

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.143 of 2012

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

A1 in Sessions Case No. 232 of 2010 on the file of the Sessions Judge at Mahabubnagar is the appellant herein. A1 and A2 were tried for the offences punishable under Sections 498-A and 302 IPC, for causing the death of Smt.Pasthanam Nagamani (wife of A1) on 20.10.2009, by pouring kerosene on her. Vide judgment dated 09.03.2011, the learned Sessions Judge, while acquitting A2 of the charge under Section 498-A IPC, convicted A1 for the offences punishable under Sections 498-A and 302 IPC and sentenced him to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- in default to undergo simple imprisonment for a period of one month for the offence punishable under Section 498-A IPC, and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/-, in default to simple imprisonment for a period of three months for the offence punishable under Section 302 IPC.

2. The facts, as culled out from the evidence of the prosecution witnesses are as under:

A1 is the husband of the deceased. PW1 is the father of the deceased, while PW2 is the mother of the deceased. PW3 is the brother of the deceased and PW4 is the younger sister of the deceased. PW5 is the brother of PW4. PWs 6 and 7 are also the relatives of the deceased. It is said that the accused and the deceased lead a happy married life for some time, and thereafter, disputes arose between them. About a year prior to the date of the incident, there was a quarrel between the deceased and A1, on account of which, the deceased returned to the house of PW1. In respect of the said quarrel, a panchayat was held in the presence of one Bhemmaiah. After the panchayat, PW1 kept the deceased in his house for one month. After holding another panchayat in Hyderabad, PW1 sent his daughter to the house of A1. The incident in question took place about a year after the said panchayat. It is stated that there was a quarrel between the deceased and her sister-in-law (A2), when A2 asked the deceased to give a share in her leg chain, which she got from somewhere. It is said that since the deceased refused to give a share to her sister-in-law (A2) in the leg chain, A1 did not provide food to the deceased. Since the deceased was not provided with food for some days, she came to the house of PW1 at Hyderabad. Subsequently, the parents of the deceased convinced her and sent her to the house of the accused, during which time, A1 is alleged to have pushed her, quarreled with her, poured kerosene and set her on fire. After bolting the door from outside, A1 is said to have fled from the house. Some of the neighbours, on hearing the cries

of the deceased, brought her from the house, telephoned to 108 ambulance and shifted her to the hospital at Mahabubnagar. After getting information from the police, the younger son of PW1, who was examined as PW6, gave information about the admission of the injured/ deceased in the hospital. Immediately, PW1 and others came to the hospital and found the injured/ deceased with burn injuries. When enquired, she is alleged to have stated that there was a quarrel between her and her sister-in-law since last two days, on account of which, she was set on fire by her husband, who fled away from the house, after setting her on fire.

3. In respect of the said incident, on 20.10.2009, at about 2.15 p.m., PW14-the Inspector of Police, Anti Corruption Bureau, Hyderabad received a wireless message from Government Headquarters Outpost Police Station, Mahabubnagar, stating that a female person sustained burn injuries and undergoing treatment in the burns ward. Immediately, PW14 made a G.D. entry regarding the information received by him and left to the Headquarters Hospital, Mahabubnagar. In the burns ward, he examined the victim/ deceased and recorded her statement. Basing on the said statement, he registered a case in Crime No. 378 of 2009 under Sections 498-A and 307 IPC and issued Ex.P6-the First Information Report. Ex.P7 is the statement of the injured, basing on which, PW14 registered the case. PW14 continued with the investigation by visiting the scene of offence on the same day at about 6 p.m., and prepared a rough sketch of the scene in the presence of PW7.

Ex.P1 is the crime details form, which contains the panchanama of the scene and also the rough sketch.

4. At the same time, PW13-the Judicial First Class Magistrate, Kadapa received a requisition from the Police Outpost Police Station, Government Hospital, Mahabubnagar, for recording the dying declaration of the injured/ deceased. Immediately, he proceeded to the hospital, identified the injured/ deceased with the help of the duty doctor and after obtaining the fitness certificate from the duty doctor, recorded the dying declaration of the deceased, which is placed on record as Ex.P4. He also obtained the left leg toe impression of the injured/ deceased on the dying declaration.

5. On 21.10.2009, PW14 received the intimation about the death of the injured/ deceased. Accordingly, he altered the section of law from 307 IPC to Section 302 IPC and Section 498-A IPC. Later, he handed over the investigation to PW12-the Circle Inspector of Police, Jadcherla.

6. On 21.10.2009, PW12 commenced investigation by recording the statements of PWs 1 to 5. He then held inquest over the dead body of the deceased in the presence of PW13. Ex.P3 is the inquest report. Thereafter, the dead body was handed over for post mortem examination.

7. PW8-the Civil Assistant Surgeon, ENT Specialist, Government Headquarters Hospital conducted autopsy over the body of the deceased on 22.10.2009 and issued Exhibit P2-the Post Mortem

Report. According to him, the cause of death was due to 95% burns leading to hypovolumnic shock and death.

8. On 26.10.2009, at about 5.15 p.m., PW12 apprehended the accused and on interrogation, the accused is said to have confessed about the offence. On 31.10.2009, PW12 arrested A2 at her residence at Divitipally and on interrogation, she also confessed about the crime. PW15 took up further investigation and effected the arrest of A2 on 31.10.2009. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 73 of 2009 on the file of the Judicial Magistrate of First Class, Jadcherla. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 232 of 2010 on the file of the Court of the Sessions Judge at Mahabubnagar. Basing on the material on record, charges for the offences punishable under Sections 498-A and 302 of IPC were framed, read over and explained to the accused, to which they denied and claimed to be tried.

9. In support of its case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P7 and M.Os.1 and 2. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced by the accused in support of their defence.

10. Relying upon the two dying declarations of the deceased, which were recorded by PW14-the Inspector of Police and PW13-the Judicial Magistrate of First Class, coupled with the evidence on record, more particularly, the evidence of PW6, the trial court, while acquitting A2, convicted A1 for the offences punishable under Sections 498-A and 302 IPC. Challenging the same, the present appeal came to be filed.

11. The learned counsel for the appellant submits that even if the entire version of the prosecution is to be believed to be true, no offence under Section 498-A is made out. According to her, since the demand of property was not for the house of the parents of the deceased, the same does not constitute an offence under Section 498-A. As far as the offence punishable under Section 302 IPC is concerned, the learned counsel would contend that as the two dying declarations made by the deceased are inconsistent with each other, no offence under Section 302 IPC is made out.

12. On the other hand, the learned Public Prosecutor would contend that merely because the demand made by the accused was with regard to the property, it does not mean that no offence punishable under Section 498-A is made out. According to him, Section 498-A does not speak with regard to demand for property from the house of the parents of the woman. He further submits that the two dying declarations, which are consistent with each other, are sufficient to base a conviction under Section 302 IPC.

13. In order to appreciate the same, it would be useful to refer to the two dying declarations, which are placed on record as Ex.P4 and Ex.P7. Ex.P4 is the first dying declaration recorded by PW13, who was working as a Junior Civil Judge, Mahabubnagar at the relevant point of time. According to him, on 20.10.2009, he received a requisition from the Police Outpost Headquarters Hospital, Mahabubnagar through a Constable, pursuant to which he proceeded to the said hospital for recording the statement of the injured/ deceased. A reading of the said dying declaration, which is placed on record as Ex.P4 would show that about a week prior to the date of the incident, A1(husband of the deceased) demanded the deceased to give her gold ear studs and leg anklets, and when she refused to give them, he beat her, drove her into the room, poured kerosene on her, set her on fire and closed the door from outside. Then, the neighbours by name Anjaneyulu and Venkatesh, opened the door and brought her outside. A1 is said to have informed the neighbours that the deceased herself closed the door, which is said to be false, by the deceased.

14. The second dying declaration of the deceased, which is made the basis for the conviction, was recorded by PW14-the Sub Inspector of Police and placed on record as Ex.P7. In the said dying declaration, which was recorded at about 3 p.m. on 20.10.2009, the deceased categorically stated that daily, A1 used to come home in a drunken condition and about a week prior to the incident in question, he demanded the deceased to give her ear studs and silver anklets, which she refused to give. The dying

declaration also states that when A1 demanded the anklets and ear studs, one of their caste elder Bheemaiah convinced both of them, but, the accused did not listen to his words, and on the date of the incident, at about 10.30 or 11 a.m., he poured kerosene and set the deceased on fire.

15. A reading of the two dying declarations would amply establish that A1 was demanding the deceased to give her ear studs and silver anklets, which were on her body, and he was beating up the deceased for not meeting his demand. Both the dying declarations also show that when the deceased refused to meet the demand of A1, he pushed her into the room, poured kerosene, set her on fire and locked the room from outside. When the neighbours enquired A1, he stated that it was the deceased who bolted the door from outside, which was found to be false, through the evidence of PW5.

16. Therefore, the two dying declarations, which inspire confidence in the mind of the court can be relied upon to hold the accused guilty of the charges.

17. Apart from these two dying declarations, there is also an oral dying declaration made by the deceased before PW6. As seen from the evidence of PW6, on the date of the incident in question, PW1 and others proceeded to the hospital and found the deceased lying with burn injuries. When they enquired, the deceased is said to have informed them that there was a quarrel between herself and her husband when she refused to give a share in her leg anklets, to

her sister-in-law, and the accused was not providing food for her for two days, on account of which, A1 poured kerosene on her and set her on fire. She also stated that after setting her on fire, A1 left the place. This oral dying declaration, which was made before PWs 1 and 6, corroborates with the two dying declarations recorded by the Magistrate and the Sub Inspector of Police. Therefore, we feel that these three circumstances, viz., the two dying declarations along with the oral dying declaration amply establish the guilt of the accused in the commission of the offence. Hence, the trial court was right in convicting A1 for the offence punishable under Section 302 IPC.

18. Coming to the offence punishable under Section 498-A, the learned counsel for the appellant would contend that since the accused never demanded any property to be brought from the house of the parents of the deceased, no offence under Section 498-A IPC is made out. A reading of Section 498-A does not, anywhere, indicate that there should be a demand for property from the house of the parents of the woman. On the other hand, Explanation (b) to Section 498-A states that harassment of the woman, where such harassment is with a view to coerce her or any person related to her to meet any unlawful demand for any property or valuable security, or is on account of failure by her or any person related to her to meet such demand, amounts to 'cruelty'.

19. A reading of the two dying declarations, which are consistent with each other, coupled with the oral dying declaration, would show that a week prior to the date of the incident, A1 demanded the deceased to give her ear studs and silver anklets which she was wearing, and as she refused to give the same, she was being harassed and ultimately, lead to the incident in question. The averments made in the dying declarations also get corroboration from the evidence of all the witnesses. All the witnesses in one voice say about the existence of a quarrel between the accused and the deceased with regard to giving of silver anklets to A2. The evidence of PW3 also shows that on account of the quarrel between A2 and the deceased for the anklets, when the deceased refused to give share in the said anklets to A2, A2 made a complaint to A1, who also demanded for a share in the anklets. On account of the same, A1 picked up a quarrel with the deceased, obtained her ear studs and leg anklets, poured kerosene on her and set her on fire. This version of PW3 also gets corroboration from all the other witnesses, more particularly, PWs 1, 2, 4, 5 and 6. Since Section 498-A does not say that the offence under this section is made out only if demand is made for getting some property or valuables from the house of the parents of the woman, and as the evidence of all the witnesses is consistent with regard to the harassment meted out to the deceased by the accused for not giving the ear studs and also silver anklets to A2, though the same do not belong to A2, we feel that the trial court is right in convicting A1 under Section 498-A IPC.

20. Having regard to the above, we find no reason to interfere with the conviction and sentence imposed by the trial court on 09.03.2011 in Sessions Case No. 232 of 2010 on the file of the Court of the Sessions Judge at Mahabubnagar.

21. Accordingly, the Criminal Appeal is dismissed. Miscellaneous petitions pending, if any, stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

09.04.2018
DMG

