

**HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HONOURABLE MISS JUSTICE J. UMA DEVI**

CRIMINAL APPEAL NO. 253 OF 2013

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

The present Criminal Appeal is filed assailing the judgment dated 15/09/2011 passed in S.C.No. 289 of 2008 on the file of learned IV-Additional Sessions Judge, Ranga Reddy district, wherein A-1 to A-3 were tried for the offences under section 302 and 498-A I.P.C., in Crime No. 516 of 2007 of Rajendranagar Police Station, Cyberabad, Ranga Reddy district. The first charge was framed under section 498-A I.P.C., while the second charge was framed under section 302 I.P.C. On appreciation of the oral and documentary evidence placed on record, the learned Sessions Judge found A-2 and A-3 not guilty of the charges under section 498-A and 302 I.P.C., and they were acquitted for the said charges. A-1 was not found guilty for the charge under section 498-A I.P.C., and he was acquitted for the said charge but A-1 was found guilty for the charge under section 302 I.P.C., and is sentenced to suffer imprisonment for life and to pay a fine of Rs.500/-, in default to suffer one month for the said charge. Assailing the same, A-1 preferred the present criminal appeal.

2. The substance of charge against A-1 is that on 28/5/2007 at about 08:00 a.m., while the deceased, Dandagula

Yadamma was in the house, A-1 came from behind, poured kerosene on her body and lit fire with an intention to kill her. She died on 01/06/2007, while undergoing treatment.

3. The facts of the case as culled out from the prosecution witnesses are as follows :

i) A-1 is the husband of the deceased, while PW-1 is the brother of the deceased; Dandagula Yadamma, PW-2 is the mother of the deceased and PW-3 is the neighbour of the deceased. All the three witnesses, who are family members of the deceased did not support the prosecution case and were treated hostile. Their version is that the deceased while preparing food caught fire and died while undergoing treatment in the Osmania General Hospital, Hyderabad. On 28/05/2007 at about 03:35 p.m., PW-8 the Sub-Inspector of Police, Rajendranagar Police Station, received information from Osmania General Hospital, Hyderabad about the admission of a female with burn injuries. On the instructions of S.H.O., PW-6, the Head Constable proceeded to the hospital and recorded the statement of the injured. The said statement is placed on record as Ex.P-5. Basing on the said statement, a case in Crime No.516 of 2007 was registered for the offences punishable under section 302 and 498-A I.P.C. Ex.P-7 is the F.I.R. On the same at about 03:55 p.m. PW-7 the learned III-Additional Chief Metropolitan Magistrate, Hyderabad received a requisition from the duty doctor of the said hospital, for recording the dying declaration. After putting some preliminary questions to know the mental condition of the injured

and after taking the endorsement of the doctor, with regard to the mental fitness of the injured, he recorded the statement. Ex.P-6 is the dying declaration. As per the statement recorded by PW-8, the Sub-Inspector of Police, her version is that her husband used to beat her in drunken state and that her father-in-law and mother-in-law used to instigate her husband/A-1. It is further stated that now and then, A-1 used to threaten her to kill her. On 28/05/2007 at about 08:00 a.m., while the injured was at house, A-1 came from behind, poured kerosene on her body and lit fire with an intention to kill her. Her case is that her entire body was burnt from the backside. Thereafter, the neighbours shifted the injured to Osmania General Hospital. In Ex.P-6 the injured stated that her husband/A-1 was in drunken state and when she sought his permission to go to the house of her sister, he refused, abused her and poured kerosene on and set her ablaze. After some time the brother of the deceased shifted her to the hospital. After registering the crime, PW-8 visited Osmania General Hospital and also recorded the statement. Thereafter, he visited the house of A-1 and conducted a panchanama of the scene in the presence of mediators and also recorded the statement of witnesses. The record shows that on 31/05/2007 at 08:00 a.m., PW-8 Sub-Inspector of Police arrested A-1 to A-3 at their house and sent them to court for remand. On receipt of death intimation of injured Yadamma on 1/6/2007, PW-8 visited Osmania General Hospital, examined Yellamma and Bheemamma and held inquest over the dead body of Yadamma in the presence of PW-5. After altering

the section of law from 307 to 302 IPC after completion of entire investigation, he laid the charge sheet, which was taken on file as P.R.C.No. 8 of 2008 on the file of the Court of VIII-Metropolitan Magistrate, Cyberabad at Rajendranagar.

ii) On appearance of A-1 to A-3, copies of documents were furnished to them as per section 207 Cr.P.C. On hearing both sides and considering the material on record, the learned Magistrate committed the case to the Court of Sessions as per section 209 [a] Cr.P.C., and the same came to be numbered as S.C.No. 289 of 2008 on the file of the Court of IV-Additional Sessions Judge, Ranga Reddy. Basing on the material on record, charges for the offences punishable under section 498-A and 302 I.P.C. were framed, read over and explained to A-1 to A-3, to which they denied and claimed to be tried.

iii) To substantiate their case, the prosecution examined PWs-1 to PW-8 and got marked Exs.P-1 to P-9. Out of eight witnesses examined by the prosecution, PWs.1, 2, 3 and 5 did not support the prosecution case and were treated hostile by the prosecution. After the closure of prosecution evidence, A-1 to A-3 were examined under section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced on behalf of A-1 to A-3 in support of their defence. Basing on the material available on record and since there was no legally admissible

evidence connecting A-2 and A-3 with the crime, the trial Court acquitted A-2 and A-3. However, the trial Court convicted A-1 under section 302 IPC and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed by the A-1.

4. The learned counsel for the appellant would submit that there is absolutely no material to connect A-1. He further submits that non-examination of the doctor, who certified the mental condition of the deceased, as the dying declaration is fatal to the prosecution case. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in **MANIRAM V/s. STATE OF MADHYA PRADESH**¹.

5. On the other hand, the learned Public Prosecutor would submit that the dying declaration recorded by the Magistrate can be made the basis to bring home the guilt of A-1, though there are some variations in between the two dying declaration recorded by PW-7/Magistrate and PW-6/Head constable. He further submits that these minor discrepancies do not go to the root of the matter. Hence, pleads that the conviction and sentence recorded by the trial Court needs no interference.

6. As seen from the facts of the case, all the family members of the deceased; namely PW-1, PW-2 and PW-3 did not support the prosecution case and were treated as hostile by the prosecution. Their evidence is that the deceased caught fire while she was cooking food. However, the prosecution relied on the

¹) 1994 [4] SCC-118

two dying declarations recorded by PW-6 and PW-7, to connect the A-1 with the crime. In the first dying declaration recorded by PW-6/Head Constable, which is marked as Ex.P-5, it was stated that A-1 used to beat her on one pretext or the other at the instigation of his parents. According to him, on one occasion, A-1 threatened to kill her by pouring kerosene. It is stated that on 28/05/2007 at about 08:00 a.m., while she was present in the house, A-1 came from behind, poured kerosene and set fire with an intention to kill her. Thereafter, neighbours shifted her to hospital. As per the said statement, the reason for A-1 pouring kerosene and setting her on fire was earlier threat and also the information furnished by mother-in-law and father-in-law about the deceased. IN the second dying declaration, the said version was given a go-bye. As per the said dying declaration, it is stated that the marriage of the younger sister of the deceased was performed about a week back and she wanted to go, to which A-1 did not agree. In respect of which there was a quarrel. As he was in a drunken condition, A-1 poured kerosene and set her on fire. Thereafter, the brother of the deceased shifted her to hospital. In the dying declaration, it is stated that when she wanted to go her sister, who got recently married recently but A-1 did not agree for the same. Pursuant to which, there was a quarrel, due to which A-1 poured kerosene and set her fire. A reading of two dying declarations would reveal as to the circumstances, which lead to the death of the deceased. Therefore, merely because both the dying declarations refer to the role of A-1 it does not mean that the

incident in question has to be accepted, in view of major variation with regard to motive. Apart from that the charge is to the effect that the incident said took place at about 08:00 a.m., and the first dying declaration of the deceased was recorded by PW-6/Head constable at 01:30 p.m., and whereas the second dying declaration of the deceased was recorded by PW-7/Magistrate on the same at 03:55 p.m. Apart from all these, it is to be noted that the doctor, who said to have been certified the dying declaration by PW-7/Magistrate is not examined and no explanation is put forth as to why the doctor, who certified the injured is not examined.

7. It is also to be noted that the doctor, who conducted postmortem examination of the deceased was not examined. Even the postmortem examination report is not placed on record and that being the position, the cause of death remain un-established whether one does not know the death was due to burn injuries which she sustained due to fire accident or for any other reason. Had the doctor, who conducted postmortem examination was examined, the cause of death was not due to burn injuries sustained by the deceased but due to the act of suicide committed by her, as all the family members of the deceased in one voice deposed that the deceased caught fire accidentally. Therefore, the inquest report is of much relevance to establish the cause of death in view of the version given by PWs. 3 and the non-examination of the doctor, who conducted postmortem examination and also the doctor who certified with

regard to the mental condition of the deceased. For the above reasons, the trial Court was in error in convicting the appellant/A-1 for the offence under section 302 I.P.C. and sentenced him to suffer imprisonment for life.

8. In the result, this Criminal Appeal is allowed, the conviction and sentence of imprisonment for life inflicted by the IV-Additional Sessions Judge, Ranga Reddy district in S.C.No. 289 of 2008, vide judgment dated 15/09/2011 for the offence punishable under section 302 I.P.C. be and is hereby set aside.

9. As a sequel, miscellaneous petitions if any, pending in this Criminal Appeal shall stands closed.



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(Judgment of the Division Bench delivered by
Hon'ble Sri Justice C. Praveen Kumar)

Date. 05-03-2018