

THE HON'BLE JUSTICE SRI C.V NAGARJUNA REDDY

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.608 of 2012

JUDGMENT: (Per Hon'ble Smt Justice T. Rajani)

This appeal is preferred by the State, assailing the judgment of the VI Additional Sessions Judge, (Fast Track Court), Anantapur at Gooty in S.C.No.37 of 2010 dated 29.01.2011 acquitting the accused for the offence punishable under Sections 498A and 302 of the Indian Penal Code.

2. Succinctly, the facts are as follows:

The deceased was given in marriage to the accused with a dowry of Rs.1,00,000/- and gold ornaments weighing 8 tulas. After marriage the deceased went to her husband's house at Abdullapuram village and started living with him. A male child was born out of the wedlock. About three years prior to the offence, the accused shifted his residence to Tadipatri to eke out his livelihood. The accused demanded the deceased to get money to purchase an auto. The deceased placed the same before her parents. L.W.2, who is the mother of the deceased, sold her gold jewels and gave Rs.20,000/- to the accused. With the said money and loan from a finance company, the accused purchased an auto and he was plying the auto. But the accused defaulted payment of loan instalments and whenever he was short of money, he used to harass the deceased to bring money from her parents. Once the deceased brought Rs.15,000/- from her parents and gave it to the accused and on another occasion,

she brought Rs.10,000/- from her parents and gave to the accused. But the accused did not stop harassing the deceased for more money.

About one week prior to the date of offence, the accused sent the deceased to her parents, to get Rs.10,000/-. The deceased went to her parents and told them about the cruel treatment meted out to her and demanded for Rs.10,000/-. Her parents sent the deceased back, advising to adjust with her husband.

On 12.11.2009, the mother of the deceased went to the house of the accused and found him lying. She gave him Rs.10,000/- and advised him to work and earn money, instead of being lazy. The accused got offended and picked up a quarrel with the deceased and at about 2 PM, the accused poured kerosene on the deceased and set her on fire. On hearing the cries of the deceased, L.Ws.4 and 5 rushed to scene and saw the accused running away. They put off the fire. L.W.4 informed L.Ws.1 and 2 about the same. L.Ws.1 and 2 rushed to the scene and took the deceased to Government Hospital and admitted her in the hospital.

On receiving medical admit intimation, L.W.14 went to the hospital and recorded the statement of the deceased. Based on it a case was registered in Cr.No.196 of 2009, for the offence under Section 498-A and 307 IPC. L.W.14 visited the Government Hospital, Tadipatri and examined the deceased and recorded her statement. On medical advice, the deceased was taken in an Ambulance to a hospital at Kurnool, but on the way, she succumbed to the injuries. The dead body of the deceased was brought back to the Government

Hospital, Tadipatri and on receiving the death intimation, L.W.14 altered the section of law to 498-A, 302 or 304-B IPC.

The statement of the deceased was recorded by L.W.10 also when she was alive, on a requisition from L.W.14. After the death of the deceased, the dead body was subjected to post mortem examination and inquest. The statements of the witnesses were recorded and after collecting all the reports and after concluding the investigation, charge sheet was laid against the accused for the same offences.

On appearance of the accused, the Judicial First Class Magistrate, Gooty took cognizance of the case under Sections 498-A and 302 IPC and after complying with the legal formalities and as the case is exclusively triable by a Court of Sessions, committed the case to the Sessions Division, Anantapur District by virtue of orders in PRC.No.4 of 2009. The learned Sessions Judge, in turn, made over the case to the Court of VI Additional Sessions Judge, (Fast Track Court), Anantapur at Gooty for trial and disposal in accordance with law. On appearance of the accused before the Court below, the charges referred to above came to be framed. They were read over to the accused, to which the accused pleaded not guilty and claimed to be tried. During trial, in support of its case, the prosecution examined P.Ws.1 to 12 and got marked Exs.P1 to P19 and M.Os.1 and 6. After completion of the prosecution evidence, the accused was questioned about the incriminating circumstances appearing in the prosecution evidence, when he was examined under Section 313

Cr.P.C., he denied truth in the prosecution evidence and reported no evidence on her behalf. Ex.D1 is the portion in the statement of P.W.1.

3. The Court below, after considering the evidence and the material on record, passed the impugned judgment against which the present appeal is preferred on the following grounds:

The Court below ought to have seen that the ingredients to constitute offences punishable under Sections 498-A and 302 IPC are made out by the prosecution and it erred in coming to the conclusion with regard to Exs.P5 and P16, that the deceased with 90% burn injuries would not have made such an elaborate statement, whereas the evidence of P.W.8, doctor, and Ex.P10 endorsement show that the deceased was in a fit condition to give statement. Based on the above, the State seeks this Court to set aside the judgment of the Court below.

4. Heard the learned Public Prosecutor appearing for the appellant-State. None appears for the respondent-accused, in spite of notice.

5. The learned Public Prosecutor contends that the Court below completely erred in finding that the evidence of the material witnesses did not prove the complicity of the accused by misconceiving that they turned hostile. He further contends that the Court below ignored the fact that the deceased was certified to be in a fit state of mind to make the statements given to the police and the Magistrate and disbelieved her statements.

6. From the above arguments and based on the material on record, we need to consider the following points:

1. Whether the deceased was in a fit state of mind to make the statements, made before the police and the Magistrate.
2. Whether the hostility exhibited by the witnesses when they were recalled and cross-examined, would affect the case of the prosecution and whether the judgment of the Court below needs any interference.
3. To what result.

POINT No.1:

8. There are two statements made by the deceased in writing viz., one before the police and the other before the Magistrate. The statement given to the police is marked as Ex.P16 while the statement recorded by the Magistrate is marked as Ex.P5. The statement given to the police is elaborate and narrates the events in detail, while the statement made before the Magistrate is cryptic, spelling only the events which lead to her death. We see absolute consistency between the two statements, except for the fact that the events preceding the incident, which lead to the death, were not stated in detail, in Ex.P5. But the material aspects are nevertheless stated in Ex.P5. According to the version given in Ex.P16, the deceased married the accused and begot a child. Thereafter, the accused has been harassing her with a demand for amount and her parents have been meeting the demands, by paying the amounts now and then. On the date of the incident, which is on 12.11.2009, the accused was sleeping in the house, then the mother of the deceased came there and gave Rs.3,200/- to the accused and expressed that the accused should not be idle and should attend to some work and that they cannot keep on adjusting the amounts.

After her mother left, the accused quarrelled with the deceased, abusing her parents and saying so, he brought kerosene tin and poured it on her and set fire. Later, he escaped from the house. On hearing the cries raised by the deceased, the neighbours came there and she informed the matter to them. They shifted her to the hospital in an Ambulance. She categorically stated that the accused did the said act in order to kill her. Ex.P.16 contains the certification made by the Doctor, that the patient was conscious and in a fit condition to give statement

Ex.P5, which is recorded by the Magistrate, speaks about the marriage, birth of the child and the harassment that was being meted out by the accused with a demand for additional dowry and about the panchayat that was held in the presence of the elders. Speaking about the incident on the date of offence, the deceased states that at about 2 PM, the accused poured kerosene on her and set fire and that he did so only for the purpose of money. This statement also contains the certification of the Doctor, both before the commencement of the statement and after conclusion of the statement.

9. The Magistrate, who recorded the statement, was examined a P.W.7. Her cross-examination does not elicit any fact which would show that she did not follow the prescribed procedure for recording the statement. The suggestion given to her is that the parents of the deceased were with the victim when she recorded the statement of the deceased and that the victim was tutored. In the cross-examination, P.W.8, duty doctor, stated that there were some people present at a distance while the Inspector was recording the statement and the

relatives of the deceased were present with the victim prior to the arrival of the Magistrate.

The mere fact that the parents of the deceased were with the victim, does not lead to an automatic inference that there was tutoring. Unnaturalness lies in the parents and relatives not being with the deceased but not in their being by her side, in the state in which she was. Unless some other circumstances are proved in favour of tutoring, the mere presence of her parents and her relatives cannot be taken as a factor suggesting tutoring. There is absolute consistency in the statements of the deceased. The finding of the Court below that the two statements are inconsistent, is absolutely groundless. It appears that the court below was immensely influenced by the fact of the hostility of the witnesses and somehow was inclined to support the said hostility, by getting over all the formidable facts that glare in the evidence. The court below blindfolded itself to the principles laid down by the Apex Court in several of its judgments, including in *MAFABHAI NAGARBHAI RAVAL V. STATE OF GUJARAT* [(1992) 4 SCC 69], wherein it was held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration and that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. The said principle was reiterated in *VIJAY PAL VS. STATE (GOVERNMENT OF NCT DELHI)* [(2015) 4 SCC 749], which dealt with 100% burns case.

The lower court, instead of imbibing the spirit of the above rulings, took up a laborious exercise of rendering the statements

incredible, disorienting itself from a prudent person's perception. P.W.8 is the Doctor, who testified about the fitness of the deceased. Unusually the duty doctor, who certified about the fitness, is examined in this case unlike in many other cases where the Magistrate alone is examined to speak about the dying declaration. When there is evidence of the doctor, that the deceased was very much fit and conscious through out the statement and when there is no doubt thrown on his credibility, there could have, absolutely, been no reason for the lower court to disbelieve the statements. We, with the above reasoning, uphold the reliability of the two statements of the deceased.

POINT No.2:

10. The Court below misdirected itself based on the hostility exhibited by the witnesses when they were recalled for cross-examination on a subsequent date, to the cross-examination done on behalf of the accused in the first instance. All the material witnesses supported the case of the prosecution, both in their chief examination and in their cross-examination done at the first instance, which was on the very date of giving the chief examination.

11. P.W.1 was examined on 20.10.2010 and was recalled on 07.12.2010 for further cross-examination by the accused i.e. nearly two months after the chief examination. P.W.1, who is the father of the deceased, corroborated the contents of the statements given by the deceased, with regard to the demand of dowry. He also speaks about the oral dying declaration given by the deceased to him. On coming to know about the incident from the neighbours of the

accused, he went to the spot and the deceased told him that the accused was not satisfied with Rs.10,000/- given by her and he entered into a scuffle with her and poured kerosene on her and set fire.

This being the version in the chief examination, in the cross-examination, he stated that the accused was happy with the deceased for three years when he was at Abdullapuram, which is his native place and thereafter, he shifted to Tadipatri from when the disputes started. He asserted that he chastised the accused several times for not attending to any earning work. He asserted that there were disputes between the accused and the deceased.

But strangely, when he was recalled on 07.12.2010, he took a u-turn and gave a version, inconsistent to both the versions given in the chief examination and the cross-examination on an earlier date. He went to the extent of admitting that he gave the money to the accused on his own, without any demand and that the accused did not harass the deceased for money and that the deceased never informed him that the accused was harassing her for money and that there was no panchayat conducted. He went to the extent of stating that the victim was unable to speak even while her condition improved. He asked the victim to state what the neighbours are thinking about the accused viz. as if the accused poured kerosene and set her on fire. He signed on the statement, which was already prepared.

In the cross-examination done by the Public Prosecutor, after he was declared hostile, he stated that they compromised the matter with

the accused, as the accused agreed to deposit Rs.1 lakh in the fixed deposit in the name of the minor son of the deceased and the amount is kept with the village elders. All the other witnesses towed the line of P.W.1 when they were recalled for further cross-examination.

12. P.W.2, who is the sister-in-law of P.W.1, spoke about giving of dowry and the harassment meted out to the deceased. She also speaks about the dying declaration made to her by the deceased when they went to the spot immediately after the incident.

13. P.W.3 is the mother of the deceased, who corroborated the evidence of P.W.1. In the cross-examination, she asserted that herself and P.W.2 went to the house of the accused on that day and gave Rs.10,000/- to the accused. The deceased handed over Rs.10,000/- to the accused, in her presence. The accused kept quiet at that time and there was no altercation between them. But in the cross-examination done on 04.01.2011, she stated that the accused never harassed the deceased until her death, either for dowry or otherwise. She also stated that they informed the deceased as to the opinion furnished to them by the neighbours, as if the accused set fire to the deceased by pouring kerosene.

14. P.W.4, who is a neighbour to the deceased and the accused, stated that on 12.11.2009 at about 1.30 or 2 PM while he was having lunch, his wife heard the cries of the deceased and informed him and immediately he rushed to the house of the accused and the deceased came out of the house with burn injuries. The accused was not there. The deceased informed him that the accused poured kerosene and set

fire to her and escaped. He immediately telephoned to P.Ws.1 to 3, who came within ten minutes. They shifted the deceased to the hospital.

In the cross-examination also he stuck to the said version and was firm to support the case of the prosecution. But on 21.01.2011, he also resiled from his earlier version.

15. P.W.5 is also a witness, who resides near the house of the accused. His evidence is also on the same lines as that of P.W.4. The witness for the inquest was examined as P.W.6, who is the VRO of Tadipatri. He also opined that the accused poured kerosene and set fire to the deceased, as the statements of the witnesses examined by him revealed the same. The Doctor, who conducted post mortem examination, was examined as P.W.9. The burn injuries, according to him, were to an extent of 90%. P.W.10 is the Mandal Executive Magistrate, who conducted the inquest over the dead body. P.W.11 is the C.I of police, who recorded the statement of the deceased i.e. Ex.P16. P.W.12 is the Investigating Officer.

16. The Supreme Court in *VIJAY PAL's case* found that oral dying declaration in that case, which was given to the brother, was absolutely credible. In this case, the witnesses spoke about the oral dying declaration, which is in consonance with the written dying declarations.

17. The Court below, ignoring the chief examination and the cross-examination of the material witnesses, which proved the guilt of the accused beyond all reasonable doubt, relied upon only the cross-

examination, which was done at a later point of time and which exhibited hostility to the case of the prosecution. As to how the witnesses were permitted to be recalled and on what grounds they sought to be recalled is not reflected in the judgment. The questions put to the witnesses, after recall, are the same, which were put to the witnesses, when they were cross-examined in the first instance. Unless there are any questions, which were not put to the witnesses in the earlier cross-examination, the recall of witnesses cannot be permitted. Having not only permitted the recall of the witness, the Court below relied only on that part of the evidence, which came before it after such unwarranted recall was permitted. The evidence of the witnesses proves the guilt of the accused, for the alleged offences, beyond all reasonable doubt. The law is well settled that even the evidence of a hostile witness cannot be thrown away totally and any part of his evidence, which is in support of the prosecution, can be relied upon. When such is the law, the approach of the lower court, in ignoring the evidence which is in absolute support of the prosecution case, is strange.

18. “Culture of compromise” is a term evolved by the Supreme Court, to describe witnesses turning hostile, in the judgment reported in RAMESH v. STATE OF HARYANA¹. Witnesses may have several reasons for compromising the cases, but the courts can have no reasons to compromise on the very well established principles of law and to ignore the evidence.

¹ (2017) 1 SCC 529

19. However, the incident seems to have been preceded by a scuffle between the couple, which is evident from the deposition of P.W.1 and also the statement of the deceased, from which it can be gathered that there is no intention on the part of the accused to commit murder of the deceased. But the manner of the incident would show that the accused had knowledge that his act would lead to the death of the deceased.

20. For the reasons aforementioned, we do not have any hesitation to set aside the judgment of the Court below and the respondent – accused is found guilty for the offence punishable under Sections 498-A and 304 Part II of the Indian Penal Code.

In the result, the Criminal Appeal is allowed. The respondent – accused is convicted for the offence under Sections 498-A and 304 Part II IPC and sentenced to undergo rigorous imprisonment for a period of seven years and also to pay fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of three months, for the offence under Section 304 Part II and to undergo imprisonment for a period of three years and to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for one month, for the offence under Section 498-A IPC. Both the sentences shall run concurrently. The Court below is directed to issue warrant to the accused and send him to jail for the purpose of serving sentence.

C.V. NAGARJUNA REDDY, J

T. RAJANI, J

November , 2018

Note: Office to dispatch the order to
the Trial Court forthwith (B/o)DSK