

**THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

CRIMINAL APPEAL No.910 of 2011

Date : 31-07-2018

JUDGMENT: (per the Hon'ble Sri Justice Gudiseva Shyam Prasad)

This criminal appeal arises out of Judgment dated 19.05.2011 in Sessions Case No.146 of 2010, on the file of V Addl. Sessions Judge (FTC), East Godavari, at Rajahmundry, whereby the appellant/accused was convicted for the offence punishable under Section 302 IPC and sentenced to suffer rigorous imprisonment for life, and to pay a fine of Rs.1,000/- and, in default, to suffer simple imprisonment for one month. He was also convicted and sentenced to undergo rigorous imprisonment for a period of seven years for the offence under Section 304 Part B IPC. Both the sentences were ordered to run concurrently.

Brief facts of the case of prosecution are:

The marriage of Akula Naga Lakshmi (hereinafter referred to as "the deceased") was performed with the accused about three years ago. That it was agreed that a dowry of Rs.80,000/- will be paid at the time of marriage, but only Rs.70,000/- was paid. That the deceased was presented five sovereigns of gold ornaments but the accused sent the deceased back to bring sare articles worth Rs.22,000/- for leading matrimonial life, that the accused was addicted to drinking and used to

come home in a drunken state and quarrel with the deceased for payment of balance dowry of Rs.10,000/-, that the deceased informed her parents that the accused was demanding her for the balance dowry and that all of them tried to convince the accused but he did not pay heed. That on 5-12-2008 the deceased went to her parents' house and informed that the accused was demanding her to get money, that in the evening on that day the accused also went to the house of the parents of the deceased and that when the accused was assured by the parents of the deceased of the amount and asked him not to worry about the money, the accused went away with the deceased to his house.

That on 08.12.2008, at about 3 P.M., PW.3 – uncle of the deceased, received a phone call stating that the deceased was admitted in the Government Hospital, Rajahmundry, with burn injuries. The parents of the deceased, PWs.1 and 2, and others went to the hospital and on their enquiry, the deceased informed them that at 1:00 PM, the accused came home in a drunken state and when she asked the accused to come for lunch and she was preparing cauliflower curry, the accused abused her saying “*nee babu pelliayindappadinundi yemi pettledu neevu nannu sariga chudadamledu*”, went into the kitchen, picked up kerosene tin, poured kerosene on her and set fire uttering that she should die. That PW.9 and others shifted the deceased to District Headquarters hospital for treatment, that on the intimation of hospital

authorities, the SHO, Out Post P.S., Rajahmundry (PW.14), recorded the statement of the deceased and forwarded the same to the SHO, Alamuru P.S. PW.15 registered the case under Sections 307, 498-A IPC on receipt of the statement of the deceased. PW.11, the Additional Judicial Magistrate of First Class has recorded Ex.P-11 - dying declaration of the deceased. The deceased died on 08.12.2008 at 10.25 PM, while undergoing treatment. On receipt of death intimation, PW-16 altered the provisions of law from Sections 307 and 498-A IPC, to Sections 302 and 304 Part-B IPC. The Investigating Officer - PW.18 conducted the scene of offence panchanama in the presence of PW.10 and another witness and seized plastic kerosene tin (MO.1). The Tahsildar - PW.17, held inquest over the dead body of the deceased. PW.12 and another Civil Assistant Surgeon conducted autopsy over the dead body of the deceased and opined that the deceased of 'primary shock due to ante-mortem burns involving 85 – 90% of total body surface area'. On 12-12-2008, PW-18 arrested the accused at Kanaka Durga Temple near Choppella road in the presence of PW-10 and another and recorded his confessional statement and after completion of the investigation, filed the charge sheet.

The trial Court framed charges under Sections 302 and 304 Part-B IPC against the accused. The accused denied the charges and claimed to be tried. In support of its case, the prosecution examined

PW-1 to PW-18, marked Exs.P-1 to P-19 and produced M.Os.1 to 4. No oral or documentary evidence was adduced on behalf of the defence. The trial Court, on appreciation of the evidence on record convicted and sentenced the appellant/accused as mentioned hereinbefore.

Heard the arguments of the learned Counsel for the appellant, and the learned Public Prosecutor.

The point for consideration is whether the Judgment of the trial Court suffers from any illegality warranting interference by this Court ?

It is the case of the prosecution that the accused harassed the deceased for payment of balance amount of dowry of Rs.10,000/-, and as his demand was not met, he set fire to the deceased by pouring kerosene on her. According to the prosecution, this is a case based on the dying declaration of the deceased recorded by PW.11 on 08.12.2008 at 7:05 PM, at the A.P.V.V.P District Hospital, Rajahmundry, on the requisition of the hospital authorities and in the presence of the duty doctor. PW-14 is a police official, worked as SHO, Outpost Police Station, District Hospital, Rajahmundry, during relevant period. He recorded the statement of the deceased on 08.12.2008, which is marked as Ex.P14 and forwarded the same to Alamuru Police Station under hospital intimation Ex.P15.

The learned counsel for the appellant submitted that there is variance in the dying declaration Ex.P-11 recorded by PW.11 – Magistrate, and Ex.P-14 -statement of the deceased recorded by PW.14 - SHO, Outpost Police Station. It is argued that in Ex.P14, the deceased stated that on 08.12.2008, at about 1:00 PM, her husband/accused came home in a drunken condition, that she informed him that she prepared cauliflower curry and asked him to come for lunch, that the accused abused her in filthy language stating that her father just performed the marriage, but he did not take care of his comforts and she was also not taking care of him, that while abusing so, he went inside the kitchen and picked up plastic kerosene tin, poured kerosene on her body from head saying that she should die and set fire to her and that as a result, she sustained burn injuries on her face, chest and back and her skin peeled off. She further stated that the neighbours put off the flames and took her to the Government hospital in 108 Ambulance. While referring to Ex.P-11 dying declaration, the learned counsel referred to question No.12 i.e., “What has happened?”, put by the learned Magistrate, and submitted that the deceased answered stating that when she offered to serve food, he refused to take for not bringing anything from her parents house, that he said that he would burn her with kerosene oil and then she went to the backyard, that the accused poured kerosene from her backside, that when she

turned back and saw, he took the matchbox, lit it and threw it on her, that later, he went inside as if he did nothing to her and nothing has happened, that then she came on to the road running and that the neighbours came there and put off the flames and brought her to the hospital. On a perusal of the above statements of the deceased recorded by the Police and the learned Magistrate, we are of the opinion that the discrepancy pointed out is a minor discrepancy. The sum and substance of both the statements is that the accused poured kerosene on her and set fire to her as she did not bring anything from her parents house. The intention of the accused in setting fire to the deceased by pouring kerosene, stated in both Ex.P11 and Ex.P14, is one and the same. It is also evident from the testimony of PW.1-father of the deceased and PW.2-the mother of the deceased and PW.3 the brother of the deceased that there was demand for balance amount of dowry of Rs.10,000/- by the accused. Originally, the parents of the deceased agreed to pay Rs.80,000/- towards dowry, but they paid only Rs.70,000/- at the time of marriage. The dispute was for payment of the balance amount of Rs.10,000/-. The statements of PWs.1 to 3 would show that the accused used to harass the deceased to get the balance amount of dowry of Rs.10,000/- and he also used to beat her. In the light of the testimony of PWs.1 to 3 who spoke about the harassment of the accused for dowry, it can be believed that there was

constant demand and harassment for dowry by the accused and ultimately, the demand for dowry led to the accused killing the deceased. The deceased clearly stated in the two dying declarations Ex.P11 and Ex.P14 that the accused harassed her for dowry. No doubt, in Ex.P11 she came out with a specific version that her husband/accused asked for Rs.10,000/- to purchase a site, and when her father asked him to show the site and then he would invest in it, the accused stated that he doesn't want site and that he wants cash. Even before two months prior to the incident, the accused demanded the deceased for money, and for the last four days prior to the incident, he said that he would burn her with kerosene and he has increased his demand for money. No doubt, there is some discrepancy in the version of the deceased between Ex.P11 and Ex.P14 with regard to the demand made by the accused for Rs.10,000/-. In the statement recorded by the police, she stated that the accused harassed her by saying that her parents did not take care of his comforts and that she also was not looking after him well. The statement of the deceased was recorded by the police on the same day i.e., 08.12.2008. Ex.P11 was recorded by Magistrate at 7:05 PM on 08.12.2008 and it was duly certified by the Duty Doctor that the patient was in conscious state to give statement, whereas the statement recorded by the police does not have any endorsement though the deceased was admitted in the

hospital with burn injuries. Though there is some discrepancy in the statement of the deceased with regard to the demand of dowry by the accused, and also with regard to the pouring of kerosene on her and setting fire to her, it is a minor discrepancy and the same does not discredit the case of the prosecution. The subsequent conduct of the accused is also to be taken into consideration to place reliance on the dying declaration Ex.P.11.

As per the testimony of P.W.4, an independent witness, who is a neighbour of accused, she heard the voice of the passers-by on the road that the house of accused was under flame and the deceased was coming out of her house and that immediately she went into her house to protect her house from the flames. Though this witness was declared hostile to prosecution, her testimony in chief examination reveals that the house of accused was consisting of two rooms, that in one room the accused and his wife and their child lived; and in the other room, his mother and brother were living.

P.W.5 is also a neighbour of the accused and she did not support the version of the prosecution, but she stated that the deceased was under flames and she was taken to hospital for treatment.

P.W.6 is a resident of the same village and though she was declared hostile to the prosecution, she stated that the accused married

the deceased two years prior to the incident and that she accompanied the deceased to hospital.

The testimony of these witnesses does not disclose that the accused accompanied the deceased to the hospital in the ambulance. In the light of the testimony of these witnesses and the conduct of the accused, though there is minor discrepancy in the statement recorded by the police and the dying declaration recorded by the learned Magistrate, the intention of the declarant has to be gathered. In both the statements, the deceased clearly stated that the accused poured kerosene and set fire to her. Though there are minor discrepancies with regard to the manner of setting fire to her and with regard to dowry, the intention of the deceased in making the statement and its purport have to be taken into consideration. The testimony of the witnesses P.W.1 to 3 clearly reveals the fact of the accused harassing the deceased for bringing the balance dowry amount of Rs.10,000/- and at last setting fire to her.

To question No.21 in Ex.P.11-dying declaration, which reads : **“Did you say the things at the instance of anyone or you said on your own accord?”**, the deceased answered : “I am telling. None has asked me to say so.”

The above answer of the deceased clearly reveals that she was not tutored by anybody to give the statement and that her statement was voluntary.

As per of Section 32 of the Evidence Act, Clause (1), when the statement is made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, such statements are relevant whether the person who made them was or was not at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

In **Sharada v. State of Rajasthan**¹, the principle on which the dying declarations are admitted in evidence is indicated in legal maxim "*nemo moriturus praesumitur mentire*" ie., a man will not meet his Maker with a lie in his mouth. It is indicative of a fact that a man who is on a death bed would not tell a lie to falsely implicate an innocent person. This is the reason in law to accept the veracity of her statement. It is for this reason the requirement of oath and cross examination are dispensed with.

Dying declaration, if found acceptable, alone can form the basis for conviction. The general rule is that all oral evidence must be direct, viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it: if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it, if it

¹ AIR 2010 SC 408

refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60 of the Evidence Act. The eight Clauses of Section 32 are exceptions to the general rule against hearsay. Clause (1) of Section 32 makes relevant what is generally described as dying declaration though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death².

In the instant case, the statement was made by the deceased as to the cause of her suffering the burn injuries. The time of death of the deceased is important in this case to give credence to the dying declaration recorded by the learned Magistrate. At 7.05 p.m. on 08.12.2008, the dying declaration was recorded by the learned Magistrate, and the deceased died at 10.25 p.m. on the same day. As per Ex.P.14, the deceased was admitted in the hospital on 08.12.2008 at 3.00 p.m. and her statement was recorded by the police at 5.00 p.m. The learned counsel for the appellant submitted that there was no endorsement from the doctor on Ex.P.14 as to the fit state of mind of the deceased to give the statement. It is a fact that the deceased was admitted in the hospital due to burn injuries. Two hours after her

² Eyre LCR in R. V. Wood Cook (1789) 1 Leach 500

admission, the police officer recorded her statement without getting endorsement from the duty doctor with regard to fit statement of mind of the deceased. It is not the case of the defence that the deceased was tutored. Therefore, the statement recorded by the learned Magistrate at 7.05 p.m. has to be given credence. Even if we take both the statements Ex.P.11 and Ex.P.14 into consideration, the cause for her suffering the burn injuries was clearly spoken by the deceased to the effect that the accused poured kerosene on her and set fire to her as the demand for dowry was not met. The evidence of P.Ws.1 to 3 reveals that there was constant demand from the accused for dowry. Even otherwise, it cannot be believed that the deceased would go to the extent of implicating her husband/accused in such a serious offence, if he is really innocent, more so when there is no evidence on record to show that the deceased was tutored to state before the Magistrate as in her dying declaration - Ex.P.11. For the aforementioned reasons, we do not find any merit in the criminal appeal.

In the result, the appeal is dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

31st July, 2018
KSM

