

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO

CRIMINAL APPEAL No.46 OF 2014

JUDGMENT: (Per Dr. Justice Shameem Akther)

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973, is filed by the appellant/accused, challenging the judgment, dated 22.11.2013, passed in S.C.No.357 of 2011 by the Judge, Family Court-cum-Additional Sessions Judge, Nalgonda (for brevity, 'the trial Court'), whereby, the trial Court convicted the appellant-accused of the charges under Sections 302 and 498A I.P.C. and Sections 3 and 4 of the Dowry Prohibition Act, 1961 (for short, 'the DP Act') and sentenced him (i) to undergo rigorous imprisonment for life and to pay a fine of Rs.500/- and in default, to undergo simple imprisonment for three months for the offence under Section 302 I.P.C.; (ii) to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.300/- and in default, to undergo simple imprisonment for one month for the offence under Section 498A I.P.C.; (iii) to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- and in default, to undergo simple imprisonment for two months for the offence under Section 4 of the DP Act; and (iv) to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.15,000/- and in default, to undergo simple imprisonment for three months for the offence under Section 3 of the DP Act; and further directed that all the sentences shall run concurrently.

2. Heard the submissions of Sri A. Nagendra Rao, the learned Legal Aid Counsel appearing on behalf of the appellant-

accused, the learned Additional Public Prosecutor (Telangana) representing the respondent-State and perused the record.

3. The learned Legal Aid Counsel appearing on behalf of the accused would contend that there was no corroboration to the evidence of P.W.1 and in Ex.P.1-report lodged by P.W.1 with the police; there is delay in lodging Ex.P.1-report; as per the evidence of P.W.1, the police personnel arrived the village of P.W.1 on 28.02.2009, i.e., on the date of alleged offence, though P.W.1 stated that he lodged the report with the police on the next day morning; the evidence of P.W.1 is inconsistent; there is also inconsistency in the evidence of P.W.1 about the injuries found on the dead body of the deceased; in Ex.P.1-report, there is no mention of stabbing the deceased with the screw driver; as there was strained relationship between the accused, his wife and in-laws, this case is foisted against the accused; there is no evidence on record against the accused to prove any of the charges framed against him; and ultimately, prayed to set aside the convictions and sentences recorded against the accused by the trial Court.

4. On the other hand, the learned Additional Public Prosecutor representing the respondent-State would contend that P.W.1 is a material witness in this case to prove the charges framed against the accused; P.W.9-investigating officer deposed about recovery of M.O.1-knife and M.O.2-screw driver and blood was detected thereon; there is no inconsistency in the evidence of the prosecution witnesses; the trial Court had rightly convicted and sentenced the accused of the charges framed against him; and

ultimately, prayed to dismiss the appeal by confirming the convictions and sentences recorded against him.

5. In view of the submissions made by both sides, the points that arise for determination in this Criminal Appeal are:

- (1) Whether the accused had caused the death of his father-in-law (deceased-Mudavath Badya) on 28.02.2009 at 20-00 hours when the deceased and his son-Mudavath Lalu (P.W.1) were returning home after crossing Chiluka tank bund near the path way leading to Palugu Thanda?
- (2) Whether the accused harassed his wife-Shanthi (P.W.3) mentally and physically demanding additional dowry?
- (3) Whether the convictions and sentences recorded against the accused by the trial Court of the offences punishable under Sections 302 and 498A of I.P.C. and Sections 3 and 4 of the DP Act are liable to be set aside?

6. The case of the prosecution, in brief, is that the marriage of the accused with Kathavath Shanthi (P.W.3), who is the daughter of the deceased-Mudavath Badya, was performed about 7 years prior to the date of incident. Mudavath Lalu (P.W.1) is the *de facto* complainant and son of the deceased. At the time of marriage, the family of the deceased offered Rs.70,000/- towards dowry and still they have to pay an amount of Rs.5,000/-. The accused was picking up quarrels with his wife frequently demanding dowry. One week prior to the incident, the accused beat his wife (P.W.3) severely, due to which, P.W.3 came to her brother's (P.W.1) house. Since then the

accused was making rounds around the house of P.W.1 to kill P.W.3. On 28.02.2009 night at about 20-00 hours, P.W.1 and his father (deceased) were returning back after tying their cattle at the shed situated in their agricultural land with a torch light and after crossing Chiluka Tank bund near the pathway leading to Palugu Thanda, the accused came across them, waylaid and picked up a quarrel with them and asked them as how many days they would keep his wife (P.W.3) in their house. The accused attacked his brother-in-law (P.W.1) with a knife, but P.W.1 escaped the blow and ran to some distance. Then the accused left P.W.1 and attacked his father-in-law (deceased) and brutally cut his throat with the knife. Immediately P.W.1 shouted and ran towards his father and found him dead in a pool of blood. Then the accused fled away from the scene. Having afraid of the incident, P.W.1 ran into the village and informed his relatives about the incident. As it was late night and there was no conveyance, P.W.1 lodged a report with the police on 01.03.2009 at about 06-00 hours. On that P.Srinivas Reddy, Sub Inspector of Police, Chandampet Police Station (P.W.9) registered a case in Crime No.19 of 2009 against the accused for the offence under Section 302 I.P.C., and during course of investigation, he visited the scene of offence, recorded statements of the witnesses, secured the presence of mediators, conducted scene of offence panchanama in their presence, prepared rough sketch of the scene and seized bloodstained and control earth under the cover of panchanama. Further, P.W.9 held inquest over the dead body of the deceased, got photographed the scene of offence, examined witnesses, recorded their statements and seized one white Dhoti with bloodstains and white shirt with bloodstains under the cover of panchanama and sent

the dead body of the deceased for post-mortem examination. Dr. Bhanu Prasad, Civil Assistant Surgeon, Community Health Centre, Devarakonda (P.W.8) conducted autopsy over the dead body of the deceased and opined that the cause of death of the deceased was due to injury to greater vessels and organs with shock. The Sub Inspector of Police (P.W.9) arrested the accused on 03.03.2009 at 06-00 hours at his house and recovered his shirt and towel containing bloodstains admitted to have been worn by him at the time of the incident, under the cover of panchanama in the presence of mediators. P.W.9 also recovered one screw driver and one knife containing bloodstains under the cover of panchanama in the presence of mediators. After completion of entire investigation, charge sheet was filed before the learned Judicial Magistrate of First Class, Devarakonda, against the accused for the offences under Sections 498A and 302 I.P.C. and Sections 3 and 4 of the DP Act.

7. The learned Magistrate had taken cognizance of the case and committed the case to Sessions Division, Nalgonda, under Section 209 Cr.P.C., since the offence punishable under Section 302 I.P.C. is exclusively triable by the Court of Session. On committal, the learned Sessions Judge, Nalgonda, registered the case as S.C.No.357 of 2011 for the offences punishable under Sections 498A and 302 I.P.C. and Sections 3 and 4 of the D.P. Act and made over the case to the trial Court for disposal in accordance with law. The trial Court framed charges under Sections 498A and 302 I.P.C. and Sections 3 and 4 of the D.P. Act against the accused, read over and explained to the accused for which, he pleaded not guilty and claimed to be tried.

8. To prove the prosecution case, the prosecution examined P.Ws.1 to 11 and got marked Exs.P.1 to P.16 and M.Os.1 to 7.

9. After closure of the prosecution evidence, the accused was examined under Section 313 of Cr.P.C. explaining the incriminating material appearing against him in the prosecution witnesses. The accused denied the same and reported no evidence on his defence.

10. The trial Court, after considering the evidence available on record, came to a conclusion that the prosecution is able to establish the guilt of the accused beyond all reasonable doubt and accordingly, found him guilty of the offences punishable under Sections 302 and 498A I.P.C. and Sections 3 and 4 of the D.P. Act, and convicted him under Section 235(2) Cr.P.C. and sentenced him as stated supra in the first paragraph. Challenging the same, the accused filed the present appeal.

Points 1 to 3:-

11. The specific case of the prosecution is that on 28.02.2009 around 20-00 hours, when Mudavath Lalu (P.W.1) and his father- Mudavath Badya (deceased) were returning from their agricultural well and when they reached near pathway leading to Palugu Thanda, the accused came across them, picked up a quarrel stating that why they were not sending P.W.3-wife of the accused to his house and made an attempt to stab P.W.1, and when P.W.1 escaped, the accused attacked the deceased (the father of P.W.1) and caused his death by stabbing on his abdomen and chest with a screw driver and

cutting the throat with a knife. The accused had also demanded additional dowry from the deceased and in-laws.

12. To substantiate the case of prosecution, the prosecution examined P.Ws.1 to 11 and got marked Ex.P.1-report lodged by P.W.1 with the police, Exs.P.2 to P.4-thumb impressions of P.W.5 on the scene of offence panchanama, rough sketch and inquest, Exs.P.5 to P.8-signatures of P.Ws.6 and 7 on the confession and recovery panchanamas of the accused, Ex.P.9-postmortem examination report, Ex.P.10-F.I.R., Ex.P.11-scene of offence panchanama, Ex.P.12-rough sketch, Ex.P.13-inquest panchanama, Ex.P.14-confession and recovery panchanama admissible portion, Ex.P.15-confession and recovery panchanama admissible portion and Ex.P.16-Forensic Science Laboratory Report. The prosecution also got marked M.O.1-knife, M.O.2-screw driver, M.O.3-white dhoti, M.O.4-white shirt, M.O.5-white towel, M.O.6-ash colour shirt and M.O.7-yellow colour towel.

13. P.W.1 is the material witness in this case, who is the son of the deceased and brother-in-law of the accused. P.W.3 is the wife of the accused and sister of P.W.1 and daughter of the deceased. The evidence of P.W.1 reveals that four years prior to his deposition, the accused married his sister; in the marriage, they gave Rs.65,000/- and an amount of Rs.5,000/- had to be paid; the accused used to demand for payment of the said balance amount; four years back, when P.W.1 and his father were returning from their agricultural fields and when they crossed Chilakala Cheruvu Katta at 8-00 p.m., the accused came in opposite direction and asked his father-in-law (deceased) to send his wife; then his father informed

the accused that he would send the wife of the accused on the next day; then the accused tried to attack P.W.1 with a screw driver; P.W.1 turned other side and then the accused stabbed the father of P.W.1 with a screw driver on his right side stomach, then his father fell down and the accused took a knife and cut his throat with the knife; thereafter, the accused fled away from the scene. Thereafter, P.W.1 ran to his house and informed the same to the inmates of the house. On the next day morning at 6-00 a.m., P.W.1 lodged a report with the police under Ex.P.1.

14. Mudavath Shankar (P.W.2) is the brother of P.W.1. Kanthavath Shanthi (P.W.3) is the sister of P.W.1 and wife of the accused. Nenavath Nanu (P.W.4) is a circumstantial witness. Nenavath Chanthru (P.W.5) is another circumstantial witness. These witnesses are not direct witnesses to the alleged incident. They stated that the accused stabbed the deceased to death and they learnt the same through P.W.1. Nenavath Hariya (P.W.6) and Nenavath Pathya (P.W.7) are the witnesses to the confession of the accused leading to recovery of material objects and their thumb impressions and signatures are got marked as Exs.P.5 to P.8.

15. P.W.8-Dr.K.Bhanu Prasad conducted autopsy over the dead body of the deceased and his evidence reveals that he found the injuries, i.e., (1) complete cut of neck, (2) damage of the treachea, (3) damage of greater vessels, (4) damage of the neck muscles, (5) multiple laceration on chest measuring 1/2 x 1/2 cms, and opined that the cause of death was due to the injury to greater vessels and organs with shock. He gave the approximate time of death as 12 to 24 hours prior to his examination. Ex.P.9 is the post-mortem

examination report, which corroborates the evidence of P.W.8. There is also no dispute with regard to the time of death.

16. P.W.9-P.Srinivas Reddy is the investigating officer, who deposed about his conduct of investigation into this case, who received Ex.P.1-report from P.W.1, and registration of crime in this case. He also deposed about the conduct of the scene of panchanama and inquest over the dead body of the deceased. Through his evidence, Ex.P.10-F.I.R., Ex.P.11-scene of offence panchanama, Ex.P.12-rough sketch, Ex.P.13-inquest panchanama were marked. Mudavath Chenna (P.W.10) is the photographer. He deposed about the taking of the photographs.

17. P.W.11-Sardar Singh, Inspector of Police, is the investigating officer, who deposed about the sending of the material objects to Forensic Science Laboratory, obtaining of Ex.P.16-F.S.L. Report and filing of the final report and charge sheet after completion of investigation against the accused for the offences under Sections 302 and 498A I.P.C. and Sections 3 and 4 of the DP Act.

18. As per Ex.P.1-report lodged with police by P.W.1, there is mention that the accused attacked the deceased, who is father of P.W.1 and brutally slaughtered the throat with knife. Under Ex.P.1-report, there is no mention of accused causing injuries with screw driver, P.W.1 deposed the same in his evidence. In the cross-examination, P.W.1 stated that within half an hour on that night, police came to the scene of offence. When the police came to the scene of offence on the date of incident at 8-00 p.m., there is no reason for P.W.1 to go to the police station on the next day morning

to lodge Ex.P.1-report. Ex.P.1-report reveals that it was prepared on 01.03.2009 and it was lodged with the police at 06-00 hours on that day. As per the evidence of police officials, the scene of offence can be reached within half an hour from the police station. As per the first information report, the distance between the scene of offence and the police station is 16 kms. The offence alleged to have been committed in this case at 8-00 p.m. on 28.02.2009. When P.W.1 noticed the commission of offence on that night, he could have immediately gone to the police station and lodged a report with the police within 3-4 hours of the alleged incident. It is contended on behalf of the accused that the deceased was doing sorcery in the village and there are number of enemies to the deceased in the village and there is possibility of elimination of the deceased by others.

19. As per the evidence of the doctor (P.W.8) and Ex.P.9-postmortem examination report, there were multiple injuries found on the chest of the deceased. P.W.1 did not mention the overt acts relating to those injuries in Ex.P.1-report lodged with the police. The oral evidence of P.W.1 is that the accused made an attempt on the deceased with a screw driver and caused injuries to his father, and when his father fell down, the accused cut the throat of his father with a knife. P.W.1 did not state the overt acts relating to the injuries suffered by the deceased on chest either in his oral evidence or in Ex.P.1-report. If really, P.W.1 was present along with the deceased at that point of time, certainly, he would have mentioned that the deceased was attacked by screw driver. It is an improvement in the oral evidence of P.W.1.

20. As seen from the evidence on record, there was strained relationship between the accused and his wife (P.W.3). As per the evidence of P.Ws.1 to 3, an amount of Rs.5,000/- was due to the accused towards dowry. There was also demand from the accused to pay the dowry amount. It is also pertinent to state that the F.I.R. was received by the learned Magistrate on 01.03.2009 at 17-10 hours. So, it goes to show that Ex.P.1-report was lodged in the afternoon of 01.03.2009. Thereafter, it was sent to the Magistrate concerned. Had P.W.1 was present at the place of offence, he would have lodged the report with the police immediately within 3-4 hours of the commission of offence. The evidence on record establishes that P.W.1 had taken sufficient time to lodge the report. It appears, Ex.P.1-report was brought into existence after due deliberations. There was delay in issuing Ex.P.10-F.I.R. in this case. So, when all these circumstances are culled out, it is difficult to hold that P.W.1 was an eyewitness to the commission of offence by the accused. The delay in lodging F.I.R., the mention in the evidence of P.W.1 about the police arriving to the village within 1½ hours of commission of the offence and further the contention of the accused that the deceased was playing sorcery in the village, makes the case of the prosecution that the accused caused the death of the deceased doubtful. The trial Court has not appreciated all these aspects and the evidence of P.W.1 with relevance to the other documents and erroneously concluded that the accused had caused the death of the deceased. Under these circumstances, the accused is entitled for the benefit of doubt. Consequently, he is liable to be acquitted of the charge under Section 302 I.P.C.

21. As far as the accused demanding additional dowry of Rs.5,000/- from his father-in-law (deceased), his brother-in-law (P.W.1) and his wife (P.W.3) is concerned, there is direct and specific evidence to substantiate the same. There is also evidence to establish that the accused had mentally and physically harassed his father-in-law (deceased) and the harassment meted to his wife (P.W.3) constitutes an offence under Section 498A I.P.C. So also, the prosecution successfully proved the guilt of the accused for the offence under Sections 3 and 4 of the D.P. Act. The trial Court had rightly convicted and sentenced the accused of the charges under Section 498A I.P.C. and Sections 3 and 4 of the DP Act. The trial Court had rightly taken the gravity of the offence and other circumstances into consideration and imposed the sentence of imprisonment for the said offences. There is nothing to set aside the convictions or reduce the sentences of imprisonment imposed against the accused for the offences punishable under Sections 498A I.P.C. and Sections 3 and 4 of the D.P.Act. Accordingly, these points are answered.

22. In the result, the conviction and sentence recorded against the appellant-accused by the learned Judge, Family Court-cum-Additional Sessions Judge, Nalgonda, in the judgment dated 22.11.2013 in Sessions Case No.357 of 2011 for the offence punishable under Section 302 I.P.C. is set aside. The appellant-accused is found not guilty of the said offence and is accordingly acquitted of the same. However, the convictions and sentences recorded by the learned Sessions Judge in the impugned judgment for the offences punishable under Sections 498A I.P.C. and Sections 3

and 4 of the Dowry Prohibition Act, 1961 are confirmed. If the sentence of imprisonment imposed for the said offences is already served by the appellant-accused, he shall be released forthwith, if he is not required in any other case.

23. The Criminal Appeal is allowed in part accordingly. Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

Dr. SHAMEEM AKTHER, J

1st December, 2018
SIVA

M. GANGA RAO, J

