

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI**

CRIMINAL APPEAL No.52 OF 2013

JUDGMENT: (per Hon'ble Sri Justice C.Praveen Kumar)

Originally, accused Nos.1 to 4 in Sessions Case No.467 of 2011 on the file of the III Additional Sessions Judge, Warangal, were tried on five charges. The first charge was against accused No.1 under Section 302 I.P.C. or in alternative under Section 304-B I.P.C. The second charge was against accused Nos.2 to 4 under Section 304-B I.P.C. The third charge was against accused Nos.1 to 4 under Section 498-A I.P.C. The fourth charge against accused Nos.1 to 3 under Section 3 of the Dowry Prohibition Act. The fifth charge was against accused Nos.1 to 4 under Section 4 of the Dowry Prohibition Act. Vide judgment, dated 15.10.2012, rendered in the aforesaid Sessions Case, the learned Sessions Judge, while acquitting accused Nos.3 and 4 of all the charges levelled against them, acquitted accused No.1 only for the charges under Sections 304-B and 498A I.P.C. and Sections 3 and 4 of Dowry Prohibition Act, but convicted him for the charge under Section 302 I.P.C. and sentenced him to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default, to suffer simple imprisonment for three months. As accused No.2 died during pendency of the case, the Sessions Case was abated against him. Challenging the conviction and sentence

recorded against accused No.1, the present appeal came to be filed by accused No.1.

2. The facts, in brief, as per the charge sheet averments and evidence on record are as under:

PW.1 is the father of the deceased, PW.2 is the mother of the deceased and PW.3 is the younger brother of the deceased. Accused No.1 is the husband of the deceased, accused Nos.2 and 3 are the parents of accused No.1, while accused No.4 is the younger brother of accused No.1.

Two years prior to the date of incident, the marriage of deceased was initially performed with one Praveen. After four months of the marriage, the said Praveen died in a road accident. Thereafter, PW.1 brought the deceased to his house and kept with him. In the month of December, 2010, accused Nos.1 to 3 along with their relatives went to the house of PW.1 to fix the match of accused No.1 with the deceased. Accused Nos.1 to 3 demanded Rs.5,00,000/- towards dowry. The averment in the charge sheet is that PW.1 informed the accused about his inability to pay the said amount towards dowry. As such, the accused returned to their house. After the said incident, accused No.1 used to meet the deceased now and then and promised to marry her. On 30.12.2010, accused No.1 and the deceased left the house and came down to Hyderabad. On coming to know about the same, PW.1

telephoned to accused No.1 and requested him to come over to Anantharam Village, promising to perform their marriage by convincing accused Nos.2 and 3. Believing the said representation, accused No.1 and the deceased came to Anantharam Village, Gundala Mandal of Nalgonda District. But, PWs.1 and 2 produced accused No.1 and the deceased before PW.10. Subsequently, it was decided to perform the marriage of accused No.1 with the deceased. Accordingly, on 05.01.2011, their marriage was performed at Jeedikal Temple. On 07.01.2011, PWs.5, 7 and 9 are said to have gone to the Gram Panchayat Office, Pembarthi Village, along with accused No.1 and the deceased to meet PW.10 and explained to him about their marriage. Later, PW.10 called accused Nos.2 and 3 and informed them about the said marriage. They agreed to the marriage and demanded a sum of Rs.5,00,000/- towards dowry, but PW.1 agreed to give Rs.70,000/- cash and 10 tulas of gold ornaments towards dowry. Accordingly, on 10.01.2011, PW.1 gave Rs.70,000/- to accused No.1 and two days thereafter, he gave gold ornaments weighing 10 tulas. The deceased led her marital life happily for two months. Thereafter, accused Nos.1 to 4 started harassing the deceased mentally and physically demanding her to bring Rs.25,000/- cash and a motor cycle towards additional dowry. About ten days prior to the date of incident, deceased went to her parents' house and informed

the same to her parents, but they convinced and sent her to her in-laws house.

On 30.03.2011, at about 11:30 AM, accused No.1 picked up a quarrel with the deceased and beat her. During the said quarrel, accused No.1 poured kerosene on the deceased and set fire on her. The deceased came out of the house with flames and fell on the road. PWs.15 and 16, who were residing in the next street, put off the flames and shifted her to Area Hospital, Jangaon, in the auto rickshaw of PW.29. On receipt of information, PWs.1 to 3 came to the Area Hospital, Jangaon, and found the deceased with burn injuries. On their enquiry, she stated that her husband quarreled with her, beat her with hands, poured kerosene and set fire on her blaming that she has illegal contacts and that accused also demanded additional dowry. On the same day, at about, 01:15 PM, she succumbed to the injuries, while undergoing treatment.

On the same day, PW.1 lodged a report, which was brought on record as Ex.P1. Basing on Ex.P1, the Station House Officer, Jangaon Police Station, registered a case in Crime No.85 of 2011 of Jangaon Police Station against accused Nos.1 to 4 for the offences punishable under Sections 302 and 304-B I.P.C. Ex.P22 is the F.I.R. Thereafter, investigation was conducted by PW.25, who worked as SDPO, Jangaon, at the relevant time. After receiving the copy of the

F.I.R., he recorded the statement of PW.1. On receipt of information from the Sub-Inspector of Police, Jangaon Police Station, the Judicial Magistrate of First Class, Jangaon, who was examined as PW.27, recorded the dying declaration of the deceased, in which she stated that accused No.1 poured kerosene and set her on fire. Ex.P27 is the dying declaration.

Later, he gave a requisition to Executive Magistrate, Jangaon, for conducting inquest over the dead body of the deceased. PW.24, who was the incharge Tahsildar of Jangaon Mandal, at the relevant time, conducted inquest over the dead body of the deceased in the presence of PWs.17 to 19. Ex.P21 is the inquest panchanama. Then, PW.25 visited the mortuary and in the presence of PWs.17 to 19, took photographs of the dead body of the deceased. He examined PWs.2 to 4 and LW.5 and recorded their statements. Thereafter, he visited the scene of offence at Pembrothy Village and prepared a rough sketch of the scene in the presence of PWs.22 and 23. Ex.P23 is the crime details form along with rough sketch. During the said process, he seized plastic tin containing kerosene, burnt cloth and match box. He examined PWs.5 to 17 and 20. Thereafter, the dead body of the deceased was sent for postmortem examination. PW.26, the Civil Assistant Surgeon in Area Hospital, Jangaon, conducted autopsy over the dead body of the deceased and issued Ex.P25, the postmortem examination report. According

to him, the cause of death was due to 100% burns. PW.25 continued with the investigation and on 02.04.2011, he arrested the accused and interrogated them. During interrogation, the accused is said to have confessed about commission of the offence.

3. After obtaining necessary documents and examining the witnesses, a charge sheet came to be filed before the Court of Judicial Magistrate of First Class, Jangaon, which was taken on file as P.R.C.No.16 of 2011. On appearance of the accused, copies of the documents were furnished to them, by following the procedure laid down under Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.467 of 2011.

4. On consideration of material placed on record, the charges as stated above came to be framed against the accused, which were read over and explained to them, to which, they pleaded not guilty and claimed to be tried.

5. To substantiate their case, the prosecution examined PWs.1 to 31 and got marked Exs.P1 to P28 and M.Os.1 to 3. Out of the 31 witnesses examined, PWs.1 to 23 did not support the prosecution and were declared hostile by the prosecution.

6. After the closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same, but, however, did not place on record any defence evidence.

7. Basing on the dying declaration recorded by the Magistrate, which was brought on record as Ex.P27, coupled with the evidence of PWs.1 to 4, who were declared hostile in the cross-examination, which was conducted after recall, the trial Court, vide its judgment under challenge, acquitted accused Nos.3 and 4 of all the charges levelled against them and accused No.1 for the charges under Sections 304-B and 498A I.P.C. and Sections 3 and 4 of Dowry Prohibition Act. However, convicted accused No.1 for the charge under Section 302 I.P.C., and sentenced him to suffer imprisonment for life as aforestated. The case against accused No.2 was abated.

8. Sri Nazeer Khan, learned counsel for the appellant, would submit that no reliance can be placed on the dying declaration, since the oral dying declaration made by the deceased before PWs.1 to 3 is inconsistent with the one made before the Magistrate. He would further submit that as the deceased sustained 100% burn injuries, she would not be in a position to make any statement. He would further submit

that the dying declaration recorded by the Magistrate being a cryptic one, containing no details, it cannot be made the base to convict the appellant. He would further submit that since the prosecution witnesses have not supported the alleged harassment and as the version of the deceased in the dying declaration is with regard to pouring kerosene and setting her on fire, as additional dowry requirements are not fulfilled, no reliance can be placed on the said dying declaration. In the alternative, he would submit that since the incident was preceded by a quarrel, which version is spelled out in the F.I.R., which was registered basing on the report given by the father of the deceased (PW.1), basing on the oral information given by the deceased, the nature of offence can be scaled down to one under Section 304-II I.P.C. In support of his submissions, he placed reliance on a judgment of this Court in **State of Andhra Pradesh v. Ramancha Laxma Reddy**¹. Insofar as reliability of the dying declaration is concerned, he refers to the judgment of the Honourable Supreme Court in **State of Rajasthan v. Santosh Savita**². Learned counsel further submits that since the incident has happened because of accused No.1 suspecting fidelity of the deceased and in view of the judgment of this Court in **Rachamalla**

¹ 2010 (2) ALD (Crl.) 847 (AP)

² AIR 2013 SC 3731

Srinu v. State of Andhra Pradesh³, he pleads that the offence can be scaled down to one under Section 304-II I.P.C.

9. On the other hand, the learned Public Prosecutor would submit that though PWs.1 to 4 were declared hostile by the prosecution, as they resiled from their earlier statements only on being recalled, after one month, their evidence in chief can be ruled up to convict the accused. He would further submit that in view of the division bench judgment of this Court, once the witnesses resiled from their earlier statements on recall, their evidence to the extent which inspires confidence and supports the case of the prosecution can be taken into consideration. He would further submit that even if the evidence of PWs.1 to 4 is eschewed from consideration, ie. dying declaration, can be made the basis to convict accused No.1. Hence, pleads that the judgment under challenge warrants no interference.

10. The point that arises for consideration is “Whether the accused was responsible for the death of the deceased?”

11. Admittedly, in this case P.Ws.5 to 23 did not support the prosecution case in the chief-examination itself. Insofar as P.Ws.1 to 4 are concerned though in chief, their evidence is in tune with the prosecution case, but in the cross-examination they resiled from what they have stated in chief. PW.1, who is the father of the deceased, deposed as under:

³ 2014 (1) ALD (Crl.) 765 (AP)

“On 30/12/2010 Ramchander, his father and his relatives came to my house to see my daughter Swapna, they demanded dowry of Rs.5,00,000/-, I expressed my inability. But Ramchander (A-1) had phone contacts with my daughter and eloped with her. However, I have traced my daughter and A-1 in Hyderabad., and brought them back on 05/11/2010 and performed her marriage on the same day at Jeedikal Devasthanam. On 07./01/2011 before Sarpanch and other elders a panchayath was held at Pemberthy (v). Our Sarpanch was also present. I have agreed to pay Rs.70,000/- each and 10 tulas of gold as a dowry to A-1 as per the decision given by the elders. Thereafter, A-1 and my daughter lived together for two months. Thereafter my daughter return to my house and told me that she was being harassed by A-1 to A-4 demanding additional dowry of Rs.25,000/- in addition to a bike. Then I took back my daughter and dropped in the hosue of A-1 by promising to fulfill their demand. On 30/03/2011 I received a phone call that my daughter was on flames through a RMP doctor namely Srinivas. Then myself and my relatives rushed to Area Hospital, Jangaon and found my daughter battling for live, her entire body was burnt. When myself and my wife enquiry my daughter as to how it happened, she told that A-2 to A-4 caught hold of her and her husband poured kerosene on her and lit fire having blamed her that she had illegal contacts with others and that accused also demanded additional dowry. Ex.P-1 is the complaint given by me. Police examined me.”

12. However, in the cross-examination, he admits that the parents of A-1 did not raise any dispute and the deceased and A-1 were leading happy life. He further states that on receiving the phone message from the accused, he rushed to the Area Hospital, Jangaon, and when enquired, the deceased told him that due to unbearable stomach pain, she poured kerosene on herself and lit fire. Then he advised and tutored

the deceased to say that A-1 poured kerosene on her as the demand of accused No.1 to bring motorcycle was not fulfilled. He also goes back on the contents of the report stating that he only signed on a blank paper.

13. Similar is the evidence of P.W.2, who is the wife of P.W.1. In the cross-examination, which was done after two months from the date on which chief evidence was recorded, admits that her daughter told her that she poured kerosene due to unbearable stomach pain and they advised their daughter to state that A-1 poured kerosene on her and lit fire, as the demand of the accused for the motorcycle was not fulfilled.

14. P.W.3, who is the brother-in-law of A-1 and son of P.Ws.1 and 2, also resiled, from what he has stated in the chief-evidence, in the cross-examination. According to him, in the cross-examination he admits that by the time he reached the Hospital, the deceased was already dead and he does not know whether the deceased was killed by litting her on fire. He states that the deceased-sister was suffering with severe stomach pain. So also is the evidence of P.W.4. From the evidence of these four witnesses, it is clear that they resiled from what they stated in chief after they are recalled pursuant to the orders of the Court. Though an argument is said to be advanced by the learned Public Prosecutor that since the witnesses turned hostile after recall, their evidence

in chief can be acted upon, in view of the judgment of this Court in ***Pubi Satyanarayana alias Satteyya vs. State of A.P.***⁴, but however the Apex Court in ***State of Rajasthan v. Bhavani***⁵ held as under:

“The fact that the witness was declared hostile by the Court at the request of the prosecuting counsel and he was allowed to cross-examine the witness, no doubt furnishes no justification for rejecting *en bloc* the evidence of the witness. But the Court has at least to be aware that *prima facie*, a witness who makes different statements at different times has no regard for truth. His evidence has to be read and considered as a whole with a view to find out whether any eight should be attached to the same. The Court should be slow to act on the testimony of such a witness and, normally, it should look for corroboration to his evidence.”

15. Therefore, if the evidence of P.Ws. 1 to 4 is excluded from consideration what remains is the D.D., which came to be recorded through the Magistrate who was examined as P.W.27. Before dealing with the evidence of PW.27, it is to be noted here that the Investigating Officer in his evidence categorically states about the report being given by P.W.1, basing on which the C.I of Police-P.W.30 registered a case in Cr.No.85 of 2011 and issued an F.I.R. The said report was signed by P.W.1. Ofcourse in the Court, PW.1 states that he

⁴ 1995 CrI.L.J. 1738

⁵ (2003) 2 ALD (Crl.) 490 (SC)

does not know the contents of the report, but however admits that he signed on a blank paper and as he was in grief he does not try to know the contents of the report. A reading of the First Information Report shows that after receiving the intimation, they rushed to Jangaon Government Hospital and found their daughter on a stretcher with fire wounds, struggling for breath. They found smell of kerosene emanating and the body extending from head to legs was in a burnt condition. When he asked, the deceased disclosed that on that day at about 11.30 a.m., herself and her husband were in the house and at that time a quarrel between herself and her husband with regard to motorcycle, which her father promised to give, and also about the illicit intimacy with one Mallesh, the mediator of the marriage. Saying that she is not required to him, poured kerosene and set her ablaze. Raising hue and cry she rushed out of the house, where the neighbours extinguished the fire and got her admitted in the hospital.

16. In the Dying Declaration recorded by the Magistrate, which is placed on record as Ex.P-27, the deceased stated that her husband poured kerosene on her at 12.00 p.m., and lit fire to her in her house at Pembarthy, as the accused used to suspect her whenever she talks with others.

17. It is to be noted that the said D.D. is a cryptic one referring to disputes between the accused and deceased with

regard to the accused suspecting her fidelity. In view of the disputes, he is said to have poured kerosene and set her on fire at 12.30 pm. Since all the witnesses have turned hostile, there is no independent corroboration to the contents of D.D. recorded by the Magistrate. But, if the D.D. is cogent, consistent and inspires confidence in the mind of the court, the same can be made the basis to convict the accused. In the instant case,, though P.W.1 went back on the contents of Ex.P.1, his signature on Ex.P1 is not in dispute, and the same gets support from the evidence of Inspector, who registered the F.I.R. As such the same cannot be thrown out as unreliable. A reading of the same would show that prior to the incident there was a quarrel and pursuant to the same, the accused poured kerosene and set her on fire. The contents of the first information report relate to a quarrel which not only relates to illicit intimacy but also with regard to demand for motorcycle. This is the first version given by the deceased.

18. As stated earlier, P.Ws.1 to 4 did not support the prosecution case but in the cross-examination, they categorically stated that they informed the deceased to inform/disclose that the accused was responsible for the death. Obviously they were won over to speak in favour of the accused. As stated earlier, as against the D.D. recorded by the Magistrate, there is also a report given by P.W.1, which

refers to the information given by the deceased, though he denies the contents therein.

19. At this stage, facts warrant looking into the evidence of Investigating Officer. According to him, on 30.03.2011 at 2.00 p.m., he received a report from P.W.1, basing on which

he registered a case in Cr.No.85 of 2011 under Sections 302 and 304-B IPC. Therefore, his evidence is to the effect that a written report came to be presented by P.W.1, after meeting the deceased in the hospital. The report given by P.W.1 shows that there was a quarrel between the accused and the deceased prior to the incident and pursuant to the said quarrel, the accused is said to have poured kerosene and set her on fire. The quarrel relates to illicit intimacy of the deceased and also about the demand for a motorcycle. Infact the said report came to be lodged after the death of the deceased. Though, P.W.1 denied the contents, but in view of the evidence of P.W.30 coupled with the fact that P.W.1 admitted his signature, we feel that the same can be used if it gets corroboration from other quarters. The corroboration with regard to the manner in which the deceased died is available through the D.D. recorded by the Magistrate. Though in both the D.Ds., it is stated that the accused poured kerosene and set her on fire but the circumstances

under which the incident took place is at variance. The incident in question is preceded by quarrel is lacking in the statement recorded by the Magistrate. Since the maker of D.D., cannot be subjected to cross-examination and in the absence of any corroboration from any other quarters in this regard, we feel that the contents of Ex.P-1 cannot be ignored altogether moreso when the signature on Ex.P-1 is not denied. Therefore, having regard to the circumstances of the case, as the incident in question is preceded by a quarrel, we feel that the case on hand would fall under Exception 4 to Section 300 IPC. The accused may not be having any motive to cause the death of the deceased since it was preceded by a quarrel, but definitely it can be said that he had an intention of causing such bodily injury as is likely to cause death. Hence, the case on hand would fall under Section 304 part-I IPC.

20. For the aforesaid discussion and in view of the judgment referred to above, we are of the opinion that an offence under Section 304 Part-I of IPC is made out. Hence, the conviction under Section 302 IPC is set aside and consequently, the appellant is convicted under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of ten years. The period of remand undergone by him during investigation, trial and after conviction shall be given set off,

under Section 428 Cr.P.C. The appellant/accused shall be set at liberty forthwith on completion of ten years rigorous imprisonment, if not required in connection with any other case.

21. Accordingly, the appeal is allowed in part. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

Dt:23.02.2018
MD/ GM

