

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON'BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.689 of 2012

JUDGMENT: (per the Hon'ble Sri Justice N.Balayogi)

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The appellant, who is arrayed as accused in S.C.No.291 of 2009, being aggrieved by the conviction and sentence dated 18.11.2011 in S.C.No.291 of 2009, imposed by II Additional Sessions Judge, Kurnool for the offence under Section 498-A and 302 I.P.C. sentencing the appellant to undergo imprisonment for life for the offence under Section 302 I.P.C. and also simple imprisonment for two years and to pay a fine of Rs.2,500/- and in default to undergo simple imprisonment for a period of two months for the offence under Section 498 A I.P.C., preferred this Appeal.

2. The contention of the appellant is that the Trial Court erred in concluding that the appellant committed offence, without considering the evidence and statements of the witnesses. The Court below failed to observe that PW1 did not depose anything of the allegations made in the complaint and the prosecution failed to prove that the appellant had ever demanded the deceased any dowry or additional dowry so as to attract Sec.498-A of I.P.C.

3. It is further contended that the Trial Court failed to consider that the appellant tried to save his deceased wife and son, admitted them in the Government hospital through 108 ambulance with the help of the neighbours, he also sustained burn injuries on his face and hands while trying to save the deceased; and had he committed the offence, he would not be present at the scene and would have not admitted the deceased in the hospital. It is the further contention that since the appellant did not get children out of his first marriage, he married the deceased wife for children, as such it is not believable that he set ablaze his younger son and his wife.

4. The prosecution case in brief is as follows:

The appellant deserted his first wife Smt. Virupakshamma, as she did not beget any children and married Boya Lakshmi, 6 years prior to the incident. The specific allegation is that the appellant used to suspect character of the deceased Lakshmi and used to consume alcohol and harass her. They used to reside in Room No.7, Parimala cottage in Manthralayam.

5. On 10.11.2007 at about 11 PM the deceased Boya Lakshmi and her son deceased Boya Narasimhulu were sleeping in the room and at about 11 PM when Boya Lakshmi questioned him for his coming late, the accused scolded her by saying “*Lanjadana Neevu Mandini Pettukunnavu*” and then there was a quarrel between the accused and Boya Lakshmi. On that, the appellant got angry and

poured kerosene on the body of Boya Lakshmi and lit her on fire with a match stick. At the same time, some kerosene fell on his son Narsimhulu also and the flames engulfed Boya Lakshmi and Boya Narasimhulu. The appellant shifted Boya Lakshmi and Boya Narsimhulu to Government Hospital, Yemmiganur in 108 Ambulance and admitted them, at which time, Boya Lakshmi was unconscious. Boya Narsimhulu died at 8 AM on the next day and Boya Lakshmi got conscious in the early hours.

6. The Sub-Inspector of Police, Yemmiganur Police Station received MLC intimation from Government Hospital on 11.11.2007 at 7.30 A.M. which was marked as Ex.P25 and recorded the statement of Boya Lakshmi and registered the same as a case in Crime No. 36/2007 for the offences punishable under Sections 307 and 302 I.P.C. and handed over the FIR to the Circle Inspector of Police- PW.17 for investigation. P.W.15, the Sub-Inspector of Police, sent requisition to the Tahsildar for conducting inquest. Boya Lakshmi died within 7 years of her marriage with the appellant.

7. During the course of investigation, PW-17 held inquest over the dead body of Boya Narsimhulu under Ex-P18, in the presence of P.W.9 and two others, thereafter sent dead body for PME.

8. On the requisition of PW-15, Smt. Sarada Bhagya Rekha, Tahsildar recorded the dying declaration of Boya Lakshmi under Ex.P-19 in the presence of P.Ws. 8 and 9.

9. On 17.11.2007 PW-16 arrested the appellant at 17.30 hours.

10. P.W.10 conducted PME on the dead body of Narsimhulu and he along with P.W.11 conducted post mortem on the dead body of Boya Lakshmi.

11. After filing the charge-sheet, the learned Judicial First Class Magistrate, Yemmiganuru took the case on file for the offence punishable under Sections 302 and 498 (A) IPC of Manthralayam Police Station against the appellant and numbered it as PRC No.21 of 2008.

12. After appearance of the accused, all copies of documents were furnished to him as required under Section 208 Cr.P.C.

13. Since the case is exclusively triable by the Court of Sessions, the learned Magistrate committed the case to the Court of Sessions under Section 209 Cr.P.C. and the same is numbered as S.C. No.291 of 2009.

14. On hearing and consideration of the entire material, the Sessions Court framed charge under Sections 498-A and 302 I.P.C. read over and explained to the accused, for which he pleaded not guilty and claimed to be tried.

15. In support of the prosecution case, P.Ws.1 to 19 were examined and Exs.P1 to P32 and M.Os.1 to 6 were got marked. On

behalf of defence, none were examined and no document was got marked.

16. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. explaining incriminating material appearing against him in the prosecution evidence and he denied the same and reported that he has not committed any offence and he married the deceased as his second wife as his first wife has not begotten any children and claims to be tried.

17. The defence counsel stated that all the material witnesses turned hostile to the case of the prosecution and there is no evidence of any direct eyewitness of the incident.

18. The Sessions Court/trial Court convicted the appellant/accused under Section 235 (2) Cr.P.C. for the offence punishable under Sections 498-A and 302 I.P.C.

19. When questioned the accused with regard to quantum of sentence, he stated that he has got a child and mother who has no legs and there are none to look after them and pleaded mercy.

20. The trial Court sentenced the appellant to undergo imprisonment for life for the offence punishable under Section 302 I.P.C. and also sentenced to undergo simple imprisonment for 2 years and to pay a fine of Rs.2,500/-, in default, to undergo simple imprisonment for a period of two months for the offence under Section

498-A I.P.C. It is further ordered to destroy M.Os.1 to 6 and any other unmarked non-valuable properties, if any, after appeal time is over.

21. Now, the point that arises for determination is :

“Whether the conviction and sentence imposed by the trial Court for the offence under Sections 498-A and 302 I.P.C. suffer from legal infirmities warranting interference, if so, are they liable to be set aside?”

22. The learned counsel for the appellant contended that there is no independent, direct or circumstantial evidence to establish that the appellant committed offences, more so, the evidence on record is uncorroborated and contradicting with each other.

23. *Per contra*, the learned Public Prosecutor contended that there is consistent and corroborative evidence of P.Ws.1 to 6, supported by the evidence of P.Ws.8, 9 and 12 – witnesses for inquest and medical evidence of Doctors – P.Ws.10 and 11, who conducted autopsy over the dead body of the deceased Lakshmi and her son and besides dying declaration of the deceased Lakshmi under Ex.P19 recorded by P.W.12 and statement of Lakshmi under Ex.P32, recorded by P.W.17, Ex.P27 - statement of the same Lakshmi recorded by P.W.15 and Exs.P20 and P21 Post-mortem Certificates, to connect the accused with the offence.

24. In fact, as per the evidence of P.Ws.1 to 5 and the statements of accused during Section 313 Cr.P.C. examination and also the evidence of P.W.7, younger brother of the accused, the accused

before marrying the deceased Lakshmi, married to one, Virupakshamma, according to P.W.3, father of the deceased Lakshmi, it was two years prior to the marriage between the appellant/accused and the deceased Lakshmi. It is also a well known fact that the accused/appellant and the deceased Lakshmi lived happily for a period of two years and during the wedlock, they were blessed with two sons i.e., Mallikarjuna, first son, who is residing with Ramulamma, sister of appellant at Venkatapuram. The 2nd son is deceased Narasimhulu. The deceased son was 1 ½ years old by the date of the incident.

25. The evidence of P.W.3 – father of the deceased Lakshmi and the evidence of P.Ws.1, 2, 4 and P.W.13 further established that P.W.1 is the owner of Parimala Lodge at Manthralayam. Dasari Eranna – P.W.2 is a lodge room boy, whereas P.W.13 – Kanapura Subramanya Kumar Swamy is an attorn tenant of room No.6 under P.W.1, whereas P.W.4 is staying in room No.5 by paying monthly rents.

26. P.W.1 is the owner of the Parimala Lodge, Manthralayam, whereas P.W.2 is lodge room boy, P.W.4 is staying in room No.5 and P.W.13 is staying in room No.6 and they are neighbours of the accused and his wife deceased Lakshmi and their sons who are residing in room No.7 of the same lodge. P.W.1 clarified that the accused and his wife along with his two sons used to reside in room No.7 since four months prior to the incident and she used to prepare food in room No.7 as they are residing there permanently. Further, the consisting evidence of

P.Ws.2, 4 and 13 is that the accused and his wife used to prepare food by using kerosene stove. The corroborative evidence of P.W.2, 4 and 13 is that the accused and his wife along with their two sons used to reside in the room No.7 of the same lodge. It is also a fact that the accused is a native of Chilakaladona Village. During stay of P.W.1 in the lodge, he used to maintain the lodge by sitting on the table in the veranda of the lodge and the room of the accused and the deceased was situated two rooms after the place of sitting which is abutting to room No.9.

27. About 3 years back at about 1 AM in the absence of P.W.1, some smoke came out from his lodge, which he got information from the room boys of his lodge. At about 1.30 AM he reached to the lodge. Before reaching the lodge, he saw the deceased Lakshmi by covering the burn injuries with a red sheet sitting near Manthralayam circle, which is at a distance of $\frac{1}{4}$ furlong from his lodge. Immediately when he entered into the room No.7, where the accused and the deceased used to reside, he found burning and smoke coming out. When room boys telephoned to ambulance, deceased Lakshmi along with their sons was shifted to Yemmiganur Government Hospital. P.W.2 stated in the evidence that on that day around 1 or 1.30 AM the incident has occurred and at that time, he was in circle which is called Raghavendra Circle and he saw while the deceased and her husband/appellant were coming towards the circle with burn injuries while crying and he went towards them, but he did not speak to the

deceased Lakshmi. P.W.3 is none other than the father of the deceased, generally, he supports the prosecution case.

28. Now, coming to the evidence of P.W.4, who is staying in room No.5 of the lodge belong to P.W.1, his evidence is consistent through out that while he was staying in room No.5 of Parimala lodge of Manthralayam, appellant/accused and his wife along with their two sons used to stay in room No.7. It is his consistent evidence that the accused used to return the lodge after consuming alcohol and now and then he used to beat and harass his wife. During the cross-examination, the Public Prosecutor could able to suggest the entire 161 Cr.P.C. statement and the part of Section 161 Cr.P.C. statement by declaring P.W.4 as hostile, as he did not fully support the prosecution case.

29. Similarly, the evidence of P.W.13, who is staying in room No.6, is that the accused and his wife Lakshmi used to do sweeping work in Parimala lodge of Manthralayam. Accused and his wife are not having any cordial relationship between them and they used to fight regarding their family affairs. The accused/appellant addicted to vices of consuming alcohol drinking and smoking and he also declared hostile and his Section 161 Cr.P.C. statement is marked as Ex.P24. From the evidence of P.Ws.1 to 4 and 13 the proved facts are that P.W.1 is the owner of Parimala lodge at Manthralayam, wherein P.W.2 is the room boy and P.Ws.4 and 13 are persons staying in the lodge on paying monthly rent. Whereas, accused and his wife by sweeping

lodge and taking care of the lodge during the absence of P.W.1, were staying in room No.7 of the same lodge along with their two sons.

30. It is P.W.4's evidence that the accused addicted to vices like drinking and he used to return to home in drunken state, abuse deceased Lakshmi and sometimes he used to beat her. The reason for that was properly explained by P.W.3, father of the deceased, that even after marrying the deceased Lakshmi, the accused used to visit his first wife and by the date of marriage, P.W.3 is not aware of the first marriage of the accused. Always the appellant/accused used to suspect the character of the deceased Lakshmi and used to abuse and beat her. It is also the evidence of P.W.3 that at the time of marriage, he gave Rs.5,000/- cash, ½ tola gold ring to the father of the accused towards dowry and he spent nearly Rs.40,000/- for marriage expenses. For about 2 years, the accused look after the deceased Lakshmi well and he continued his relationship with the first wife Virupakshamma. P.W.3 states that he does not know the reason for the 2nd marriage of the deceased. But, according to the prosecution case and also statement of the appellant/accused during Section 313 Cr.P.C. examination, as the first wife failed to beget children, he married deceased Lakshmi as second wife.

31. P.W.7 is none other than the elder sister of the accused/appellant whose evidence is very clear and clinches the issue that Virupakshamma is the first wife of the appellant/accused and as she has not begotten any children, the accused married the deceased

Lakshmi and maintaining both his first wife and second wife. After the marriage, they stayed for some time at Chilakaladona Village and thereafter shifted to Parimala lodge, Manthralayam and they lived happily without any disputes. She also admits that Lakshmi and her son Narasimhulu succumbed to burn injuries while undergoing treatment.

32. With regard to tonsuring the head of the deceased Lakshmi, her father P.W.3 clarified that the appellant/accused poured pesticide on the head of his daughter Lakshmi at his house in order to do her away as he had suspicion on her on the pretext that she used to see some male persons and due to the said act of the accused, his daughter Lakshmi suffered from ill health and her head sustained with skin disease. Therefore, he has taken his daughter to Yemmiganur and provided the treatment in a private hospital. As per the advice of Doctor, P.W.3 got tonsured the head of his daughter Lakshmi and thereafter Lakshmi went to the house of the accused and stayed at Chilakaladona village and subsequently along with two sons shifted to Manthralayam for better living and started to work in lodge by staying in room. P.W.1 used to pay Rs.1,000/- to the accused and another Rs.1,000/- to the deceased per month as they are doing cleaning work in the lodge. Over phone, now and then, the daughter of P.W.3 used to inform that appellant/accused used to beat and trouble her on the pretext of suspicion on the character of her by stating that she used to see male persons. On one occasion, Lakshmi informed P.W.3 that she cannot bear the harassment subjected by the appellant/accused, since

already twice he tried to do away her life by pouring kerosene on her body. When Lakshmi informed harassment and torture subjected by the appellant/accused, P.W.3 – father tried to pacify the issue and asked his daughter Lakshmi to bear the troubles for some time and continue to stay with him. Then, the deceased replied that she cannot bear the torture and if P.W.3 visits her house, he knows her miserable life with the appellant/accused. The deceased told her father that accused would not allow to live with him and he would kill her. Then, P.W.3 asked his daughter to come to his house. Accordingly, she came to his house and started living in the house.

33. Further, the evidence of P.W.3 is that after dasara festival she went back to accused and while leaving, she told that it may be her last visit. On the next day, through people of Yemmiganur, he came to know that his daughter is lying outside the Yemmiganur hospital with burn injuries, as accused burnt her. Immediately, he rushed to the Government Hospital at Yemmiganur along his wife and some others by 7 or 8 AM. He enquired his injured daughter Lakshmi as to how she received injuries and on that she told him that at about 11.00 PM on the previous night while she was sleeping along with her last son Narasimhulu, at that time, her first son was also sleeping at some distance by keeping the doors of the room closed without bolting from inside in order to accused come to her room. While so, at about 11 PM the accused/appellant came and poured kerosene from two or three bottles on her and her last son Narasimhulu who was sleeping with her

and lit fire, due to which herself and her last son sustained burnt injuries. His further evidence is that Lakshmi told him that she threw away the first son by pushing him with her leg while she was burning. She also informed that the last son did not leave her and he clunged to her body.

34. It is his further evidence that at about 4 PM on that day his daughter Lakshmi also died where as her last son Narasimhulu died in the hospital while undergoing treatment at 8 AM. The further evidence of P.W.3 is that Lakshmi gave statement to the Police and affixed thumb impression on it and he saw the same from a distance. The Mandal Executive Magistrate also examined and recorded statement of P.W.3. He was present at the time of inquest of the dead body of the deceased daughter Lakshmi. He identified the clothing of the deceased daughter Lakshmi – M.O.1 as burnt saree and petty coat pieces. M.O.2 is ‘T’ shirt pieces of his deceased grand son Narasimhulu.

35. During cross-examination, P.W.3 clearly stated that inmates of the lodge called 108 ambulance and shifted the injured Lakshmi and Narasimhulu to the Government General Hospital and denied the suggestion that the accused admitted his wife and son in the Hospital.

36. The evidence of P.W.3 is corroborated by the evidence of P.W.6, whose evidence is that after deserting Virupakshamma, the appellant/accused married the deceased Lakshmi and after lived sometime at Bangalore and later at Chilakaladona Village and later in

Manthralayam at Parimala lodge, working as Watchman and Sweeper in the same lodge. After came to know that somebody of his village were burnt, he went to the Parimala lodge by 1.30 AM where he was informed that the injured was shifted to Yemmiganur Government Hospital in 108 ambulance and later he visited to the hospital at 8 AM and came to know that the son of Lakshmi was already died and Lakshmi died at about 4.00 PM on the next day of incident. He was declared as hostile by the prosecution.

37. P.W.14 is the Civil Assistant Surgeon, Government General Hospital, Yemmiganur, whose evidence is that on 11.11.2007 at 2.55 PM he examined Boya Lakshmi, wife of Thimmappa, resident of Chilakaladona Village of Manthralayam Mandal and the deceased Lakshmi was accompanied by her husband Thimmappa. Thimmappa/appellant/accused stated before P.W.14 that his wife sustained total body burns due to pouring of kerosene on her body and lit herself on fire with match stick and the same was intimated to Station House Officer, Yemmiganur Town Police Station, Yemmiganur. At about 10.00 AM on the same day during rounds he found that deceased Lakshmi was conscious and clearly expressing her views and he then intimated the same to Judicial Magistrate of First Class, Yemmiganur and came to know that Judicial Magistrate of First Class, Yemmiganur was out of station, later he intimated M.R.O., who is the Executive Magistrate of Yemmiganur and requested to record dying declaration of deceased Boya Lakshmi. As per the endorsement

on Ex.P25, the S.H.O. received the intimation at 8.30 hours on 11.11.2007.

38. P.W.12 is the then Mandal Executive Magistrate, Yemmiganur, and he is presently working as Tahsildar in Vigilance and Enforcement Department, Hyderabad, whose evidence is very clear that on 11.11.2007 on the request of medical officer - P.W.14 he visited the Government General Hospital, Yemmiganur at 12.30 hours. P.W.14, who was the Medical Officer at the relevant time, had shown deceased Lakshmi. During cross-examination, P.W.12 admitted under Ex.P23, Dr.Rajappa in writing requested him to record dying declaration of deceased Lakshmi which was received by him at 12.00 hours. Then, he along with V.R.O. – P.W.8 visited the Government Hospital and met P.W.14 at first and later a nurse took him to the patient Lakshmi. He started recorded the dying declaration after identifying himself as Mandal Executive Magistrate. While recording dying declaration, he has taken all precautions that no relative and parents of the deceased are present there and so also no police personnel is present at that time.

39. It is the clinching evidence of P.W.12 that Lakshmi, declarant, was conscious and coherent while giving a statement under Ex.P19. In the said Ex.P19 Lakshmi clearly stated that she is making the statement without any force from any body and on her own and she is conscious. Lakshmi stated that she is the resident of Chilakaladona Village, Manthralayam Mandal and belongs to boya caste and her

marriage was performed with the appellant/accused 6 years back and she is the second wife to the appellant. In the dying declaration the clear declaration of the deceased Lakshmi was that her husband's first wife Virupakshamma has no children, as such, he married her. Even after marrying, Virupakshamma was living at Venkatapuram village, Yemmiganur Mandal and the appellant also used to live with her. For the last three months, the appellant along with his wife deceased Lakshmi was residing in Manthralayam while working in Parimala lodge. While so, on 10.11.2007 at 11 PM there was a quarrel between the wife and the husband and the accused/appellant picked up quarrel suspecting his wife Lakshmi and poured kerosene which is available in the house on her body and lit her fire. At that time, the kerosene has also fallen on her second son namely, Narasimhulu aged 1 ½ years and fire spread and attacked her son also. She further stated that immediately her husband/appellant joined them in the Government General Hospital, Yemmiganur by taking them in an ambulance. After admission, she came to know that her son Narasimhulu died at 8 AM. She further certified that whatever she stated is true and correct and the contents of Ex.P19 statements were read over and explained to her and found correct and she affixed thumb impression on the statement recorded by P.W.12. The Medical Officer - P.W.14 who was present certified that patient is coherent and conscious while recording Ex.P19. In the evidence in chief itself P.W.12 clarified that he sent out the relatives of the deceased Lakshmi and others while recording Ex.P19 dying declaration and has taken all precautions and there was nobody

was present while he was recording the voluntary dying declaration of the deceased Lakshmi.

40. The evidence of P.W.14 – Doctor corroborates the evidence of P.W.12 that on the requisition under Ex.P23, P.W.12 visited the Government General Hospital, Yemmiganur and recorded Ex.P19 dying declaration of Boya Lakshmi wherein he certified that Boya Lakshmi is conscious and coherent while recorded Ex.P19 and to that effect he certified his endorsement with his signature dated 11.11.2007 on Ex.P19. During the cross-examination, P.W.14 clarified that by mistake he did not certify in Ex.P19 (Ex.P26 sic.) before starting the recording of dying declaration that the patient is conscious and coherent and fit to give statement and denied the suggestion that he made certification on Ex.P19 in the Police Station.

41. P.W.15 is the Sub-Inspector of Police, Manthralayam Police Station during the period from 22.2.2007 to 29.1.2009. While so, on 11.11.2007 at 7.30 hours while he was present in the Manthralayam police station, he received phone call information from S.H.O., Yemmiganur Town Police Station about Ex.P25 MLC intimation of deceased Boya Narasimhulu and Boya Lakshmi at 7.30 hours. Immediately P.W.15 left the Police Station along with Police Constable No.447, K.Ramaiah at 8.00 hours and reached Government Hospital, Yemmiganur at 8.30 hours and received MLC intimation of Boya Lakshmi and death intimation of Boya Narasimhulu under Ex.P26. P.W.15 noticed the dead body of Boya Narasimhulu aged

about 18 months, secured Boya Lakshmi who is undergoing treatment for burn injuries and recorded Ex.P27 statement under Section 161 Cr.P.C., posted P.C. 447 to safeguard the dead body of Narasimhulu and left the Government Hospital, Yemmiganur and reached Manthralayam police station at 10.00 hours. Basing on Ex.P27, a case is registered under Sections 307 and 302 I.P.C. and submitted Ex.P28 F.I.R. and sent to Judicial Magistrate of First Class, Yemmiganur, posted H.C.682 at the scene of offence at room No.7 of Parimala lodge, Manthralayam.

42. Under Ex.P19 – dying declaration Lakshmi clearly stated that the marriage between herself and the appellant/accused was performed six years back and she got two sons and she is the second wife to the appellant/accused. As the first wife Virupakshamma has not begotten children, the appellant married her as second wife. The accused also used to live with his first wife Virupakshamma. For the last three months Lakshmi - declarant and her husband/appellant along with two children are residing at Manthralayam as herself and her husband are working in Parimala lodge. While so, on 10.11.2007 at 11 PM there was quarrel between wife and husband and the accused suspecting her fidelity, poured kerosene which was available in the house and set her on fire. At that time, her second son Narasimhulu, aged 1 ½ years, was sleeping by her side and the kerosene also fell on him and fire spread to him also. Immediately, her husband Thimmappa brought them to Yemmiganur Government Hospital in 108

ambulance and got them admitted and went away. She came to know that her son died on that day at 8 AM. Ex.P28 – F.I.R. also goes to suggest that on 10.11.2007 at 9 PM Lakshmi along with her younger son Narasimhulu were sleeping in room No.7 of Parimala cottage. The appellant/accused, who is none other than her husband, working as watchman in the same cottage, came to room, woke her up and when she questioned where he is till then, the accused levelled allegations against Lakshmi and there was an altercation and with an intention to kill her and her son, accused poured kerosene which is in the house and the same kerosene fell on her younger son who is sleeping by her side, then the accused with a match box which is in his pocket set her on fire. The fire caught to the clothes of the deceased Lakshmi and her son and they sustained burn injuries all over the bodies and they got admitted in Yemmiganur Government Hospital and while undergoing treatment, her son Narasimhulu died at 8 AM.

43. P.W.17, was the Inspector of Police, Kosigi Circle during 8.6.2006 to 24.3.2010. On 11.11.2007 he was in-charge of the post of Circle Inspector of Yemmiganur Circle. While he was present in the Kosigi Circle at about 10 AM he received message from P.W.15 about the death of the deceased Narasimhulu in Crime No.36 of 2007 of Manthralayam Police Station, then he left his office at 10.15 AM, went to Yemmiganur Community Hall, where he received copy of Ex.P28, secured the inquestdars, P.W.9 and Boya Kondaiah, Boya Omkar and also blood relatives of the deceased, who are P.W.3, his wife Boya

Lakshmi and also deceased Lakshmi, who is wife of the accused and caused service of summons to them. He commenced the inquest of dead body of the deceased Boya Narasimhulu from 11.30 AM and completed by 2.30 PM. The dead body was found on a cot on which his deceased mother was there with severe burns to her. The body of the deceased Boya Narasimhulu was fresh and totally burnt. There were no clothes on the body of the deceased Boya Narasimhulu. He found one feet black and red colour old thread of two rows to which one inch copper amulet was there tied around the neck of the deceased Boya Narasimhulu. He seized the same at the time of the inquest which is M.O.6. He also drawn the rough sketch of the place of inquest under Ex.P31 and sent the dead body of Narasimhulu for conducting post-mortem. During cross-examination he admitted that he recorded Ex.P32 - 161 Cr.P.C. statement of the deceased Lakshmi during the course of investigation as stated in the chief-examination. During the cross-examination, he admits that in Ex.P32, he has not mentioned when he recorded it. But, he has not seen the dying declaration under Ex.P19 recorded by P.W.12. Ex.P32 - 161 Cr.P.C. statement of the deceased Lakshmi is another dying declaration, since the declarant is no more. In Ex.P32 the declarant Lakshmi clearly stated that about 6 years back, her marriage was performed with Boya Thimmappa, the appellant herein and they are residing in Chilakaladona Village and she is having two sons Mallikarjun and Narasimhulu who are aged 4 and 1 ½ years respectively. Mallikarjun is residing with Ramulamma, sister of her husband at Venkatapuram

and she is admittedly second wife of the appellant/accused. As Virupakshamma – first wife did not beget any children, the appellant married Lakshmi as second wife. Occasionally, the appellant/accused used to visit his first wife Virupakshamma and even then he looked after Lakshmi well for a period of two years after the marriage. Thereafter, he started suspecting her fidelity and making allegations against Lakshmi. The appellant/accused is addicted to alcohol. About two months back her husband got job as Watchman in Parimala cottage at Manthralayam, since then, herself and her husband and their two sons are residing in Room No.7 of the said lodge.

44. It is further stated in Ex.P32 that on 10.11.2007 while herself and their son Narasimhulu were sleeping in the room, at about 11.00 O'clock in the night her husband came to the room and woke her up and then she questioned him as to where was he up to that time. Then, her husband abused her as *lanjadana* you are keeping other persons and levelled allegations against her. There was some altercation between them, then her husband poured kerosene which is available in the room on her, kerosene also fell on Narasimhulu who is sleeping by her side and the accused took match stick from his pocket and lit her on fire. The shirt of her son Narasimhulu was also caught fire. Her saree and jacket were also caught fire and flames are there, then her husband put off the flames. Entire body of Lakshmi and face sustained burn injuries. Their son Narasimhulu also sustained burn injuries all over the body and head. Then, her husband brought them in

Government ambulance to Yemmiganur Government Hospital and got them admitted. At that time, she was conscious. Her son died at 8.00 AM on 11.11.2007. Her husband suspecting her character with an intention to kill her and her son poured kerosene and lit fire.

45. The consistent evidence of P.W.12, supported by Ex.P19, P.W.17 – Inspector of Police, supported by Ex.P32 – 161 statement, wherein the deceased Lakshmi clearly and specifically declared that on 10.11.2007 at 11 PM the appellant/accused returned to room No.7 of Parimala lodge, where they were residing and suspecting her fidelity, he picked up quarrel and took two litres of kerosene bottle – M.O.4 which is available in the kitchen, poured on Lakshmi and kerosene fell on Narasimhulu, another son who is sleeping by her side and then the accused picked up match box – M.O.3 from his pocket and lit her on fire. Shirt of Narasimhulu caught fire. On 11.11.2007 at 8 AM Narasimhulu died and in the evening at 4.30 PM Lakshmi succumbed to injuries. The dying declaration under Ex.P19 was recorded while deceased Lakshmi was in a fit state of mind to give statement and Doctors certified on Ex.P19 that patient Lakshmi was conscious and coherent while giving statement under Ex.P19. The dying declaration under Ex.P19 and the statement under Ex.P32 recorded by P.W.17 are proved beyond suspicion. The further contention of the appellant is that in the PME report, no evidence was found against the appellant. P.Ws.8 and 9 are mediators for the inquest Ex.P16 and P18 conducted by P.W.12 – Tahsildar. It is the evidence of P.W.17 that he

commenced inquest on the dead body of the deceased Boya Narasimhulu at 11.30 AM and completed by 2.30 PM. The dead body was found on a cot on which deceased mother was with burn injuries. The dead boy was fresh and totally burnt and has no clothes. The burn clothes of Boya Narasimhulu M.O.2 – yellow colour ‘T’ shirt pieces were seized and marked at the time of inquest. P.W.9 is the inquestdar whose evidence is that on 11.11.2007 police conducted inquest on the dead body of the deceased Narasimhulu and prepared inquest report. He along with Kondaiah signed on Ex.P18. So, the evidence of P.W.12 corroborated with P.W.9 and supported by Ex.P18 established the inquest on the dead body of Boya Narasimhulu and it is not disputed.

46. Further, the evidence of P.W.8 is that the M.R.O. i.e., P.W.12 conducted inquest Ex.P16 on the dead body of Lakshmi, thereafter himself and Inspector of Police P.Ws.15 and 17 went to the room No.7 of the Parimala lodge, Manthralayam. The Circle Inspector of Police observed the scene of offence at 12.30 hours on 12.11.2007 in Room No.7 of Parimala lodge in their presence. In that room they found match box with sticks, some of which are partly burnt, two bottles kerosene bottle without cap, burnt rose and yellow colour design cotton bed sheet piece, light green colour terri cotton ‘T’ shirt pieces, rose colour cotton petty coat and merino red polyester saree both mixed as one piece due to burning and they were seized at that time in his presence and they were marked as M.Os.1 to 5. Himself

and other panchayatdars signed on Ex.P17. The seizure is concerned, Ex.P17 - observation-cum-seizure panchanama and Ex.P16 – inquest report on the dead body of Lakshmi are not in dispute. All the inquestdars opined that accused with an intention to kill the deceased Lakshmi poured kerosene and lit her on fire. The kerosene fell on their son Narasimhulu who was sleeping by the side of deceased Lakshmi and fire spread to him and they succumbed to injuries.

47. The Doctor, who conducted PME on the dead body of Narasimhulu, is examined as P.W.10. The consistent evidence of P.W.10 – Doctor is that he conducted PME on the dead body of Boya Narasimhulu on the requisition of Circle Inspector of Police, Yemmiganur. The post-mortem was conducted on 11.11.2007 in between 3.30 PM and 4.30 PM. Ex.P20 is the Post-mortem certificate on the dead body of Boya Narasimhulu. The Doctor specifically mentioned in Ex.P20 and corroborated in the evidence that the dead body of Narasimhulu is lying on the back, both the arms by side of the body. Both the legs are semi-flexed at knee joint. Both the eyes are closed. Mouth is partially opened. Tongue is seen inside the mouth. Rigor mortise seen present all over the body. Kerosene smell is coming from the dead body. 75% burns were found on the dead body.

48. Ante-mortem injuries are noted as follows :

Head and Neck : - Front part of the neck is spared. Eye lashes are singed. Hairs are singed. Whole of the face including two ears are

burnt. Face is swollen and red in colour due to burns. Burnt areas were seen red and charred.

Chest :- Whole of the chest front and back burnt. Injuries are seen red and charred here and there.

Abdomen :- Burnt injuries are seen all over the abdomen here and there. External genitals are spared.

Upper limbs and Lower limbs :- Upper limbs and lower limbs are seen with burnt injuries except soles and palms. Burnt areas are seen red in colour. Buttocks are spared.

49. The Doctor opined that the cause of death of Narasimhulu is due to shock due to extensive burns on 11.11.2007 at 8 AM in the Government Hospital, Yemmiganur. Therefore, there is no substance in the contention of the defence that there is no nexus between the death and injuries, because PME report Ex.P20 clearly states that the cause of death is due to shock due to extensive burns.

50. Similarly, the evidence of P.W.10 is that he along with P.W.11 conducted post-mortem on the dead body of Boya Lakshmi. The evidence of P.W.10 is corroborated with P.W.11 and supported by Ex.P21 – post-mortem report of Boya Lakshmi, wherein it is specifically mentioned that PME was conducted on 12.11.2007 between 12 noon and 1 PM and found that the dead body is lying on the back, both the arms by the side of the body. Both the legs are semi-flexed at knee joint. Both the eyes are seen closed. Mouth is seen

partially opened. Tongue is seen inside the mouth. Rigor mortise seen present all over the body. Kerosene smell is coming from the dead body. 95% burns are present on the dead body.

51. Ante mortem injuries are noted as follows :

Head and Neck : - Head is spared. Eye lashes are singed. Whole of the face including two ears are burnt. Face is swollen and charred . Burnt areas seen red in colour .

Chest :- Whole of the chest front and back sides are seen burnt with red and charred colour here and there.

Abdomen :- Burnt injuries are seen over the abdomen with red colour areas here and there. External genitals are burnt. Pubic hair are signed. Burnt areas are seen red in colour.

Upper limbs:- Both the upper limbs are seen burnt. Palms are spared. Burnt areas are seen with red and black in colour.

Lower Limbs :- Both the lower limbs are burnt. Both soles are spared. Burnt areas are seen red and charred. Buttocks are also burnt completely. Burnt areas are red in colour.

52. In the chief itself P.W.10 stated that there are no chances of a lady with 95% burns to speak, but after giving the treatment such chances are possible and he opined that the deceased Boya Lakshmi has not done self immolation because her face is burnt. So, it is ruled out the theory of the defence that she might have poured kerosene

herself and lit fire, because the Doctor clearly opined that Lakshmi had not done self immolation, because her face is burnt.

53. P.W.10 – Doctor was cross-examined by the defence counsel, but could not elicit any favourable material. During the cross-examination he clarified that the face of Lakshmi was totally burnt and generally if it is self immolation, there is no chance of burning of face. A person who intends to have self immolation generally without taking any choice pour kerosene on any part of her body and burnt herself. Therefore, the evidence of P.Ws.10 and 11 corroborated and supported by Exs.P20 and P21 clearly established that the deceased Narasimhulu sustained 75% burn injuries, whereas Lakshmi sustained 95% burns. The Doctor in Exs.P20 and 21 specifically mentioned that the dead body is lying on the back, both the arms by side of the body. Both the legs are semi-flexed at knee joint. Both the eyes are closed. Mouth is partially opened. Tongue is seen **inside** the mouth. Rigor mortise seen present all over the body. Kerosene smell is coming from the dead body. This evidence coupled with seizure of M.O.4 – kerosene bottle and M.O.3 match box with sticks and the evidence of inquestdars under Exs.P16 and P18 and the evidence of P.Ws.8, 9 and 12 well established that the death was due to burn injuries and that Boya Lakshmi had not done self immolation, the reason being her face is fully burnt.

54. In the facts and circumstances discussed above and findings therein we find that the evidence of P.Ws.1 to 17 is free from

any suspicion and there are no omissions and contradictions and their evidence inspires confidence. Though P.Ws.2, 4 to 7 turned hostile, their 161 statements marked as Exs.P7, 12 to 15 would not be totally rejected to the extent of supporting the prosecution or the accused, but can be subjected to close scrutiny and the portion of the evidence which is consistent with the case of the prosecution or defence can be accepted.

55. In *Himanshu @ Chintu Vs. State (NCT of Delhi)* (2011) 2 SCC 36 the Apex court held that it is the duty of the Court to separate the grain from the chaff, and the maxim "*Falsus in uno falsus in omnibus*" has no application in India vide *Nisar Ali Vs. The State of Uttar Pradesh* (AIR 1957 SC 366).

56. In the case on hand dying declarations under Ex.P19 and statement of Lakshmi recorded by P.W.17 under Ex.P32 are beyond suspicion. There is no material produced by the appellant to suspect or doubt the dying declaration. There is neither suggestion nor evidence produced by the appellant/accused showing any enmity to the Police against the accused/appellant or showing any other reason for falsely implicating the appellant. In the absence of any such evidence and more particularly when there is no contradiction or material omission elicited by the defence counsel, the dying declarations as well as evidence of P.Ws.1, 2 and 13 well established that the accused along with his family deceased Lakshmi, son Narasimhulu was residing in room No.7 of Parimala cottage/lodge. It is the clinching declaration in

Exs.P19 and P32 that the accused suspected the fidelity/character of the deceased Lakshmi, his wife, picked up quarrel on 10.11.2007 at 11 PM and picked up the kerosene bottle – M.O.4 poured on her and the kerosene fell on Narasimhulu, younger son, who is sleeping by the side of her at that time and the accused picked up M.O.3 - match box from his pocket and lit her on fire. The shirt of the deceased Narasimhulu caught fire who died at 8 AM on 11.11.2007 and the deceased Lakshmi succumbed to injuries while undergoing treatment at 4.30 PM.

57. The motive for the offence is that the accused suspected the character of the deceased. The simple reason for his pouring kerosene and lighting her on fire is that she questioned as to why he came late and further having married Boya Lakshmi, he continued his relation with his first wife Virupakshamma. Those are the reasons for the difference between Boya Lakshmi and her husband/appellant/accused. The inquestdars under Exs.P16 and P18 and the Doctors – P.Ws.10 and 11 under Exs.P20 and P21 PME reports opined that the death was due to shock due to extensive burns. Narasimhulu died at 8 AM on 11.11.2007 in the Government Hospital, Yemmiganur, whereas as Boya Lakshmi died at 4.30 PM on 11.11.2007. There is also evidence of P.Ws.3, 4 and dying declaration under Ex.P19 and statement under Ex.P32, recorded by P.W.17, that the accused used to return home in drunken state and beat her. P.W.3 stated that he gave Rs.5,000/- cash and ½ tula of gold ring weighing of 6 grams to the father of the accused as dowry and spent Rs.40,000/- in

the marriage. For about 2 years after the marriage they lived happily and after that the accused/appellant addicted to vice of consuming alcohol and stopped his doing cultivation and started to move in the company of his friends without any work. It is also clear from the evidence of P.W.3 that earlier, the accused poured pesticide on the head of her daughter at his house in order to do her away as he had suspicion on her on the pretext that she used to see some male persons. As per the advice of Doctor, P.W.3 got tonsured the head of his daughter. The deceased also informed P.W.3 and his wife that accused may kill her and after Dasara festival, when she was going back to accused, she told that it may be her last visit and her husband would kill her.

58. In Exs.P19 and P32, it is specifically stated that accused poured kerosene, lit the deceased Lakshmi on fire with an intention to kill. P.W.5 took photographs in the room No.7 under Exs.P3 to P6. P.W.8 – V.R.O. who is no way connected with the accused and complainant and P.W.9, the agriculturist who is also nothing to do with parties, are inquestdars for the inquest on the dead body and seizure of M.Os.1 to 5. P.W.13 also speaks that accused addicted to vices and he used to pick up quarrel with her wife suspecting her fidelity. The ocular evidence of inquestdars – P.Ws. 8 and 9 and P.W.12 – Tahsildar, supported by investigating officers P.Ws.15 to 17, Ex.P19 and P32 statements established that accused intentionally poured kerosene, lit them on fire and consequently, Narasimhulu, aged 1 ½

years and Lakshmi, aged 25 years succumbed to burn injuries. The evidence of P.Ws.10 and 11 clarified that there is no possible presumption that Lakshmi herself poured kerosene and lit fire because her face was completely burnt. There is no contradiction or omission in the evidence of P.Ws.1 to 17 to suspect the evidence. There is no substance in the contention of the appellant that the trial Court has not considered the evidence of P.Ws.1 to 17 properly and their evidence is full of omissions and contradictions. No single contradiction was marked in the evidence of any of the witnesses. The Doctor – P.W.14's evidence is very clear that before the statement-Ex.P19 recorded by P.W.12 and Ex.P32 recorded by P.W.17, she was conscious and in a fit condition to give statement. Accordingly, P.W.14 signed the endorsement appearing on Ex.P19 and obtained the thumb impression of deceased Lakshmi. By cross-examining P.W.14, nothing contra has been elicited to discard the evidence of P.W.14 and disbelieve Exs.P19 and P32.

59. From the dying declaration in Ex.P19 and 161 Cr.P.C. Statement in Ex.P32 recorded by P.W.17 the reason for marrying Boya Lakshmi while subsisting marriage with Virupakshamma is, as Virupakshamma has not begotten any children. It is the evidence on record that the accused suspecting fidelity of Lakshmi, subjected her to cruelty under the influence of alcohol and he poured kerosene on the body of Lakshmi and lit her on fire and he came with match box – M.O.3 in his pocket, picked up kerosene bottle – M.O.4 which is

available in the kitchen, poured on her and lit her on fire. The circumstances clearly lead to infer that the appellant/accused poured kerosene and lit fire with full knowledge of causing burn injuries to the deceased wife Lakshmi and his son Narasimhulu which are likely to cause death and the same is corroborated by PME Reports Exs.P20 and P21 and also inquest reports - Exs.P16 and P18. The material on record well established the guilt of the accused beyond any reasonable doubt.

60. In the facts and circumstances discussed above and findings therein, we are of the considered view that the trial Court marshalling the facts, appreciation of oral and documentary evidence and considering the circumstances, came to the right conclusion that the appellant/accused poured kerosene and lit fire with full knowledge of causing burn injuries to the deceased wife Lakshmi and his son Narasimhulu which are likely to cause death. He also subjected deceased Lakshmi to cruelty by visiting his first wife and returning home belatedly and picking up quarrel and by abusing and beating her by suspecting her fidelity.

61. We do not find any infirmities or illegalities in the findings and conviction of the accused. The conviction and sentence is legal, valid and do not suffer from any legal infirmities warranting interference in the appeal.

62. Accordingly, the Criminal Appeal fails and is dismissed while confirming the judgment dated 18.11.2011 in S.C.No.291 of

2009 on the file of the II Additional Sessions Judge, Kurnool, convicting and sentencing the appellant/accused to undergo imprisonment for life for the offence under Section 302 I.P.C. and also simple imprisonment for two years and to pay a fine of Rs.2,500/- and in default to undergo simple imprisonment for a period of two months for the offence under Section 498 A I.P.C.

63. Since the appellant is on bail in pursuance of the order dated 2.1.2017 passed by this Court in CrI.A.M.P.No.2392 of 2016, the appellant is directed to surrender himself before the II Additional Sessions Judge, Kurnool within a period of 10 days from today and on such surrender, the learned Sessions Judge shall, in turn, send the appellant to the jail concerned for serving the remaining sentence. In case of failure to surrender, the learned Sessions Judge shall take steps for securing the presence of the appellant and commit him to the prison.

64. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE SURESH KUMAR KAIT

JUSTICE N.BALAYOGI

April, 2018

Note : Furnish copies to :

- (i) The Trial Court; and
- (ii) The Superintendent, Central Prison, Kadapa.

JR/SKMR