

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMADEVI

CRIMINAL APPEAL No.204 of 2013

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

1) The sole accused in Sessions Case No.196 of 2011 on the file of the V Additional District and Sessions Judge (Fast Track Court) Ranga Reddy District, is the appellant herein. He was tried for the offences punishable under Sections 302, 201 and 498-A IPC. Vide, judgment dated 11.02.2013, the learned Sessions Judge, while acquitting the accused for the offence punishable under Section 201 IPC, convicted him for the offences punishable under Sections 302 and 498-A IPC and sentenced them as under:

U/ s. 302 IPC	To suffer imprisonment for life and to pay fine of Rs.500/ -.
U/ s. 498-A IPC	To suffer simple imprisonment for a period of three years and to pay a fine of Rs.500/ - in default to suffer simple imprisonment for a period of three months.

Both the sentences were ordered to run concurrently.

2) The substance of the charge is that on 10.10.2010 at about 10.00 a.m., at plot No.11, Adarshanagar Colony, Rajendranagar, the accused caused the death of his wife by name Y.Venkata Sumathi (hereinafter referred to as "the deceased") by beating her indiscriminately and then strangled her with a cloth, due to which she became unconscious and died.

3) The facts as culled from the evidence of the prosecution witnesses are as under:

i) PW.2 is the brother and PW.3 is the mother of the deceased. The accused was working as police constable. PW.1 was known to the family of the deceased. The marriage between the accused and the deceased took place on 26.03.2004. At the time of marriage, the accused and his family members were given cash of Rs.4,50,000/- which includes the gold and other household articles. After marriage both of them lived happily for some time. Thereafter, the accused started harassing the deceased mentally and physically for additional dowry, on the ground that he has to pay the loan which was obtained by him for performing the marriage of his sister. It is said that on two occasions, PW.2 paid Rs.50,000/- each, on different dates. But however, the deceased used to inform PW.2 that the accused was subjecting her cruelty on a plea that he is going to join the S.I. post and demanded her to bring additional dowry of Rs.2.00 lakhs. Pursuant to the demand made by the accused, a sum of Rs.2.00 lakhs was paid to the accused. It is said that out of wedlock, they blessed with a child namely Maneesh Reddy. About 20 days prior to the incident, the accused sent the deceased to the house of PW.2, demanding her to get a sum of Rs.50,000/-. PW.2 and his family members convinced the deceased and sent her back stating that the said amount will be paid shortly. About four days prior to her death, the deceased telephoned to PW.2 and informed him about the demand for money and was also harassing her physically and mentally.

However, they convinced her and promised to pay the amount after some time.

ii) The evidence of PW.5, who is a neighbour and working as a A.R.Constable would show that on 10.10.2010, he saw the accused at 9.30 a.m. in his house and on the same day at 10.00 a.m., the accused called him and told him that his wife was not present in the house. However, in his presence he opened the door and found the deceased lying on the ground. He noticed blood oozing from nose and her hands were tied. In his presence, the accused cut the nylon wire tied to her hands. PW.5 called the owner and other tenants, and shifted the deceased to Shadan Hospital, where the doctors declared her dead. On 10.10.2010, PW.2 informed PW.1 about the death of the deceased and requested him to go to that place. Accordingly PW.1 went there but the injured was not present in the house. His enquiries revealed that the injured was shifted to Shadan Hospital. Immediately, he rushed to Shadan Hospital and saw the deceased lying on the bed. He found blood oozing from her nose and some marks on the neck and hands. He enquired PW.5 and others, who stated that on the same day morning there was a galata in the house of the accused and the deceased and also stated that the accused went away along with his son for some time by closing the doors from outside. After his return, the accused called PW.5 and told him that his wife fell sick and requested him to assist in shifting her to the hospital. In the presence of PW.5, the accused opened the door and with the assistance of LW.6 he shifted the

deceased to Shadan Hospital. PW.5 also told him that the deceased was in an un-conscious state and blood was oozing from her nose. From there, PW.1 went to Rajendranagar police station and lodged a report with PW.11-the Inspector of Police. Basing on the said report, PW.11 registered a case in Crime No.931 of 2010 for the offence punishable under Sections 302 and 498-A IPC and issued Ex.P8 the first information report. After examining PW.1, PW.11 proceeded to the scene of offence and prepared a panchanama of the scene in the presence of PW.7 and also a rough sketch of the scene, which are placed on record as Exs.P3 and P4. As the death took place within seven years, PW.11 sent a requisition to the R.D.O., Rajendranagar, for conducting inquest over the dead body. On receipt of the said requisition, PW.10, the Revenue Divisional Officer, proceeded to the mortuary of Osmania General Hospital, identified the body and then conducted inquest over the dead body of the deceased, in the presence of PW.6. Ex.P2 is the inquest report. During inquest, he seized the wearing apparels of the deceased, and also examined PWs.2 to 5 and others. After completing the inquest, PW.11 sent the dead body for postmortem examination.

iii) PW.9-the Associate Professor, Department of Forensic Medicine, Osmania Medical College, conducted autopsy over the dead body and issued Ex.P6-postmortem certificate. According to him, the cause of death was “due to strangulation”.

iv) On 13.10.2010, the Crime party apprehended the accused and produced him before PW.11. During interrogation, the accused confessed about the commission of offence. His confessional statement was recorded in the presence of PW.8. Pursuant to the said confession, PW.11 seized Mos.6 and 7. After completing the investigation and after collecting all the material papers, PW.11 filed a charge sheet before the Court of the VIII Metropolitan Magistrate, Rajendranagar, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.196 of 2011.

4) On appearance, charges under Sections 302, 201 and 498-A IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

5) To substantiate its case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P9 and MOs.1 to 7. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. On his behalf, the accused examined Dr.M.Narayana Reddy as DW.1, but no documentary evidence was adduced on his behalf.

6) After considering the material available on record, the trial Court convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

7) Learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the entire case rests on the circumstantial evidence. It is his plea that the circumstances so relied upon by the prosecution to show that it was a case of homicidal death, is falsified by the evidence of DW1, the forensic expert who opined that it was a case of suicide. Apart from that the learned counsel for the appellant would contend that the evidence of PWs.1 and 5 does not show any suspicion over the conduct of the accused, as projected by the prosecution now through the evidence of PW.5. In other words he submits that the earliest version given by PW.5 to PW.1 as to how the incident happened is totally different from what PW.5 is narrating before the Court. His plea is that the evidence of postmortem doctor is not conclusive and does not establish that it is a case of homicidal death. On the other hand, the evidence of DW.1 would show that it was a case of suicide.

8) On the other hand, the learned Public Prosecutor would contend that if really it was a case of suicide no material is forthcoming as to who brought down the deceased, since the evidence of PW.5 would show that the deceased was lying on the floor. Further, the version of PW.1, more particularly with regard to the nature of information given by PW.5 to him, was not spoken to in the earlier statement and the explanation given by the accused to PW.5 that his wife was missing from the house, when she was present in the house show the involvement of the accused in the crime. According to him, if really the accused was innocent

of the offence alleged, there was no necessity for him to give a false explanation. His plea is that since the medical opinion is only an opinion evidence and if the said evidence is tested with other evidence it would clearly reveal that it was a case of death due to strangulation.

9) The point that arises for consideration is whether it was a case of homicidal death or a suicide? If it is a case of homicide whether the accused is responsible for the same.

10) The material on record would show that the prosecution examined 11 witnesses to prove that it is a case of strangulation while the defence examined DW.1, a Professor of Forensic Medicine to prove that it is a case of suicide.

11) Before going further, we intend to delve into the issue as to whether it was a case of homicidal death due to strangulation or suicidal death by hanging.

12) As per Modi's medical Jurisprudence, strangulation is defined as the compression of the neck by a force other than hanging. It is said that weight of the body has nothing to do with strangulation. Ligature strangulation is a violent form of death, which results in constricting the neck by means of a ligature or by any other means, without suspending the body. When constriction is produced by the pressure of the fingers and pain upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle

hold). The difference between hanging and strangulation as per Modi's Medical Jurisprudence is as under:

<i>Hanging</i>		<i>Strangulation</i>	
1.	Mostly suicidal	1.	Mostly homicidal
2.	Face – usually pale and petechiae rare	2.	Face- congested, livid and marked with petechiae
3.	Saliva – Dribbling out of the mouth down on the chin and chest	3.	Saliva – No such dribbling
4.	Neck – Stretched and elongated in fresh bodies	4.	Neck – Not so
5.	External signs of asphyxia, usually not well marked	5.	External signs of asphyxia, very well marked (minimal if death due to vasovagal and carotid sinus effect).
6.	Ligature mark – Oblique, non-continuous placed high up in the neck between the chin and the larynx, the base of the groove or furrow being hard, yellow and parchment-like	6.	Ligature mark – Horizontal or transverse continuous, round the neck, low down in the neck below the thyroid, the base of the groove or furrow being soft and reddish
7.	Abrasions and ecchymoses round about the edges of the ligature mark, rare	7.	Abrasions and ecchymoses round about the edges of the ligature mark, common
8.	Subcutaneous tissues under the mark – White, hard and glistening	8.	Subcutaneous tissues under the mark – Ecchymosed
9.	Injury to the muscles of the neck – Rare	9.	Injury to the muscles of the neck – Common
10.	Carotid arteries, internal coats ruptured in violent cases of a long drop	10.	Carotid arteries, internal coats ordinarily ruptured
11.	Fracture of the larynx and trachea – Very rare and may be found that too in judicial hanging	11.	Fracture of larynx trachea and hyoid bone

12.	Fracture –dislocation of the cervical vertebrae – Common in judicial hanging	12.	Fracture – dislocation of the cervical vertebrae – Pate
13.	Scratches, abrasions and bruises on the face, neck and other parts of the body –Usually not present	13.	Scratches, abrasions fingernail marks and bruises on the face, neck and other parts of the body –Usually present
14.	No evidence of sexual assault	14.	Sometimes evidence of sexual assault
15.	Emphysematous bullae on the surface of the lungs – Not present	15.	Emphysematous bullae on the surface of the lungs – May be present

13) In the light of the above, we intend to examine the evidence of PW.9 and DW.1 to decide whether it was a case of suicide or strangulation. It is also to be noted that in *Machindra v. Sajjan Galfa Rankhamb and others*¹ the Apex Court held as under:

“Expert's opinion should be demonstrative and should be supported by convincing reasons. Court cannot be expected to surrender its own judgment and delegate its authority to a third person, however great. If the report of an expert is slipshod, inadequate or cryptic and information on similarities or dissimilarities is not available in the report of an expert then his opinion is of no value. Such opinions are often of no use to the court and often lead to the breaking of very important links of prosecution evidence which are led for the purpose of prosecution.

It is a cardinal principle of criminal jurisprudence that the guilt of the accused must be proved beyond all reasonable doubts. However, the burden on the prosecution is only to establish its case beyond all reasonable doubt and not all doubts.”

¹ (2018) 1 SCC (Cr.) 381

14) In *State of U.P. v. Krishna Gopal*² the Apex Court observed as under:

'25. ... Doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an overemotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt; but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

26. The concept of probability, and the degrees of it, cannot obviously be expressed in terms of units to be mathematically enumerated as to how many of such units constitute proof beyond reasonable doubt. There is an unmistakable subjective element in the evaluation of the degrees of probability and the quantum of proof. Forensic probability must, in the last analysis, rest on a robust common sense and, ultimately on the trained intuitions of the judge. While the protection given by the criminal process to the accused persons is not to be eroded, at the same time, uninformed legitimization of trivialities would make a mockery of administration of criminal justice."

15) PW.9 is the doctor who conducted the postmortem examination. He found the following injuries:

1. Ligature mark of 20 cms in length of varying width of 0.25 cms to 0.5 cms in length from left angle of mandible running backwards to the back of the neck and on to the right angle of the mandible. The mark present is dry and prachmatished with absence of the

² (1988) 4 SCC 302

mark on the front and on reflection of the neck, underlying soft tissues beneath the ligature mark are contused with normal hyoid bone and thyroid cartilage.

2. On reflection of scalp, scalp contusion of 2 cms x 1 cm seen over the temporalised muscle area, red in colour, with intact skull. And on opening the skull congested brain seen. On internal examination all the organs were congested, stomach contained about 50 cc of creamish colour liquid with congested mucosa and no specific smell. Uterus was normal.

16) Basing on injury No.1, he opined that the death was due to strangulation. In the cross-examination he admits that the injury No.1 referred to above started from left angle of mandible passing through back of the neck and ending at right angle of mandible. He further admits that there is no ligature mark in front of the neck. He further admits that whether the death was caused due to strangulation can be confirmed by the ligature marks on the neck. He denies that ligature marks can be produced after the death. To a question that in homicidal strangulation there is only single round with one or more nuts on the side of the neck, was denied. According to him, sometimes there could be two rounds of ligature marks and it depends upon multiple factors. He further admits that he has not noted any finger nail marks on the neck of the deceased. To a question as to whether he has noticed any injuries on the neck to show that the deceased resisted strangulation, he would say that there are no injuries on the neck. However, he says that he noticed an injury ie. injury No.2 to indicate that there was some resistance during strangulation. But

at the same time he also says that there is no injury to show resistance during strangulation. Insofar as injury No.1 is concerned, he would say that the same would be possible when the assailant is stranding in front of victim and caused strangulation. However, he admits that his opinion is not based on the F.S.L. report. He says that he sent viscera to the F.S.L. for analysis and on receipt of the said report, he gave opinion basing on the postmortem examination findings, viscera report.

17) The evidence of PW.9 further shows that the underlying soft tissues on the neck is contused but however hyoid bone and thyroid cartilage are normal, meaning thereby that there was no fracture of larynx and trachea or hyoid bone. Further, he has not noticed any finger nail marks on the neck of the deceased.

18) As against this evidence, we have the evidence of DW.1, who is a retired Professor of Forensic Medicine, Osmania Medical College and an author of book on Forensic Medicine. It would be relevant to refer to his evidence, which is as under:

“I have retired as Professor of Forensic Medicine, Osmania Medical College on 30.09.2011. I worked in that capacity for 19 years 10 months. On 22.03.2012 the defence counsel in this case met me in the corridor of the Court Complex and show the postmortem report. On that day I attended the I Additional Assistant Sessions Court to depose evidence as prosecution witness. On seeing the postmortem report Ex.P6 I told the counsel that it was not a case of death due to strangulation. The counsel enquired to me whether I can attend before the Court to depose. I told him that I will attend before the Court if

summoned to me. In this case the doctor who conducted the postmortem examination noted a ligature mark of 20 cms in length over the upper part of the back of the neck passing from one angle of the lower jaw to the other angle of the lower jaw. There was no ligature mark on the front of the neck. This type of incompletely encircling mark is against the theory of death due to strangulation. The other injured noted was a contusion of 2 cms in length and one cm in width on the inner surface of the scalp on the side of the head over the temporal region without any contusion to the underlying muscle. This is too small and medico legally insignificant injury. The doctor who conducted the postmortem examination did not notice any other marks of struggle on the dead body that could indicate that it was a case of a death due to strangulation.”

19) The Public Prosecutor cross-examined the witness at length. In the cross-examination he admits that PW.9 was his associate before his retirement. To a question that marks of strangulation need not be present all around the neck in all the cases, he says that in very rare case the pressure across the front and sides of the neck is sufficient to kill a person by strangulation. He voluntarily says that in the instant case, the pressure is on the back of the neck which is not sufficient to kill a person. He further states that if any soft cloth intervenes between the skin and ligature material, the pressure mark need not be present on the skin. According to him, the tissues behind the skin will be contused behind and the same can be observed in the postmortem examination. He further says that there was no contusion of tissues in the front portion of the neck.

20) From the opinion of DW.1 it is clear that it is a case of hanging only. If the evidence of PW.9 is tested with the evidence of DW.1 and Modi's medical jurisprudence, the evidence of D.W.1 makes it clear that there was no fracture of larynx and trachea and hyoid bone, which normally happens in case of strangulation and very rare in case of hanging. This being one of the tests to decide the nature of death and as the same is lacking in the instant case, we feel that it is a case of hanging.

21) Now the question would be whether other oral evidence in this case supports the said theory.

22) The prosecution in this case pressed into service the evidence of PWs.1, 4 and 5 to prove that it was a case of strangulation. PW.1 came to the scene of offence pursuant to the information given by PW.2, who in turn received the information from PW.5. Before dealing with the evidence of PWs.1 and 5, we intend to deal with the evidence of PW.4, who was declared hostile. Though she was declared hostile, but in the cross-examination done by the Public Prosecutor, she states that she stated before the police that she found ligature marks around the neck and contusions to her hands. She came to know that prior to the death of the deceased, the accused was in the house and at that time there was commotion in the house and the accused took away his son and came back later. After coming back, he called PW.5, ie. other tenant, talked to him and in his presence the

accused opened the door and informed PW.5 that his wife dead. She stated the same to the M.R.O. at the time of inquest.

23) Though this witness was treated hostile, but the said version which has been elicited in the cross-examination gets ample corroboration from the evidence of PW.5. Strangely the admissions elicited in the cross-examination of PW.4 by the Public Prosecutor were not put to the Investigating Officer to show that she never deposed about the same in her earlier version. Infact no suggestions whatsoever came to be made about the earlier version of PW.4.

24) This version of PW.4 gets corroboration from the evidence of PW.5, who is also one of the tenants. It is his version that on that day he saw the accused at 9.30 a.m. and again saw him at 10.00 a.m. when he came and told him that his wife is not appearing in the house. In his presence he opened the doors and found the deceased lying on the ground and blood was oozing. Meanwhile, he called the house owner and other tenants and shifted the injured to the hospital. In the cross-examination he admits that the house was latched from outside when the accused opened the same. From the admissions of PW.5, it is clear that the accused came from outside and after he came from outside and in his presence the accused opened the door which was latched from outside. At this stage, we intend to refer to the evidence of PW.1, who went to the scene of offence on receiving the information about the death of the deceased from PW.2. In his chief

examination he says that PW.5 stated to him that on the date of incident there was a galata in the house of the accused and the deceased and thereafter the accused took his son and went away by closing the doors from outside. On his return the accused called PW.5 and started some conversation stating that his wife was sick and requested him to assist the accused to shift his wife to the hospital and with the assistance of others, the accused shifted the deceased to the hospital. When this version of PW.1 was put to PW.11, he deposed as under:

“It is true that PW.1 did not state before me that he enquired with one Mohan, PW.5. Witness voluntarily says that PW.1 stated that he enquired with neighbours. My investigation reveals the neighbour of the accused is Mohan.

Q. PW.1 did not state before you in his statement that he enquired with Mohan (PW.5) and others, they informed him that a quarrel took place between the deceased and the accused in their portion?

Ans: It is not true to say that PW.1 did not state before me that when he enquired PW.5 and others they informed him about the quarrel that took place between the deceased and the accused in their portion. It is not specifically stated by PW.1 that when he enquired PW.5 and others they told that they heard the quarrel between the accused and the deceased in their portion.”

25) Further, PW.11 in his evidence stated that PW.1 has not specifically stated as to when the accused took his son by name Maneesh out of the house, by closing the door. PW.1 has also not specifically stated in his statement as to when the accused returned and met PW.5 and informed about the sickness of his

wife. It is also not stated as to when the door was opened in the presence of PW.5 and also about the hands of the deceased being tied.

26) From a reading of the evidence of PW.11 it is not clear as to whether PW.1 resiled from what he has stated in the earlier statement and also from what he has stated in the Court, with regard to the earlier version of PW.1. His evidence is only to the effect that he has not specifically stated as to when the accused took his son by name Maneesh out; as to when the accused returned and also as to when the doors were opened by the accused in the presence of PW.5. Meaning thereby with precision the time of the information furnished, as PW.1 was not treated hostile and having regard to the answers given by PW.11 in the cross-examination vis-à-vis earlier statement of PW.1, it can be said that there was a galata, pursuant to which the accused left the house with the child by latching the door from outside, came back to the house, informed PW.5 that his wife was sick, opened the door and found the deceased dead with blood oozing from nose. The evidence of PW.1 gets corroboration not only from the evidence of PW.5 but also from the answers given by PW.4 in the cross-examination done by the public prosecutor. Hence, the evidence of PWs.1, 4 and 5 would only establish that there was some galata in the house in the morning pursuant to which the accused went out with the boy, came back later and noticed the dead body.

27) In *Kailash Gour and others vs. State of Assam*³ the Apex Court held as under:

“It is one of the fundamental principles of criminal jurisprudence that an accused is presumed to be innocent till he is proved to be guilty. It is equally well settled that suspicion howsoever strong can never take the place of proof. There is indeed a long distance between accused ‘may have committed the offence’ and ‘must have committed the offence’ which must be traversed by the prosecution by adducing reliable and cogent evidence. Presumption of innocence has been recognised as a human right which cannot be wished away.”

28) The only other circumstance is about the hands of the deceased being tied from back, which was spoken to by PW.5. The fact that the hands of the deceased were being tied with a nylon rope was never spoken to by PW.1 nor was that information given by PW.5 to PW.1 when he went to the scene of offence. Similarly PW.4 did not also refer to tying of hands of the deceased with nylon rope. Therefore, there is any amount of doubt with regard to existence of such circumstance of tying of hands of the deceased with nylon rope, more so, in view of the medical evidence where no bruises and contusions were noticed on the hands of the deceased. Therefore, we feel that the prosecution was not able to prove with clinching evidence that it is a case of homicide. Hence, we feel that it is not a case of death due to strangulation but a case of hanging. Hence, the conviction of the accused for the offence punishable under Section 302 IPC is set aside.

³ AIR 2012 SC 786

29) Coming to the offence punishable under Section 498-A IPC, there is overwhelming evidence in the form of PWs.2 and 3 to show that the accused was subjecting the deceased to cruelty by demanding her to get additional dowry. PW.2 in his evidence deposed as under:

“At the time of marriage on the demand of the accused and his family members we gave Rs.4,50,000/- which includes gold and also household articles. After the marriage they lived happily for some time. Thereafter the accused started harassment both mentally and physically for the demand of additional dowry stating that he performed his sister's marriage brought loan amount from others to pay that money he demanded to get that money from my house and send my sister to our house. As such on two occasions we paid Rs.50,000/- and Rs.50,000/- on different dates. The demand of dowry by the accused was informed by my sister to me and my family members. Thereafter my sister also told to me and my family members that she was subjected to cruelty in the hands of the accused on a plea that the accused is going to join in S.I. post and he demanded my sister to bring an additional dowry of Rs.20,000/- for his job. The same was informed by my sister to all our family members. We gave Rs.2,00,000/- also to the accused to live my sister happily with the accused. My sister blessed one male son. His name is Maneesh Reddy. At present the age of my nephew is 3 years. Thereafter some time also the accused also demanded an additional dowry of Rs.50,000/-. Prior to 20 days before the accused demanded and additional dowry of Rs.50,000/- and send my sister to our village and we convinced her and requested her that we will pay the said amount of Rs.50,000/- after some time and send back her to her house at Hyderabad. Prior to four days before her death my sister telephoned and stated that the accused is

demanding money and also harassed her physically and mentally.”

30) PW.3 in her evidence deposed as under:

“At the time of marriage we gave Rs.4,50,000/- in all as dowry in the presence of elders. The spouse lived happily for a period of 4 or 5 months. Thereafter the accused started harassment on the pretext of demanding of dowry and he used to manhandle the deceased on the said pretext. The said fact was revealed by my daughter whenever she came to my house with all my family members stating that the accused was manhandled her and also demanding of additional dowry. Initially we paid an amount of Rs.50,000/-, thereafter also the accused continued his harassment to my daughter again demanding of additional dowry. We also gave Rs.50,000/- on the send time and apart from the performing of the marriage additionally we gave household articles to the accused at the time of marriage. Thereafter also the accused continued the harassment to my daughter and demanding of money as additional dowry by saying he is going to get the S.I. job and demanded an amount of Rs.2,00,000/- for the said job. As such we gave Rs.2,00,000/- to the accused. Thereafter also the accused harassed my daughter by harassing mentally, physically and demanding of additional dowry. After payment of Rs.2,00,000/- the accused send my daughter to my house to get Rs.50,000/- and demand of dowry. It was happened 20 days prior to her death.”

31) Their evidence is consistent to show the nature of harassment caused by the accused. Though both the witnesses were cross-examined at length, nothing has been elicited to discredit their testimony. Ofcourse it has been elicited in the evidence of PW.3 the time when the amount was paid was not

stated by him, but in our view the same shall not go to the root of the matter. PWs.2 and 3 being villagers, one cannot expect them to remember the date and time as to when the said amount was paid, since the payment was not on one occasion as it was spread over a period of time. In fact, the evidence of PW.4, who was treated hostile, also refers to the demand made by the accused for payment of additional dowry. In fact, in the cross-examination, PW.4 admits that during her examination by M.R.O., she stated that the deceased told her that inspite of giving sufficient dowry the accused used to demand for additional dowry from her parents and on that ground disputes arose between them. This being the evidence on record, which remained un-impeached with regard to demand of additional dowry, we feel that the finding of the trial Court with regard to conviction under Section 498-A IPC requires no interference.

32) Accordingly, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/accused in the judgment, dated 11.02.2013 in S.C.No.196 of 2011 on the file of the V Additional District and Sessions Judge (Fast Track Court), Panga Reddy District, for an offence punishable under Section 302 IPC are set aside, while confirming the conviction and sentence imposed for the offence punishable under Section 498-A IPC. The period of remand underwent by accused during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any

other case, on completion of three years simple imprisonment imposed on him for the offence punishable under Section 498-A IPC, including remissions, if he is entitled to.

33) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI

15.03.2018

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