

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.467 of 2012

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

At the time when the matter is taken up for hearing, learned counsel for the appellant submits that since the incident took place prior to amendment to Section 372 Cr.P.C, the matter should be remanded back to the Single Judge by converting the appeal into a criminal revision.

2. Recently, a Division Bench of this Court in *D.SUDHAKAR v. PANAPU SREENIVASULU @ EVONE WATER SREENIVASULU AND OTHERS*¹, relying on the judgment of the Hon'ble Supreme Court in *NATIONAL COMMISSION FOR WOMEN v. STATE OF DELHI AND ANOTHER*², held that the date of incident cannot be the criteria for filing the appeal.

3. Learned additional public prosecutor, states that the said judgment is followed by the other Division Bench hearing the appeals. Even the learned counsel for the appellant did not dispute the same.

4. Having regard to the above, the appeal is heard on merits.

5. The present appeal came to be filed by PW1 against the judgment dated 21.11.2011, passed in S.C.No.715 of 2008, by the learned V Additional District and Sessions Judge, Fast Track Court,

¹ 2013 (1) ALD (CrI.) 366 (AP)

² (2010) 12 Supreme Court Cases 599

Panga Reddy District, wherein the three accused who were tried for the offences punishable under Sections 498-A and 302 IPC were acquitted. It is stated that the three accused, who are husband and in-laws of the deceased, caused her death on 07.08.2008, at about 07.00 p.m. at the house bearing No.112-16-106/ E/ 12, situated at Venkat Reddy Nagar, Ramanthapur, Uppal.

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

(i) PW1 is the father of the deceased. PW2 is the maid servant in the house of PW1, PW3 is the son of PW1 and brother of the deceased. The marriage between the deceased and A1 was performed in the year 2000. At the time of marriage, PW1 gave cash of Rs.1 lakh towards dowry and some household articles to the accused. It is stated that both of them lived happily for a period of one year and thereafter disputes arose in their matrimonial life. It is stated that after marriage, both of them lived at Shanker Nagar, Bodhan for a period of six (06) years. Thereafter, A1 to A3 used to harass the deceased mentally on the ground that she did not begot any children and that she gave less dowry. The material placed on record further shows that A1 to A3, while complaining that if the marriage of A1 was performed with others, they would have got more dowry than what the deceased brought, directed her to get additional dowry of Rs.4 lakhs or else they will perform second marriage to A1. The deceased used to inform about these quarrels to PW1 and other family members. Thereafter, A1 and the deceased shifted their

residence from Bodan to Hyderabad. PW1 claims to have provided all the requirements for setting up their house. Two months thereafter, A2 and A3 came to Hyderabad and started quarreling with the deceased. It is stated that the deceased was a teacher, while A1 was working as a driver. PW1 stated that when the parents of A1 came to Hyderabad and resided at their relatives house, A1 also joined them and at that time the deceased came to the house of PW1 for two days. It is stated on the date of Nagulapanchami, A1 pressed the neck of the deceased by pouring kerosene and set her on fire. On seeing the smoke coming out from the house of the accused, the basti people informed PW1 about it. On receiving the same, PW1 along with his family members went to the house of the accused and saw the deceased in flames. Immediately, he got an ambulance and shifted her to Osmania General Hospital. While shifting the deceased to the hospital, PW1 claims to have enquired with the deceased as to the cause of death, to which she is alleged to have stated that A1 poured kerosene and set her on fire. She survived till next day and then succumbed to death. After receiving information about the death of the deceased, PW1 lodged a report with PW11 the Inspector of Police, Hayatnagar Police Station, which came to be registered as a case in Crime No. 634 of 2008 for an offence punishable under Section 302 IPC. PW11 visited the scene of offence at Venkat Reddy Nagar, Ramanthapur, prepared a panchanama of the scene of offence in the presence of PW6. He also prepared a rough sketch of the scene and seized burnt petty coat, burnt cloth pieces, kerosene tin and match box, which are marked as MOs.1 to 4. PW10 the Sub-Inspector of

Police, Uppal, conducted inquest over the body, in the presence of PW6 and others. Ex.P5 is the inquest report. Thereafter, the body was sent for post mortem examination. PW8 the Assistant Professor, Department of Forensic Medicine, Osmania Medical College, Hyderabad, conducted autopsy over the body and issued Ex.P7 the post mortem examination report. According to him, the cause of death was due to burns. PW11 who continued with the investigation, examined PW4 on 08.08.2008. On the same day the sub-ordinates of PW11 apprehended A1 and produced before him. In the presence of panch witnesses, the accused confessed about the commission of offence. Later, A2 and A3 surrendered before the Court and obtained bail.

(ii) After collecting all the documents, PW11 filed a charge sheet which was taken on file as PRC No.46 of 2008 on the file of the III Metropolitan Magistrate Cyberabad.

(iv) On appearance, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. On committal to the V Additional District and Sessions Judge, Fast Track Court, Ranga Reddy District, the case came to be numbered as S.C.No.715 of 2008.

(iii) On appearance, charges under Sections 498A and 302 IPC were framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

(iv) In support of its case, the prosecution examined PWs.1 to 11 and got marked Exs.P-1 to P-9s and M.Os.1 to 4. No oral or documentary evidence was adduced on behalf of the defence.

(v) After the closure of 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 the prosecution witnesses, to which they denied.

(vi) Since the evidence of the witnesses does not indicate the complicity of A1, in the commission of offence and as the prosecution failed to examine the neighbours, who claimed to have informed PW1 about the incident, the trial Court acquitted the accused. Challenging the same, the present appeal came to be filed under proviso to Section 372 (2) of Cr.P.C.

7. Learned counsel for the appellant mainly submits that the finding of the trial Court in acquitting the accused is illegal and improper. Though the material on record would show that on receipt of information from neighbours, PW1 proceeded to the house and noticed the deceased with burn injuries and immediately thereafter, she was shifted her to hospital, during which process the deceased is said to have made a statement to PW1, which is sufficient to convict the accused.

8. On the other hand, learned counsel for the respondents would submit that the findings of the trial Court warrants no interference by this Court.

9. As seen from the record, the accused were tried for the offences punishable under Sections 498-A and 302 IPC. Though the prosecution tried to contend that PWs.1 to 3 in their evidence deposed about the harassment, against the deceased for not begetting children and also for not giving sufficient dowry, but the same in our view is not established beyond reasonable doubt. The answers given by the witnesses in their cross-examination would show that the accused were taking care of the deceased properly and A1 used to take her to the hospital for not begetting children. As seen from the record, though PW1 in his evidence stated that the accused and deceased lived together for a period of one year and thereafter harassment started, but both of them lived together for a period of six (06) years and thereafter A2 and A3 have come to the Hyderabad. Since two years prior to the date of incident, the accused and deceased started living near the house of PW1, who provided them with all necessities. There is no evidence on record to show that there was harassment in the hands of A2 and A3, when they used to visit the house of deceased. The answers elicited in the cross examination of PW1, would show that on the date of incident, the deceased came to his house at about 02.00 p.m., and was there for few minutes and she never disclosed to PW1 about any harassment on that day. He admits that he has not stated to police about gathering of public and his family members at the house of the deceased. He further submits that he does not know whether the ambulance persons informed the police about shifting of the injured to the hospital. The suggestion that his statement was recorded by the

police at about 10.00 p.m., on the date of incident was denied by him. He further admits that he was not examined soon after the death of his daughter, though the police were present in the hospital on 06.08.2006. PW1 also admits that he has not stated in his statement to the police as to when the parents of the accused came to their relatives house in Hyderabad and when A1 was called back to their house. He further admits that his daughter did express her anguish in not begetting children, even after seven years of marriage. He admits that during her matrimonial life, A1 and the deceased used to reside at one place and the deceased was frequently taken to doctor as she was not begetting any children. He states that the contents of Ex.P1 were read over to him after scribing it, but admits that he does not know the scribe of Ex.P1. From the above witness, it is clear that the allegations made in the charge sheet in trying to fix the culpability of the accused, was not spoken to by him. Infact, the averments in the charge sheet indicates that immediately after the incident, when the neighbours knocked the door, it was the accused who opened the house door. Strangely, the said version is not stated by PW2, while giving evidence before the Court. According to PW2, after marriage, the deceased and A1 resided at Shanker Nagar, Bodan, at her in-laws house. According to him, both of them lived happily for a period of one year and thereafter quarrels took place in their matrimonial life when the accused demanded additional dowry. According to her, on the date of incident, when she came home, she was informed by her neighbours that the daughter of PW1 was killed by her husband by pressing her neck. Immediately, thereafter he

proceeded to Osmania General Hospital. In the cross examination, she denies the suggestion that she has not stated before police about the deceased informing her about the harassment of the accused either when she went to her house or when she came to her house. She further admits that she has not stated before the police about the deceased informing them about the harassment.

10. PW3 is the brother of the deceased. Though his evidence in chief toes in line with the evidence of PW1, but the answers elicited in the cross examination, demolishes his version in chief. He admits that the deceased was treated by the doctor to find out the reason for not begetting children. He admits that he has not stated before the police the names of the neighbours, who informed as to what happened when they reached the scene of offence. He further admits that he had not stated to the police about the presence of accused at the scene of offence, when he reached there. According to him, when he along with his family members reached there, the neighbours were attempting to put off the flame. He further admits that no effort was made by him or his father to inform the police about the incident. It is further elicited that the police took the accused from the hospital after the death of the deceased. It is also admitted that the report came to be lodged pursuant to the death of the deceased. He further admits that as and when the deceased used to come to Bodhan, she was taking treatment in the hospital. He admits that he has not stated to the police about seeing the accused pouring kerosene and setting the deceased on fire.

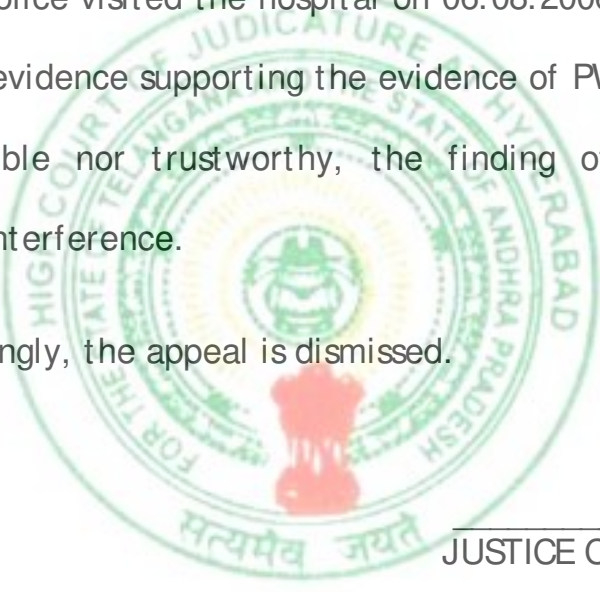
11. From the above, it is clear that all the accused were not present in the house at the time of incident. Further, no effort was made by the prosecution to examine any of the neighbours. All the three witnesses, who were examined does not speak about the demand of dowry or any valuables. If really harassment was found for the deceased not begetting the children, definitely the accused would not have taken trouble by taking deceased to the doctor to find out the reason for the deceased in not begetting children. Therefore, the version of the prosecution, that A2 and A3 instigated A1 to kill the deceased, appears to be incorrect. There is no evidence on record to show that A1 or other accused were present in the house at the time of incident. Moreover, it is to be noted that though the neighbours informed about the smoke coming out from the house of the deceased and that the shoutings of the deceased were heard, but none of the neighbours were examined to speak about the same.

12. Another circumstance relied upon is the extra-judicial confession said to have been made by the accused before one K.Dasarath. But the said K.Dasarath was not examined as he died long before the commencement of trial.

13. Though learned counsel for the appellant tried to rely upon the oral dying declaration said to have been made by the deceased to PW1, while she was being taken to the hospital, but in the absence of any other evidence, we feel that it may not be safe to place reliance on the dying declaration alone. No other person present in the house

was examined to speak as to whether the deceased was in a position to make the statement. If really the deceased was in a position to make statement, nothing prevented the police or the investigating agency to get the dying declaration recorded from the Magistrate. Further, no reason is given by the prosecution or PW1 as to why he kept quiet without lodging any report and as to why the report came to be lodged only after the death of the deceased. Infact, PW1 categorically admits that he never disclosed about the information which he had, either to the doctor or to the police, though according to him, the police visited the hospital on 06.08.2006. In the absence of any other evidence supporting the evidence of PWs.1 to 3, which is neither credible nor trustworthy, the finding of the trial Court warrants no interference.

14. Accordingly, the appeal is dismissed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

Date: 06.08.2018

vhb