

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.241 OF 2012

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

The sole accused in Sessions Case No.456 of 2010 on the file of the Court of III Additional District and Sessions Judge (F.T.C), Ranga Reddy District (for short, trial Court) is the appellant herein. He was tried for the offences punishable under Sections 498-A and 302 IPC, for causing the death of one Jayamma (deceased) on 13-06-2010. Vide judgment dated 09.01.2012, the learned Sessions Judge convicted the accused under Section 235(2) of the Criminal Procedure Code and sentenced him to suffer rigorous imprisonment for one year and to pay fine of Rs.100/-, in default, simple imprisonment for one month for the offence punishable under Section 498-A IPC and further sentenced to suffer imprisonment for life and to pay a fine of Rs.100/-, in default, simple imprisonment for one month for the offence punishable under Section 302 IPC.

2. The case of the prosecution, as culled out from the evidence, is as under:-

P.W.1 is the mother and P.W.2 is the brother of the deceased (Jayamma). P.W.3 is the neighbour. The marriage of the accused with the deceased took place about 10 years prior to the date of incident, but they had no children. The accused got addicted to alcohol and used to beat the deceased frequently. He also sued to harass the deceased for money, to fulfill his vices. On 13.06.2010

at about 3.30 pm., while P.Ws.1 and 2 were in house, they came to know that the deceased was in flames. Immediately, they rushed to the house of the accused and found the deceased with burn injuries. When enquired with the deceased as to how she sustained burn injuries, she stated that the accused poured kerosene and set her ablaze. She further informed that the accused forcibly took Rs.1,500/- from her in the morning, returned home in a drunken condition, poured kerosene and set her ablaze. Immediately, they shifted the deceased to the Gandhi Hospital and intimated about the same to P.W.10 - P.Narsimha Rao, Head Constable, Miyapur Police Station. Upon the same, P.W.10 visited the Gandhi Hospital and recorded the statement of the deceased, which is placed on record as Ex.P.9.

3. The material on record further discloses that P.W.8 – Judge, Additional Family Court, Hyderabad also recorded the dying declaration of the deceased at about 8.15 pm, in the presence of the medical officer, and after being satisfied with regard to the medical fitness of the deceased. Ex.P.6 is the requisition and P.7 is the dying declaration recorded by P.W.8. As the entire body was burnt, P.W.8 obtained the right toe impression of the declarant, after explaining the contents of the declaration to the declarant.

4. On 13.06.2010 at about 10.40 pm, P.W.11 – Inspector of Polce, Miyapur, received the statement recorded by P.W.10, basing on which, he registered a case in Crime No.266/2010 under Section 307 IPC. Ex.P.10 is the First Information Report. On the next day, at about 7.00 am, he proceeded to the scene of offence,

and in the presence of P.W.8, observed the scene of offence and prepared a panchanama of the same and also the rough sketch of the scene, which are placed on record as Exs.P.2 and P.3. He also got the scene of offence photographed, which are placed on record as Ex.P.1. On 13.06.2010, he received death intimation of the deceased, in pursuance of which, he altered the section of law to one under Section 302 IPC. Ex.P.11 is the alteration memo. He then proceeded to the hospital, and in the presence of P.Ws.6 and Vanarasi Bandaiah (L.W.10), held inquest over the dead body of the deceased and issued Ex.P.4 the inquest report. Thereafter, the body was sent for postmortem examination. P.W.9 the Assistant Professor, Forensic Medicine, Gandhi Hospital, conducted autopsy over the dead body and issued Ex.P.8 the postmortem certificate. According to him, the cause of death of the deceased, to the best of his knowledge and belief, was “due to neurogenic shock, as a result of 92% burns involving the body surface area”. After affecting the arrest of the accused and recording the confession, P.W.11 filed the charge sheet which was taken on file as PRC.No.75 of 2010 on the file of the Court of IX Metropolitan Magistrate, Cyberabad at Miyapur. On appearance of the accused, copies of the documents were furnished as required under Section 207 Cr.P.C. As the case is triable by a Court of Sessions, the same was committed, which came to be numbered as S.C.No.456 of 2010. Basing on the material available, charges under Sections 498-A and 302 IPC came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

5. In support of its case, the prosecution examined P.Ws.1 to 11 and got marked Exs.P.1 to P.11 and M.Os.1 to 5. P.W.7 did not support the case of the prosecution and was declared hostile by the prosecution. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against him in the evidence of prosecution witnesses, to which he denied. No oral evidence was adduced on behalf of the defence. Basing on the evidence of P.Ws.1 to 3, coupled with the two dying declarations recorded by P.W.8 and P.W.10, the trial Court convicted the accused and sentenced him as afore said. Challenging the same, the present appeal came to be filed.

6. The learned counsel for the appellant/accused would contend that no reliance can be placed on the two dying declarations, as they are an out come of tutoring. She would further contend that even accepting the entire allegations to be true, no offence under Section 498-A is made out.

7. On the other hand, the learned Public Prosecutor would submit that the contents of two dying declaration coupled with oral dying declaration of the deceased made before P.Ws.1 to 3 would show that the accused used to beat the deceased frequently for money which attracts second limb of Section 498-A IPC. Hence, the conviction and sentence awarded by the trial Court warrants no interference.

8. In order to appreciate the rival contentions, it would be useful to refer to the oral evidence as well as to the two dying declarations. P.W.1 in her evidence stated that on coming to know about the incident, she along with P.W.2 and her daughter Bhagyamma (L.W.3) proceeded to the house of the accused and found the deceased with burn injuries. The accused was not present in the house. When enquired with the deceased as to how she sustained burn injuries, the deceased is said to have informed them that in the morning of that day, the accused forcibly took away Rs.1,500/- and thereafter returned home in a drunken condition, poured kerosene on her and set her ablaze. Though P.Ws.1 was cross-examined at length, nothing useful was elicited to discredit her testimony. All the suggestions put to the witness, with regard to the manner in which the accused used to behave with the deceased and also the nature of incident was denied.

9. Similarly, P.W.2 the sister of the deceased in her evidence deposed that on the date of incident, her sister (deceased) received salary for working in municipality. The accused is said to have beat her sister and took away the amount for consuming alcohol. After return up to the house, the accused beat her sister, poured kerosene and set her ablaze. Her evidence also discloses about the oral dying declaration made by the deceased, before her. Later they took the injured in an ambulance to the hospital. In the cross-examination of P.W.2, it has been elicited that several panchayats were held with regard to the harassment of the accused on the deceased.

10. Similar is the evidence of P.W.3. He appears to be a resident of that area, and living in the same compound of the accused along with P.Ws.1 and 2. In his evidence, he deposed about the oral dying declaration made by the deceased wherein she narrated the manner in which she was set on fire by the accused. Though P.W.3 was cross-examined at length, nothing useful was elicited to discredit his testimony. In fact, it has been elicited through P.W.3 that when he was at the theatre, the accused came and informed that the deceased committed suicide. On receiving the said information, he is said to have proceeded to the house and enquired with the deceased.

11. From the above, it is clear that not only the evidence of P.Ws.1 and 2, who are the family members of the deceased, but also the evidence of P.W.3, who is an independent witness refers to the oral dying declaration made by the deceased to P.Ws.1 to 3, wherein she gave details about the manner in which the incident occurred. Hence, there is no reason to disbelieve the evidence of P.Ws.1 to 3 to the oral dying declaration and also with regard to the manner in which the deceased sustained burn injuries.

12. Apart from the oral evidence, there are two dying declarations recorded by P.Ws.10 and 8. The first dying declaration was recorded by P.W.10, which is placed on record as Ex,P9, wherein the deceased stated as follows:

“ I am to state that I am married to one Babu about 10 years ago and until now I am not blessed with children. I am working as Sweeper in GHMC, Serilingampally Municipality. My husband used to come to the house in drunken condition daily and also used to beat me and harassed me miserably. In

the month of May, since I worked for 15 days I drawn Rs.1500/-. Today i.e., on 13.06.2010 morning my husband forcibly taken Rs.1500/- from me and returned to home in drunken condition and then poured kerosene and set ablaze me and ran away from the house. I came out of the house with flames and raised hues and cries and fell in the sand in front of my house. Later my husband came and shouted that his wife attacked with fire. On that neighbours shifted me to Gandhi Hospital. Whatever I have stated now is true and correct and police read over the contents to me in Telugu and on that I have put my thumb impression.”

13. A reading of the said dying declaration, which was made the basis to register the FIR, would show that on the date of incident in the morning, the accused took away Rs.1,500/- from the deceased, returned home in a drunken condition, poured kerosene on the deceased, set her ablaze and ran away from the house. She came out of the house with flames, raised hues and cries and fell on the sand in front of her house. On that the neighbours shifted her to the hospital.

14. Another dying declaration was recorded by P.W.8 who was working as an Additional Family Court Judge at Hyderabad. A reading of the said dying declaration recorded by him would show that after being satisfied with regard to the mental condition of the deceased to give the statement, obtained the endorsement of the doctor and thereafter proceeded to record the statement in which the deceased categorically stated that the accused used to beat her regularly for money and also beat her on the date of incident. She stated that whenever her husband beat her to give money, she used to give Rs.100/- or Rs.200/-. It is also stated that on the date of incident, the accused took money in the morning, later came home

in a drunken condition, demanded for money and when she refused, he is said to have poured kerosene and set her on fire.

15. From the said dying declaration, it is clear that the accused used to demand the deceased for money and whenever he beat her, the deceased used to give some amount to buy peace. On the date of incident also, the accused took Rs.1,500/- from the deceased, came home in a drunken condition, poured kerosene on the deceased and set her on fire. From the evidence referred to above, it is clear that the accused is responsible for the death of the deceased. The contents of the two dying declarations are consistent and also get corroboration from the dying declaration. Hence there are no reasons to disbelieve them. Therefore, we hold that the prosecution established its case against the accused for an offence under Section 302 IPC beyond doubt.

16. The other argument advanced by the learned counsel for the appellant is that no offence under Section 498-A is made out. According to the counsel, petty quarrels happen regularly in every family and the same will not fall within the ingredients constituting an offence under Section 498-A IPC. But the oral evidence of P.Ws.1 to 3 would show that the accused used to beat the deceased regularly demanding her money, which she used to earn by working as a Sweeper in the Municipal Corporation to fulfill his vices. Even the two dying declarations, referred to above, would show that whenever the accused used to beat the deceased for money, she used to give Rs.100/- or Rs.200/- to the accused. On the date of incident also in the morning, the accused took away a

sum of Rs.1,500/- from the deceased, later came in drunken condition and demanded for money and when she refused, the accused poured kerosene on the deceased and set her ablaze.

17 Section 498-A IPC reads as under:

“ 498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

18. A reading of the second limb of Section 498-A would show that where the harassment is for any property or valuable security or is on account of failure by her or any person related to her to meet such demand, the same amount to cruelty. Having regard to the findings on facts given above, the argument of the learned counsel for the appellant that no offence under Section 498-A is made out, cannot be accepted.

19. For the aforesaid reasons, the Criminal Appeal is dismissed confirming the conviction and sentence rendered in the judgment dated 09.01.2012 passed in Sessions Case No.456 of 2010 on the file of the Court of III Additional District and Sessions Judge (F.T.C), Ranga Reddy District. The bail granted during the

pendency of the Criminal Appeal shall stand cancelled. The appellant/accused shall surrender forthwith before the Superintendent, Central Prison, Cherlapally, and suffer the rest of the sentence, as confirmed by this Court. Consequently, miscellaneous petitions, if any, pending shall stand closed.

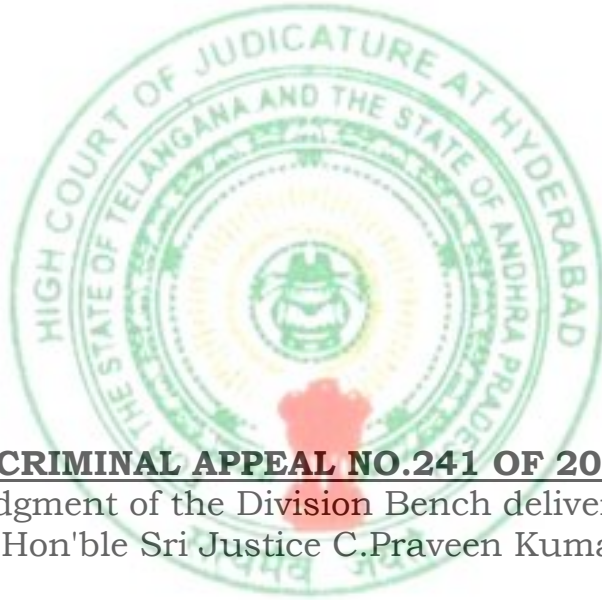
C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

Date: 17.04.2018
TJMR



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