, at page No.48 of the material papers, the certificate issued by the Board of Secondary Education, Andhra Pradesh, is filed. According to said certificate also, the date of birth of appellant No.4 is 03.06.1991.

14. It is not in dispute that this fact was not raised before the trial Court. But, the issue of juvenility can be raised at any point of trial or even at the appellate stage. Therefore, in terms of directions dated 04.07.2011, issued by this Court, the Principal District Judge, Warangal conducted inquiry and submitted a report that as on the date of filing of

charge sheet or during trial, appellant No.4 is not a minor. She crossed 18 years of age and she did not claim that she is aged less than 18 years. However, this report is self-contradictory for the reason that in one para, the District Judge stated that as on the date of commission of offence, appellant No.4 was aged about 17 years. The charge sheet in the said case was laid on 28.07.2008 showing that the appellant No.4 was aged about 19 years. The learned District Judge has totally went wrong, as the age of the accused is to be seen on the date of commission of the offence, but not as on the date of filing of charge sheet. Thus, it is established by the certificate issued by the Zilla Parishad Girls High School, Gudur and the Secondary School Certificate issued by the Board of Secondary Education, Andhra Pradesh, that the date of birth of appellant No.4 is 03.06.1991. Thus, as on the date of offence i.e. 22.04.2008, appellant No.4 was aged less than 18 years in all circumstances. It is pertinent to mention here that appellant No.4 was released on bail vide orders of this Court, dated 04.07.2011, in Crl.A.M.P.No.1019 of 2011, and since then, she is on bail.

15. On the other hand, it is submitted by the learned Public Prosecutor that the prosecution has established the guilt against appellants by leading oral and documentary evidence. PW-1 is the *de facto* complainant, who testified the contents in Ex.P-1/report. PW-2/the mother of the deceased, PW-3/the driver of the Auto, in which, the deceased was shifted to the hospital, PW-4/the neighbour of appellants, PW-5/the brother of the deceased and PW-6/an elder in the panchayat; all these witnesses clearly stated that the appellants used to beat the

deceased demanding to bring additional dowry. The evidence of PWs.1 to 6 have clearly established that the appellants have made unlawful demand for additional dowry and harassed the deceased. The evidence of PWs.1 and 2 further testify that immediately after reaching the house of appellants, their daughter Sumalatha informed that appellants 1 to 4 beat her and poured chilly power on her private parts and also poured pesticide poison in her mouth. The evidence of PWs.1 and 2 that they shifted the deceased to hospital in an auto, is established by PW-3/the Auto driver. The evidence of inquestdhar present at the time of inquest conducted over the dead body of the deceased Sumalatha, who was examined as PW-7, proved the contents in Ex.P-2/inquest panchanama with reference to Column No.15 regarding the cause of death. The evidence of PW-8/Medical Officer who conducted autopsy over the dead body of Sumalatha, clearly shows that as per the FSL report, the deceased would have died due to Organochloro, an insecticide poison. Through him, his final report and the postmortem examination report were marked. Therefore, the evidence of PWs.1 and 2 that the appellants killed deceased by forcibly pouring pesticide poison in her mouth, was established by medical evidence. The evidence of investigating officers, who were examined as PWs.10 and 11, clearly established that after receipt of report, the investigation was made on correct lines and their investigation disclosed that the appellants had killed the deceased.

16. In addition to above, the learned Public Prosecutor submitted that the incident had taken place on 22.04.2008. PWs.1 and 2 reached the place of the deceased in the same night and immediately took the

deceased to the hospital, but she died on the way. On the very next day i.e. 23.04.2008 at 11 a.m., they made a complaint to the Police. The village of the deceased is at a distance of 12 km from the Police Station and the deceased was shifted by an Auto, thus, there is no delay in lodging the FIR. Moreover, the statement of deceased to PWs.1 and 2 that the appellants administered pesticide poison in her mouth, is proved by the postmortem report/Ex.P-4. Based on above evidence against the appellants, the trial Court has rightly convicted them.

17. The plea of juvenility raised by appellant No.4 is not disputed by the learned Public Prosecutor. He submitted that the report of the District Judge, Warangal is contrary to the record. Therefore, the said report may be rejected and benefit of juvenility may be granted to appellant No.4.

18. It is pertinent to mention here that at the time of examination under Section 228 (1)(b) Cr.P.C., the appellants pleaded not guilty and denied the charges framed against them. Appellant No.1 contended that he was attending decoration work of Kalyana Mandapam of one Koya Sambaiah in Macherla village. Appellant No.4 contended that at that time, she was studying intermediate in Gudur. She used to write scripts for DWACRA group people and she went to Visakhapatnam to attend the meeting of DWACRA group. While returning from Visakhapatnam, when she reached near Khammam, she came to know that her sister-in-law died.

19. When appellants 1 and 4 raised the plea of alibi, burden lies on them to establish that they were not present in the village on the date of offence. For better appreciation of facts, the provision of Section 11 of

Indian Evidence Act was considered by the trial Court and it is observed that appellants 1 and 4 have to establish that they were not present at the house at the time of offence, but were at Macherla and Vizag respectively. However, appellant No.1 did not choose to examine himself as a witness or to examine any other witness to establish that on the relevant day he was attending decoration work of Kalyana Mandapam of Koya Sambaiah in Macherla village. Even said Koya Sambaiah was also not examined by the appellants to establish that on the relevant day he engaged appellant No.1 to decorate Kalyana Mandapam. In his 313 Cr.P.C. statement also, appellant No.1 did not choose to say anything that he was not available in the house on the relevant day. He simply stated that the parental grandmother of his wife Sumalatha died, upon which, himself and his wife went to his in-laws' house. After ceremony, himself and his wife returned to his house. He refused to send his wife to attend immersion function at Bhadrachalam. On that, his wife refused to take food. He never harassed his wife to bring any dowry. He does not know whether his wife consumed pesticide or not and he does not know how his wife died. Thus, the substance of the statement of appellant No.1 in 313 Cr.P.C. is that he does not know the reasons for the death of his wife, he never harassed his wife and that he was not responsible for the death of his wife. Except that, he has not led any evidence to this effect.

20. The defence of appellant No.1 is not accepted by the trial Court, keeping in view the cross-examination of PW-1, whereby, he denied to the suggestion that on the date of incident, he called appellant No.1 on

telephone to enquire about the health of the deceased, upon which, appellant No.1 told that he was in Macherla village for decoration of Kalyana Mandapam of Koya Sambaiah and appellant No.4 was not present in the house at the time of incident and she went to Vizag. This is a suggestion given to PW-1. Therefore, it does not amount to admission as contended by the counsel for the appellants. The question, on the relevant day appellant No.1 was at Macherla village attending decoration work of Kalyana Mandapam belonging to one Koya Sambaiah, as suggested, is untenable and cannot be accepted as it was not spoken by appellant No.1 even at the time of 313 Cr.P.C. examination. Thus, appellant No.1 failed to adduce any evidence to show that he was not present at his house on the relevant day. He even did not choose to examine himself to testify the same. In such circumstances, the plea of alibi raised by appellant No.1 stands not proved.

21. Appellant No.4 contended that on the relevant day, she was at Vizag. To establish the same, she examined Smt.Vasam Venkata Laxmi as DW-1. She stated that she worked as President in Udaya Sree Mahila Mandal, Gudur village. About 2½ years back, their Mandal committee had been to Golconda village of Visakhapatnam District to attend training under the Tribal Nutrition Programme. Twelve members of their Mahila Mandal had participated in the programme, including appellant No.4/Neelam Vasantha. While returning from the tour, when they reached Khammam, they received information that the sister-in-law of appellant No.4 had expired. This witness was cross-examined by the

Additional Public Prosecutor, in which, it was elicited that DW-1 did not file any document to show that she was working as President of Udayasree Mahila Mandal, Gudur. She even failed to file any document to show that the members of their Mahila Mandal including appellant No.4, had participated in any programme held at Golconda village. Moreover, she admitted that she cannot furnish the registration certificate of their Mahila Mandal. Therefore, the evidence of DW-1 being oral, is not accepted by the trial Court. This witness was examined by the trial Court on 26.11.2010. Subsequently, counsel for appellants filed a Memo into Court on 4<sup>th</sup> January 2011, which contains a certificate dated 28<sup>th</sup> November 2010, to show that DW-1 was President of Mahila Mandal and the Mahila Mandal members attended training at Golconda village from 18.04.2008 to 24.04.2008. But the counsel failed to recall DW-1 to mark the said certificate for the reasons best known to him. As per law, if a document is not marked, the mere filing of it cannot entitle the person to rely on its contents. Therefore, the document filed along with Memo dated 04.01.2011, was not considered by the trial Court to support the version of DW-1.

22. PWs.1 and 2 are the main witnesses. PW-1 testified giving Ex.P-1/report. As per his evidence, PW-4 informed his son/PW-5 over telephone stating that the appellants beat the deceased by pressurizing her to bring additional dowry. PW-4 also stated the same. PW-5 brother of the deceased had also stated that he received information from PW-4 stating that the appellants beat and harassed the deceased. On that, he telephoned to his parents as he was residing in Kesamudram. The

evidence of parents of deceased i.e. PWs.1 and 2 shows that they received information from their son PW-5 who was residing at Kesamudram. On that, they engaged a Tractor and reached Kollapur village. By then, their daughter was in front of the house and the appellants locked the door and went away. On enquiry, their daughter informed that appellants beat her, poured chilli powder on her private parts and also poured pesticide poison forcibly in her mouth. Immediately, PWs.1 and 2 shifted the deceased to the hospital, but on the way to hospital, the deceased died. PWs.1 and 2 coming to Kollapur and shifting the deceased to the hospital was corroborated by the evidence of PW-3, who is an Auto driver, who stated that he took PWs.1 and 2 to Kollapur to the house of their daughter and they also shifted the deceased to hospital but she died on the way. Later, the dead body was again shifted to the house of appellants at Kollapur. Though this witness was cross-examined at length, no useful material was elicited so as to disbelieve him.

23. The evidence of PW-4 is to the effect that on the date of incident, he saw appellants 1 to 4 beating the deceased and he informed the same to the son of PW.1 by name Naresh/PW-5. The passing of information to PW-5 by PW-4 was testified by PW-5 and the evidence of PW-5 that he received information through PW-4 and later conveyed the same to his parents by telephone was also corroborated by the evidence of his parents i.e. PWs.1 and 2. The appellants have not adduced any evidence to show that they conveyed information to PWs.1 and 2 that deceased swallowed pesticide. In the absence of such evidence, the evidence of PWs.1 to 5

though interested witnesses, can be relied upon. In Ex.P-1, it is recited that on enquiry the deceased informed PWs.1 and 2 that the appellants beat her demanding to bring more dowry and finally sprinkled chilly power on her private parts and forcibly poured pesticide in her mouth.

24. As stated by the learned Public Prosecutor, the statement made by the deceased to her parents with regard to the circumstances under which the death occurred, can be considered as a Dying Declaration under Section 32(1) of the Indian Evidence Act. As per the said provision, when the statements made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in case in which the cause of that person's death comes into question, such statements are relevant. Generally, the statement will be recorded by Mandal Revenue Officer or Judicial First Class Magistrate or the Police officer who investigated the case. In this case, though the statement of deceased was not recorded, Ex.P-1 as well as the evidence of parents of deceased i.e. PWs.1 and 2 shows that the deceased had narrated the circumstances under which she was forced to swallow pesticide.

25. On the aforesaid issue, the Hon'ble Supreme Court in ***Ramesh Kumar v. State of Punjab***<sup>1</sup>, held that Section 32 of Indian Evidence Act is an exception to the rule of hearsay evidence and makes admissible the statements of a person who dies, whether the death is a homicide or a suicide, provided the statements relate to the cause of death or exhibits circumstances leading to the death. It has to be seen whether the

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<sup>1</sup> AIR 1994 SC 945

statement made to PWs.1 and 2 as recited in Ex.P-1 can be accepted as dying declaration under Section 32 of the Evidence Act. The evidence of PWs.1 and 2 is to the effect that on their enquiry, their daughter informed that the appellants beat her and forcibly poured pesticide in her mouth. This fact was testified by the evidence of Medical Officer, who was examined as PW-8. As per his evidence, on 23.04.2008, he received a requisition to conduct autopsy over the dead body of the deceased. Accordingly, he conducted postmortem examination and found ante-mortem injury of contusion over left side of chest measuring 2x2 inches. He issued postmortem report which is marked as Ex.P-4 and he gave final opinion under Ex.P-5 through the investigating officer/PW-11. The report/opinion received from RFSL, Warangal is marked as Ex.P-7, which shows that items 1 and 2 contained insecticide poison. Basing on the final report, the Medical Officer opined that the death was caused due to insecticide poison.

26. The evidence of PWs.1 and 2 is to the effect that their daughter informed that the deceased beat her and forcibly poured pesticide in her mouth. The opinion expressed by the inquestdhars as well as Mandal Revenue Officer who conducted inquest is to the effect that they noticed chilly powder poured on the private parts of the deceased and the inquestdhars opined that the death was due to beating as well as forcibly pouring pesticide in the mouth of the deceased. Therefore, the evidence of PW-7/inquestdhar, who was present at the time of inquest, shows that the death was due to pouring insecticide in the mouth of the deceased. It gained strength by the evidence of PWs.1 and 2 who stated that their

daughter informed that the accused poured chilly powder on her private parts and also forcibly poured pesticide in her mouth.

27. In view of the aforesaid evidence, we find no illegality or perversity in the judgment of the trial Court. Accordingly, we hereby confirm the same.

28. As discussed above, appellant No.4 was born on 03.06.1991 and the alleged incident took place on 22.04.2008. Thus, on the date of incident, appellant No.4 was a juvenile. She was released on bail on 04.07.2011. The learned Public Prosecutor also has not disputed this fact. Therefore, we hereby declare that appellant No.4/A-4 was a juvenile on the date of the incident. Hence, while maintaining her conviction, we hereby set her free from this case.

29. Since appellants 1 to 3 were released on bail vide order dated 30.11.2016, passed in Crl.A.M.P.No.1942 of 2016, they are directed to surrender before the Court below i.e. VI Additional Sessions Judge (III FTC), Warangal at Mahabubabad, within one week from receipt of a copy of this judgment, for undergoing the remaining sentence.

30. Appeal is accordingly dismissed.

Pending miscellaneous applications, if any, shall stand closed.

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**SURESH KUMAR KAIT, J**

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**P. KESHA RAO, J**

29<sup>th</sup> December, 2017  
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