

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

CRIMINAL APPEAL NO. 252 OF 2013

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

The sole accused filed the present criminal appeal assailing the judgment dated 06/11/2012 passed in S.C.No.260 of 2011 by the Sessions Judge, Mahbubnagar, wherein he was tried for the offence punishable under section 302 I.P.C., and Section 3 and 4 of Dowry Prohibition Act. The learned Sessions Judge convicted the accused under all the counts and sentenced him to suffer imprisonment for life and to pay a fine of Rs.100/-, for the offence under section 302 I.P.C., and further sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.100/-, in default to undergo simple imprisonment for one month for the offence under section 498-A I.P.C. The accused was also sentenced to suffer simple imprisonment for a period of six months on each count for the offences under section 3 and 4 of Dowry Prohibition Act. All the sentences were directed to run concurrently.

2. The facts as culled out from the prosecution witnesses are as follows :

i) The accused is the husband of the deceased. PW-1 is the brother of the deceased, while PW-2 is the cousin. The marriage

between the accused and deceased took place at about ten months prior to the death of the deceased, i.e., on 06/05/2009. At the time of marriage a sum of Rs.75,000=00 cash, 3 tulas of gold and silver ornaments were agreed to be given as dowry. Out of Rs.75,000=00, it is stated that a sum of Rs.70,000=00 was paid, gold and silver ornaments as agreed upon were given. Both of them lived happily for a period of six months and subsequently accused was harassing for the balance dowry. Apart from that, he was harassing the deceased to get colour T.V. cot and bed. The averments in the charge sheet further reflect that the deceased used to demand for the balance dowry whenever used to visit her parents house they used to convince the deceased to adjust herself. In that regard a panchayat was held between the accused and deceased and also told the accused that PW-1 will give balance cash, colour T.V. bed and cot as demanded by him. On 20/03/2010 at about 11:30 p.m., PW-1 received a phone call from the villager of Medakpally stating that her sister set ablaze by pouring kerosene and she was shifted to Government Hospital, Kalwakurthy through 108 ambulance. The villager further asked PW-1 to go to Government Hospital immediately. PW-1 and his family members rushed to Government Hospital, Kalwakurthy and found the deceased in extensive burns and on the advise of the doctor the injured was shifted to Osmania General Hospital, Hyderabad. When enquired as to what happened the deceased, Daruvula Santhosha informed that her husband came late to the

house and she asked him as to why he came late then he picked up a quarrel reiterating demand for the balance amount of Rs.5,000/-, T.V., cot and bed, poured kerosene and set fire. On 21/03/2010 at about 12:00 hours while PW-8/Head Constable was present in the Police Station, he received a report Ex.P-1 from PW-1. Basing on which, the Station House Officer, Talakondapally Police Station, registered a case in Crime No.22/2010 for the offences punishable under section 498-A and 307 I.P.C. He recorded the statement of PW-1 and then visited the scene of offence, which is at the house of the deceased at Medakpally village. He prepared an observation report and rough sketch in the presence of PW-4. Ex.P-3 is crime details form dated 21/3/2010 and seized MO-1 plastic kerosene can. Thereafter, he went to Osmania General Hospital and found the injured undergoing treatment. He recorded 161 Cr.P.C. statement of the injured and others, who were present there. Ex.P-7 is the 161 Cr.P.C. statement of the deceased. On the same at about 09:45 p.m., PW-9/III-Additional Chief Metropolitan Magistrate, Hyderabad received requisition from the police for recording the statement. Immediately he rushed to the hospital and identified the injured, Santhosha with the help of the duty doctor. The duty doctor certified about the statement of mind and thereafter he recorded the statement of the injured. Ex.P-9 is the dying declaration recorded by PW-9 on 21/03/2010 at about 09:45 p.m. PW-10 Sub-Inspector of Police received death intimation of the

deceased. Pursuant to which, he altered the section of law from 498-A to 302 I.P.C. Ex.P-10 is the alteration memo. On receipt of death intimation, a requisition was sent to the Tahsildar to conduct inquest at Osmania General Hospital. Pursuant to which, an inquest was conducted at Osmania General Hospital, Hyderabad by PW-6 in the presence of PW-5. Ex.P-4 is the inquest report, dated 23/3/2010. According to him the cause of death was due to extensive burns. PW-11/Sub-Divisional Police Officer took up investigation from PW-10. He visited the scene of offence, verified the investigation done by PW-10 and examined the witnesses. PW-11 arrested the accused, produced him before the Court for judicial custody. After obtaining all the documents, PW-11 filed the charge sheet.

ii) The learned Judicial Magistrate of First Class, Shadnagar has taken cognizance of the offence against the accused in P.R.C.No.37 of 2010 for the offences punishable under section 302, 304-B I.P.C. and section 3 and 4 of Dowry Prohibition Act, 1961.

ii) On appearance of the accused, copies of documents were furnished to him 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. 260 of 2011 on the file of the Court of Sessions Judge, Mahbubnagar.

iii) Basing on the material on record, charges for the offences punishable under section 498-A, 302 I.P.C. and section 3 and 4 of Dowry Prohibition Act, 1961 were framed, read over and explained to the accused, to which he denied and claimed to be tried.

iv) To substantiate their case, the prosecution examined PWs.1 to PW-11 and got marked Exs.P-1 to P-10 and MO-1 Plastic Kerosene can. After the closure of prosecution 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. No oral or documentary evidence was adduced on behalf of the accused in support of his defence. Basing on the material available on record, the trial Court convicted the accused and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed by the accused.

3. Basing on the dying declaration and the evidence of PWs.1 and 2, though the only ground urged by the counsel for the appellant that Ex.P-7 161 Cr.P.C. statement recorded by PW-8 and Ex.P-9 dying declaration of the deceased recorded by PW-9 were not voluntarily statements made by the deceased and there is a gap of two days in recording those statements, therefore, there is every possibility of tutoring the deceased by her relatives to implicate the appellant/accused. When the deceased sustained extensive burns, as such, she was not in a position to give

statement and there is no legal evidence on record to convict the appellant/accused. Ex.P-7 161 Cr.P.C. statement recorded by PW-8 and Ex.P-9 dying declaration recorded by PW-9 suffers from material inconsistencies and infirmities. He further submits that the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion

4. Per contra, the learned Public Prosecutor argued that prior to the death of the deceased, she was subjected to ill-treatment and harassment by the appellant/accused for balance amount of Rs.5000/-, colour T.V. cot and bed towards additional dowry. The deceased informed about the harassment of the appellant/accused to PW-1 and her other family members. While refuting the contentions raised by the learned counsel for the appellant/accused, the learned Public Prosecutor submits that PW-8 recorded Ex.P-7 161 Cr.P.C. statement of the deceased and PW-9 recorded Ex.P-9 dying declaration of the deceased just prior to the death of the deceased, who was conscious and coherent and she was perfect in sense and the same was certified by the duty doctor. In Ex.P-7 and Ex.P-9, the deceased coherently stated that the appellant/accused poured kerosene and lit fire to

her for want of Rs.5000/- balance dowry amount, colour T.V., cot and bed. Ex.P-9 dying declaration is the last statement of the deceased and it can be acted upon without any corroboration. Though PW-1 in his evidence deposed that the deceased made oral dying declaration about the harassment and demand made by the appellant/accused for additional dowry, which corroborates with Ex.P-9 dying declaration. In view of the above, he submits that the question of disbelieving the aforesaid statements made by the deceased in Ex.P-7 and P-9 would not arise. Therefore, the trial Court gave cogent and clinching reasons for convicting and to sentencing the appellant/accused to suffer imprisonment for life.

5. The point that arises for consideration is that whether the appellant/accused is responsible for causing the death of the deceased ?

6. As seen from the record, the prosecution case is based on the evidence of PW-1 and PW-2 and the documentary evidence under Ex.P-7 161 Cr.P.C. statement and Ex.P-9 dying declaration made by the deceased. Before dealing with the dying declaration, it will be useful to the evidence of PW-1 and PW-2 to show that even prior to the incident, there was continuous harassment meted out by the deceased in the hands of the appellant/accused. The evidence of PW-1 shows that the marriage between the appellant/accused and deceased took place about ten months back prior to the incident. At the time of marriage, PW-1 agreed to give cash of Rs.75,000=00, three tulas

gold and thirty tulas silver and household articles to the appellant/accused. Out of Rs.75,000=00, a sum of Rs.70,000=00 was paid and balance of Rs.5,000=00 was agreed to be paid later but gold and silver ornaments as agreed were given to the appellant/accused. After marriage, the appellant/accused and deceased lived happily for about six months, thereafter, the appellant/accused started harassing the deceased to get balance dowry amount besides colour T.V., cot and bed. The same was informed by the deceased to PWs. 1 and 2 and they promised to give balance cash, colour T.V. cot and bed. This part of the evidence of PW-1 gets corroboration from Ex.P-7 161 Cr.P.C. statement made by the deceased. Though PW-1 was cross-examined but nothing came to be elicited to discredit his version. The only answer which came to be elicited from PW-1 was that there is nothing in writing to show that dowry was paid but the fact of payment of dowry and request made at the time of marriage is evident not only in the evidence of PW-1 but also the statement made by the deceased and also from the statement of witnesses, who were examined at the time of inquest. Therefore, the evidence of PW-1 and PW-2 amply establish that there was a demand made by the appellant/accused for the balance amount of dowry besides T.V. cot and bed. Hence, the findings of the trial court convicting the appellant/accused for the offence under section 498-A I.P.C. and section 3 and 4 of Dowry Prohibition Act, 1961.

7. Coming to the evidence of PW-1, it is stated that on 20/03/2010 at about 11:00 or 11:30 p.m., he received a phone call from the villager of Medakpally village stating that his sister received burn injuries and shifted to Government Hospital, Kalwakurthy. Immediately, PW-1 and others rushed to Government Hospital, Kalwakurthy and found the injured with burn injuries. They enquired with her as to how she sustained burn injuries, to which she replied the appellant/accused poured kerosene and set fire to her. The reason for setting fire is due to non-payment of balance amount of Rs.5000=00, colour T.V. bed and cot and the evidence of PW-1 gets corroboration from the answers in this regard. These are the first set of statement made by the deceased disclosing the manner in which the incident was happened. Thereafter, at about 12 noon on 21/03/2010, PW-1 lodged a report with the Sub-Inspector of Police, Talakondapally Police Station. PW-1 refers to earlier declaration given by the deceased and also the manner in which she was done to death by the appellant/accused. The argument of the learned counsel for the appellant is that earlier dying declaration as well as the subsequent dying declaration cannot be accepted. But there is a reference to the earlier dying declaration given by the deceased, which is reflected in the FIR lodged by PW-1. After registering the crime, PW-8 proceeded to the hospital and recorded the statement of the injured, which is placed on record as Ex.P-7. It may be true that the statement of the injured may not contain

signature but however the contents of the said statement discloses harassment meted out by her in the hands of the appellant/accused for payment of balance dowry and also other articles. It is stated that on the date of incident at about 10:00 p.m., when the accused returned home late in night, upon which the deceased questioned as to where he has gone then the accused said to have picked up a quarrel, poured kerosene and set ablaze. Even if the said statement of the injured is excluded from consideration, as it does not contain thumb impression mark of the deceased but the learned III-Additional Chief Metropolitan Magistrate, Hyderabad recorded the statement of injured on 21/03/2010 at the hospital. A perusal of the said statement which is placed on record as Ex.P-9 would show that PW-9 put preliminary questions and after being satisfied with the answers took endorsement of the doctor with regard to the mental condition of the deceased and then PW-9 recorded the statement. In Ex.P-9 statement the deceased categorically stated that as her brother did not give additional dowry i.e., colour T.V., cot and bed, her husband poured kerosene and set fire. Though PW-9/Magistrate was cross-examined but nothing came to be elicited to discredit his testimony with regard to the steps taken by him while recording Ex.P-9 dying declaration. On the other hand, it has been elicited that the injured voluntarily gave statement against her husband before the learned Magistrate. PW-9/Magistrate denied the suggestion that he has not followed Rule-33 of the

Criminal Rules of Practice while recording the statement of the deceased. Therefore, Ex.P-9 dying declaration recorded by the learned Magistrate inspires confidence on this Court that the deceased voluntarily gave her statement as in Ex.P-9. As seen from the evidence of PW-1 and PW-2, they categorically denied that the deceased was chronic patient of stomach pain and fits and that she vexed on her life, she poured kerosene and set fire to herself and committed suicide. Even if it is presumed that it is an act of suicide committed by the deceased but nothing has been elicited from Ex.P-5/postmortem report to show that the injuries sustained by the deceased are the suicide injuries. In fact, PW-7 the postmortem examination doctor was cross-examined but there is no material to show that the deceased sustained injuries due to the act of suicide committed by her. The suggestion given to PW-1 and PW-2 remained as suggestion without any further material to show that it is a false case. Hence, we feel that the two dying declarations given by the deceased coupled with the dying declaration recorded by PW-7/Magistrate amply prove that it was the accused alone, who was responsible for causing the death of the deceased.

8. In the result, this Criminal Appeal fails and is accordingly dismissed and the conviction and sentence of imprisonment for life recorded by the Sessions Judge, Mahbubnagar, vide judgment dated 06/11/2012 in S.C.No.260 of 2011, be and is hereby confirmed.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

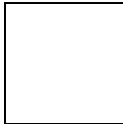


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HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

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HON'BLE MISS JUSTICE J. UMA DEVI



CRIMINAL APPEAL No.252 OF 2013

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

Date. 06-03-2018