

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

Crl.A.NO. 272 of 2013

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

1. The sole accused in Sessions Case No. 111 of 2012 on the file of the Prl. Sessions Judge, Karimnagar was tried for the offences punishable under Sections 498-A, 302 IPC and Sections 3 and 4 of the Dowry Prohibition Act on an allegation that he subjected his wife Bommagani Anjamma @ Ambavva to harassment and cruelty, physically and mentally, with a view to coerce her to meet his illegal demand of money and that on 18.1.2011, during night time, at Reddy Colony, Husnabad he committed her murder by throttling her to death. By its judgment dated 9.1.2013, the trial Court acquitted the accused of the offences punishable under Sections 3 and 4 of the Dowry Prohibition Act, but, however, convicted him of the offences punishable under Sections 498-A and 302 IPC and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for three months for the offence under Section 498-A IPC and imprisonment for life and to pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for three months for the offence under Section 302 IPC. Both the sentences were directed to be run concurrently.
2. The facts, as culled out from the evidence of prosecution witnesses, are as follows,

The accused is the husband of the deceased Anjamma @ Ambavva. P.W.2 is their daughter, P.W.1 is the elder sister and P.W.3 is the mother of the deceased respectively. The marriage of the deceased with the accused was performed in the year 2001. At the time of marriage cash of Rs.60,000/-, 4 tulas of gold and also house hold articles worth Rs.20,000/- were given as dowry to the accused. After the marriage, the deceased joined the company of her husband (accused) at Pandilla village of Husnabad mandal and led a marital life with him for a period of 6 months. Thereafter the accused started harassing and torturing her by demanding her to bring additional dowry. Subsequent to the meeting of the demands of the accused, by supplying some electronic equipments worth Rs.20,000/-, the accused kept quiet for some time and thereafter he again started demanding the deceased to bring money of Rs.50,000/- so as to perform his sister's marriage. Accordingly P.W.1 is said to have paid Rs.20,000/- to the accused for that purpose. It is said that out of wedlock, the deceased gave birth to a female child in the year 2002. As per the customary precedents, the family of the deceased met expenditure in connection with the birth of the child and sent her back to her husband after following the formalities, as per their customs. It is said that in spite of the demands being met by the family of the deceased, the accused did not stop the harassment, but continued to harass her for bringing more money. Having fed up with the attitude of the accused, P.W.1 and others sought the intervention of the elders in solving the disputes. P.W.5 and Thatipamula Sathaiah who acted as elders, advised the

accused to look after his wife well, but to no avail. Hence P.W.1 and other family members brought the deceased to their house. On 6.12.2010, the accused came to their house along with his brother-in-law by name Mallesh and asked the parents of the deceased to send her and her daughter (child) with him to lead a marital life as he wanted to perform the marriage of his daughter, who was born through his first wife. Considering his request, the deceased and her daughter were sent along with the accused to lead a marital life. It is said that on 19.1.2011 at about 8.00 or 8.30 P.M. the accused informed P.W.1 over cell phone that the deceased fell into the water tap pit, while fetching water and that she was unable to breath. When P.W.1 asked repeatedly as what had happened, the accused told him that she died. Immediately P.W.1 and other family members rushed to the house of the accused where they found the deceased lying dead with injuries on her person. When P.W.1 enquired with P.W.2, she disclosed that on the day of incident, the accused came home in a drunken condition and killed the deceased by throttling. P.W.2 further told him that the accused asked her not to disclose about killing of her mother and asked her to tell that she died accidentally by falling into a water tap pit, while fetching water. Thereafter P.W.1 went to the police station, Husnabad on 19.1.2011 and lodged a report- Ex.P1 with P.W.11, the Sub-Inspector of Police, Husnabad who registered a case in Cr.No. 18 of 2011 under Sections 498-A and 302 IPC and issued First Information Report (FIR). Ex.P7 is the FIR. Further

investigation was taken up by P.W.12, the Circle Inspector of Police, Husnabad.

3. On receipt of CD file in the crime on 19.1.2011, P.W.12 took up investigation, visited the scene of offence, observed the scene of offence in the presence of P.W.7 and another and prepared crime details form vide Ex.P4. He got the scene of offence photographed through P.W.4 and recorded his statement. He examined and recorded the statements of PWs. 1, 2, 3, 6, 8 and Bolugam Ramulu and recorded their statements. He then conducted inquest over the dead body of the deceased in the presence of P.W.7 and another vide Ex.P3. After inquest, he sent the dead body of the deceased to Government Civil Hospital, Husnabad for post mortem examination.

4. P.W.10, the Civil Assistant Surgeon, Upgraded Primary Health Centre, Husband conducted autopsy over the dead body of the deceased on 19.1.2011 from 5.10 P.M. to 6.45 P.M. and issued post mortem certificate-Ex.P6. According to him, the cause of death of the deceased was due to vasovagal shock due to torturing and attempt to throttle lead to failure of left ventricle.

5. On 20.1.2011 at 2.30 P.M. P.W.12 arrested the accused while he was at his house and interrogated him in the presence of P.W.9 and another. During the interrogation, the accused is said to have confessed about the commission of offence. After getting the statements of PWs 2 and 8 recorded under Section 164 Cr.P.C. by the Judicial Magistrate of First Class, Huzurabad and after collecting necessary material documents, he filed the charge sheet, which was

taken on file as PRC No. 42 of 2011 on the file of the Judicial Magistrate of First Class, Husnabad. On appearance of the accused, copies of documents were furnished to the accused as required under Section 207 Cr.P.C. and then the case was committed to the Court of Sessions for trial of the accused under Section 209 Cr.P.C. On committal, the same came to be registered as SC No. 111 of 2012. Basing on the material available on record, charges under Sections 498-A and 302 IPC and Sections 3 and 4 of the Dowry Prohibition Act came to be framed against the accused, read over and explained to him, to which he pleaded not guilty and claimed to be tried. In support of its case, the prosecution examined PWs 1 to 12 and got marked Ex. P1 to P7. After completing the prosecution evidence, the incriminating circumstances appearing against the accused in the evidence of the prosecution witnesses were put to the accused during his examination under Section 313 Cr.P.C., to which he denied. However, he did not adduce any oral or documentary evidence in support of his plea. Basing on the evidence of PWs 1 to 3 coupled with medical evidence, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed.

6. Learned counsel for the appellant/accused submits that there is absolutely no legal evidence available on record to connect the accused with the crime. According to her, PWs 1 and 3 are not eye-witnesses to the incident and as such their evidence is not of any help to the prosecution so as to connect the accused with the crime. According to her, the entire evidence of P.W.2 does not inspire

confidence so as to make it a basis to convict the accused. In the alternative, she would submit that even if the testimony of P.W.2 is to be accepted, having regard to the medical evidence adduced by the prosecution, the accused cannot be convicted under Section 302 IPC.

7. On the other hand, learned Public Prosecutor would contend that the plea taken by the accused that the deceased fell in a water pit and died as no basis and having taken that plea, the burden is on the accused to prove the size of the water pit in which the deceased fell down and its location in the house. But no material as such has been produced by the accused and there is no evidence to show the presence of wet clothes on the deceased. In the absence of such material, the plea of the accused cannot be believed. He would further contend that the theory of the deceased sustaining vasovagal shock due to falling in a water pit, is built up by the defence, taking advantage of the observations made in medical jurisprudence.

8. Therefore, the points that arise for consideration are,

- (1) Whether the accused is responsible for the incident? and
- (2) Whether the trial Court is right in convicting the accused for the offence under Section 302 IPC?

POINTS 1 AND 2:

9. In order to appreciate the same, it would be useful to refer to the evidence available on record. P.W.1 is the brother of the deceased. In his evidence in chief, he refers to payment of dowry to the accused at the time of his marriage with the deceased and the repeated demands

for additional dowry made by the accused, the harassment and torture meted out to her by the accused. He also deposed about the accused demanding the deceased to bring money of Rs.50,000/- for performing the marriage of his (accused) sister and payment of Rs.20,000/- to the accused for that purpose. In spite of the demands made being met, the accused did not stop the harassment towards the deceased and continued to harass her by demanding her to bring more money. In order to settle the disputes, the family members of the deceased convened a panchayat in which elders including P.W.5 advised the accused to take care of the deceased properly, but there was no change in his attitude. P.W.1 was cross-examined at length with regard to payment of dowry. As seen from the cross-examination, P.W.1 admits that except oral evidence, there is no evidence in writing to show that an amount of Rs.60,000/- in cash, 4 tulas of gold and house hold articles worth Rs.20,000/- were given to the accused at the time of marriage. But one cannot expect any documentary evidence in support of the same. However, the said version requires to be tested with other evidence. As seen from the evidence of P.W.1, the accused harassed and tortured the deceased demanding her to bring money of Rs.50,000/- to perform his sister's marriage, to which P.W.1 claims to have paid Rs.20,000/- to the accused. The fact of payment of dowry to the accused at the time of marriage with the deceased, supplying of electronic items to the accused and payment of Rs.20,000/- to the accused for performing the marriage of his sister out of the demand of Rs.50,000/- , are all

mentioned in the report-Ex.P1 given by P.W.1 and also in his 161 Cr.P.C. statement recorded by the police. Since this version of P.W.1 gets corroboration from P.W.3 with regard to the harassment and torture meted out to the deceased, payment of dowry and also demands made by the accused, whose evidence remained unimpeached, though subjected to lengthy cross-examination, we feel that the findings of the trial Court in convicting the accused for the offence under Section 498-A IPC requires no interference.

10. Coming to the incident proper, PWs 1 and 3 are not the eye-witnesses to the incident, but the prosecution examined P.W.2, who is the daughter of the deceased and the accused, as an eye-witness to the incident. Admittedly the presence of P.W.2 in the house on the date of incident is not in dispute. In her evidence she states that on the day of incident in the evening time her father (accused) came home in a drunken condition and killed her mother by throttling. Due to fear she went and slept in the front room. On the next day morning her father asked her to wake up her mother. Her mother did not respond to the calls. A private medical practitioner came and examined her mother when she was found lying without breathing. The said doctor informed them that her mother died. Thereafter the accused informed about the death of her mother over his cell phone to P.W.1. She further states that her father asked her to tell to P.W.1 that the deceased fell in the water tap pit and died. In the cross-examination she admits that she was studying 4th class in Primary Elementary School at Musthyala village. She admits that her father was working

as a T.V. mechanic and goes to his work in the morning hours and returns in the evening. On the date of incident also her father returned home in the evening hours. She further states that on the next day of the death of her mother, PW 1 and PW 3 and other family members reached her house by 8.00 A.M. She further admits that after the death of her mother, P.W.1 and other family members instructed her to narrate about the incident in the Court as per their instructions given by the police. To a suggestion that the accused was not responsible for the death of her mother, she denied. At this stage it is to be noted that the version of P.W.1 that when he went to the house of the accused, he noticed burn injuries on the body of the deceased is falsified by the evidence of P.W.12 who in his evidence stated that P.W.1 did not mention about the burn injuries over the person of the deceased.

11. Coming to the version of P.W.2, P.W.12 in his cross-examination admits that P.W.2 did not state to him in her 161 Cr.P.C. statement that on the day of incident in the evening time, her father came home in drunken condition and killed her mother by throttling. He states that as per his investigation, the deceased was not examined by any private medical practitioner before he reached the scene of offence. He further admits that P.W.3 did not state before him, in her 161 Cr.P.C. statement, that her husband went to the village of the accused and there he noticed her daughter with injuries on her person inflicted by the accused. P.W.3 also did not state before him that P.W.2 revealed to her that the accused killed the deceased by

subjecting her to electric shock. Similarly P.W.5 also did not state before him about P.W.2 revealing to her about the accused killing the deceased by subjecting her to electric shock.

12. But one fact which remains to be noticed that the dead body of the deceased was found in the house of the accused, for which the accused has to explain as to how she died. To which, he has come with an explanation, stating that the deceased fell in the water tap pit and died. Taking advantage of the observations made in medical jurisprudence that vasovagal shock is also possible if a person falls suddenly in a pit, the learned counsel for the appellant/accused tried to contend that the plea of the accused that the death of the deceased was due to falling in the water tap pit appears to be correct. It is to be noted that the plea of the accused that the deceased fell in the water tap pit and died, was taken by the accused through P.W.2. In cross-examination P.W.2 states that her father asked her to say that the deceased fell into the water tap pit while fetching water. By this plea, which is reflected in the version given by P.W.2, the accused wanted to show that the deceased accidentally fell in the water pit. But there is no evidence on record to show the size of the water pit and whether it is possible that the deceased could have fallen in it and died, apart from its location in the house of the accused.

13. The question now is how the deceased died? Was it a case of death or was it due to fall in a water pit? As observed earlier, the plea taken by the accused was that the death was due to fall in a water pit, but no material has been placed to show as to the size of the water pit

and its location in the house and the presence of wet clothes on the body of the deceased in support of the plea. Further this plea is falsified by the evidence of P.W.5 who is an elderly person in the community. According to him, on 19.1.2011 he and others heard that the deceased died in suspicious circumstances and then they went to the house of the accused and found the dead body of the deceased lying on the cot. On enquiry, P.W.2 told them that the accused killed the deceased by throttling and he also subjected the deceased to electric shock. The fact that the deceased was subjected to electric shock is absent in the earlier statement of P.W.5. If really death was due to fall in a water pit, P.W.5 would have noticed wet clothes on the deceased. On the other hand, he found the deceased on a cot. In fact, the scene of offence panchanama i.e., crime details form-Ex.P4 does not indicate any where about the existence of any water pit in the house of the accused. Therefore, in the absence of any material, we are not inclined to accept the plea of the accused that the death of the deceased was due to fall in the water pit.

14. The next question relates to cause of death of the deceased and whether the accused is responsible for the same. As stated earlier, the fact that the deceased died in the house of the accused and the dead body was lying in the house, remains proved.

15. The post mortem report of P.W.10 shows that there were six external injuries on the body of the deceased viz., a contusion over right eye-brow, a contusion on the left side of neck, injuries on left leg, abrasions old on left leg, old injuries on the back of intra scapular

region and left hip and thigh. Out of six injuries, the injuries 4, 5 and 6 were found to be old injuries. The cause of death as per the post mortem doctor was due to vasovagal shock, due to torturing and attempt to throttle leading to left ventricular failure. In the cross-examination the doctor states that the deceased might have received injuries 1 to 3 while she was in supine position. He also admits that he did not find any finger impressions around the neck of the deceased, at the time of the autopsy. He further states that he did not find any scratch marks or nail marks on the neck portion of the deceased. To a suggestion that the injuries 1 and 2 were caused after the death of the deceased, while shifting the dead body by placing hands on it, was denied. He admits that in case of throttling the symptoms of tongue and eyes will be typical and he did not find any abnormality in the condition of tongue and lips of the deceased. He noticed that the mouth of the deceased was partially opened. He admits that he did not notice any blood or froth oozing from mouth, nose and ears of the deceased. According to him, vasovagal shock is also called as reflects cardiac arrest. He admits that if any amount of slightest pressure and stimulation is caused to the borrow receptors situated in carotid bodies, it may cause cardiac arrest. He accepts the opinions and observations of Dr. K. S. Narayana Reddy, the author of Principles of Forensic Medicine and Toxicology that the death due to Vasovagal shock is possible if a person falls suddenly in cold water and that most of the deaths are accidental. In view of the opinion of Dr. K.S. Narayana Reddy that death could be accidental in case a

person falls in a water pit, the accused pleads that the death of the deceased could have been accidental. But as stated earlier there is no material to show existence of the water pit in the house of the accused and any attendant circumstances to show that death was accidental or suicidal. But the fact that the death of the deceased was due to vasovagal shock is not in dispute. According to Dr. K. S. Narayana Reddy's Medical Jurisprudence and Toxicology, sudden death occurring within seconds or a minute or two due to minor trauma or relatively simple and harmless peripheral stimulation are caused by vagal inhibition. Pressure on the baroreceptors situated in the carotid sinuses, carotid sheaths, and the carotid body (located in the internal carotid artery just above the bifurcation of common carotid artery, and situated about the level of angle of mandible) causes increase in blood pressure in these sinuses with resultant slowing of the heart rate, dilatation of blood vessels and a fall in blood pressure. From the above it is clear that the slightest pressure and stimulation caused to borrow receptors situated in carotid bodies may cause cardiac arrest. Having regard to the fact that there is no pressure marks, no scratch marks or nail marks on the neck of the deceased, it can be said that no pressure was applied while causing her death.

16. As stated earlier, the entire case is now based on the evidence of P.W.2. In her chief evidence she says that on the day of incident in the evening time her father came in a drunken condition and killed her mothers by throttling. But it appears to be a case where he must have come in a drunken condition and tried to place his hand on the neck of

the deceased, pursuant to which she must have fell down. If really his intention was to cause her death, his conduct would have been different. Apart from that, he would have pressed the neck with pressure leaving marks of violence on the neck. Further he would not have slept in the house along with dead body the whole night and on the next day ask PW 2 to wake up her mother. Further his conduct in informing P.W.1 about the death of the deceased speaks that he never had any intention to cause her death. Though the learned counsel for the appellant/accused tried to take advantage to the answers elicited in the cross-examination of P.W.2, but it cannot be said that this admission by itself would throw out her entire testimony. The request of family to narrate in the Court as per the instructions of police, is nothing but to reiterate the version given by her in 161 Cr.P.C.

17. Having regard to the discussion made above, we feel that it is a case where the accused came home in a drunken condition and put his hand around the neck of the deceased which led to vasovagal shock leading to her death, which went unnoticed even to the accused. The fact that the said circumstance went unnoticed is clear from the fact that the accused slept in the house itself and on the next day asked P.W.2 to wake up the deceased. As there was no response, he immediately informed P.W.1 on phone. Having regard to the peculiar circumstances under which the incident took place, we hold that the accused never had any intention to cause the death of the deceased and that his case squarely falls under Section 304, Part-II of IPC.

18. The appeal is partly allowed. The conviction and sentence imposed on the appellant/accused by the Prl. Sessions Judge, Karimnagar in Sessions Case No. 111 of 2012 for the offence under Section 302 IPC is set aside and the appellant/accused is acquitted of the same. However, the appellant/accused is convicted of the offence under Section 304, Part-II of IPC and sentenced to undergo rigorous imprisonment for FIVE years. The conviction and sentence for the offence under Section 498-A IPC is upheld. Both the sentences are directed to be run concurrently. The period of detention/imprisonment undergone by the appellant/accused shall be set off against the term of imprisonment. The material objects are ordered to be destroyed as per the directions of the trial Court.

19. Miscellaneous applications, if any pending, shall stand closed.

Dt. 15.3.2018
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C.PRAVEEN KUMAR, J

J. UMA DEVI, J