

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.97 of 2013

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

1) Accused Nos.1 to 5 in Sessions Case No.1 of 2007 on the file of the Additional District and Sessions Judge, West Godavari, Kovvuru, are the appellants herein. They were tried for the offences punishable under Sections 302, 498-A and 201 read with 34 IPC. By its judgment dated 18.01.2013, the learned Sessions Judge, convicted all the accused for the charges leveled against them and sentenced them to suffer 'imprisonment for life' and to pay fine of Rs.1,000/- each in default to suffer rigorous imprisonment for a period of three months, for the offence punishable under Section 302 IPC. They were also convicted under Sections 201 and 498-A IPC and sentenced to suffer rigorous imprisonment for a period of one year each and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for a period of two months for the offence punishable under Section 201 IPC and to suffer rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- each, in default to suffer rigorous imprisonment for a period of two months for the offence punishable under Section 498-A IPC. The substantial sentence of imprisonment for the charges under Sections 201 and 498-A IPC

were directed to run concurrently with the sentence of imprisonment imposed under Section 302 IPC.

2) The facts are as under:

i) Accused No.1 is the husband of one Sridevi (hereinafter referred to as “the deceased”), while accused Nos.2 and 3 are parents of accused No.1 and accused Nos.4 and 5 are the married sisters-in-law of the deceased. PW.1 is the mother of the deceased, PW.2 is the brother of the deceased and PW.3 acted as an elder, for the marriage of accused No.1 with the deceased, which took place on 27.05.2005. At the time of marriage, cash of Rs.2.00 lakhs dowry and Rs.25,000/- towards adapaduchu katnam was paid. The parents of the deceased also gave silver plate, silver tumbler and silver wedding card. At the time of marriage, accused No.1 was working as an Electrical Operator in Railways, Guntakal. After the marriage, the deceased joined her husband in Dharmavaram, Kovvur Mandal, West Godavari District. It is said that accused No.1 and the deceased used to come to the house of PW.1 and to the house of accused Nos.2 and 3 during first 10 days of the marriage. For about nine months thereafter the deceased was kept in the house of her parents. During that period, accused No.1 did not visit the house of PW.1. It is said that prior to the said marriage, there was an alliance to the deceased, in which the parents agreed to give dowry of Rs.4.00 lakhs. Having come to know about the same, the accused started demanding the deceased to bring Rs.2.00 lakhs, thinking that there was a deposit

of Rs.2.00 lakhs in the name of the deceased. Further, the family of the deceased own a house in Rajahmundry which was named as "Sridevi Nilayam". Thinking that the deceased would get a share in the house, the accused were demanding the deceased to get a share in the said house. It is said that accused Nos.1 to 5 used to harass the deceased to bring Rs.2.00 lakhs and also a share in the house at Rajahmundry.

ii) The evidence on record also shows that elders including the family members of the deceased were requesting the accused No.1 to take back the deceased, as the mother of the deceased, who is a widow, was not in a position to give anything more. Thereafter, accused No.3 is said to have gone to the house to bring back the deceased to his house. At that time, sare saman were arranged. Accused No.3 is said to have demanded that the sare saman should be brought and handed over to them at Guntakal. When the same was informed to elders, they asked accused No.3 to take the sare saman, instead of asking PW.1 to bring them and deliver at their house. Accused No.3 took sare saman to Guntakal along with the deceased. This incident of accused No.3 taking back the deceased to their house took place about five months prior to the date of incident. It appears that accused No.2 also accompanied accused No.3 when he went to the house of PW.1. The evidence further discloses that when accused No.1 set up a house at Guntakal, accused Nos.2 to 4 went to Guntakal. On the said occasion, accused Nos.2 and 4 are alleged to have beat the deceased on the ground that she did not bring

cash of Rs.2.00 lakhs and a share in the building. The son of PW.1 by name Sridhar, who was examined as PW.2, accompanied the deceased, stayed for two days in the house of accused No.1 at Guntakal and thereafter returned to his house. The deceased lived with accused No.1 for five months in Guntakal. At that time, accused No.4 was also living with accused No.1. During the said period, the accused No.4 harassed the deceased on the ground that she did not bring Rs.2.00 lakhs and a share in the building. The evidence on record shows that accused Nos.2, 3 and 5 used to harass the deceased on phone, with a demand to bring Rs.2.00 lakhs and a share in the building. On 15.08.2006 at about 4.30 a.m., PW.1 received a phone call from Ramachandra Rao (not examined), asking her and her son PW.2 to come over to Dharmavaram. On receipt of the said information, PWs.1,2,8 and Prasad went to Dharmavaram to the house of accused. By the time they reached, accused Nos.1 to 5 were sitting in the veranda of their house. They noticed the deceased in a corner of small room, in a standing posture, with the help of a stick kept at her waist. After they opened the door the deceased fell down. They found the deceased dead and her tongue protruding out of the mouth. They also noticed bleeding from nose. The deceased was wearing a jacket and without any saree and a petty coat. They found burn injuries on the private parts and also on the face. The accused were pretending that the deceased committed suicide by pouring kerosene on her and setting herself on fire. Immediately thereafter, ie., on 15.08.2016 PW.1 lodged a report with PW.12-

the Sub-Inspector of Police, which came to be registered as Crime No.80 of 2006 for the offence punishable under Section 304-B IPC. Ex.P1 is the report and Ex.P8 is the first information report. PW.12 handed over the investigation to S.D.P.O., Kovvur. As per the instructions of S.D.P.O., Kovvuru, PW.12 gave a requisition to PW.11-the Mandal Revenue Officer, Kovvur, to conduct inquest over the dead body of the deceased.

iii) PW.13-the S.D.P.O., Kovvur Sub-Division, after collecting copy of the first information report, proceeded to the scene of offence ie., house of accused No.3, bearing Door No.2-2 (2) in Dharmavaram Village. He observed the scene of offence in the presence of PW.9 and others and got prepared a scene of offence panchanama. During scene observation, he seized MOs. 6 to 10 from the scene. Ex.P5 is the scene of offence panchanama. He also prepared a rough sketch of the scene, which is placed on record as Ex.P10. He got the scene of offence photographed through one Srinivasa Rao, which are placed on record as Ex.P9. On the same day at about 1.30 to 3.30 p.m., PW.11-the Mandal Revenue Officer, conducted inquest over the dead body of the deceased in the presence of PW.9 and another. Ex.P6 is the inquest report. During inquest, he examined Pws.1 to 3 and others. Thereafter, the dead body was sent for postmortem examination.

iv) PW.10-the Deputy Civil Surgeon, Community Health Centre, Kovvur, conducted autopsy over the dead body and

issued Ex.P7-postmortem certificate. According to him, the cause of death was “due to cardio respiratory failure due to shock and asphyxia due to smothering”. He also observed that the burn injuries on the body are postmortem burn injuries. On the same day PW.13 arrested accused Nos.1 to 5 at the house of accused No.3 and brought them to police station. After receipt of the postmortem report, the section of law was altered from 304-B to 302, 498-A and 201 IPC. After completing the examination of all the witnesses and after collecting all the documents, PW.13 filed a charge sheet before the Court of II Additional Judicial Magistrate of First Class, Kovvur, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.1 of 2007.

3) On appearance, charges under Sections 302, 498-A and 201 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P10 and MOs.1 to 10. After the closure of evidence, the accused 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 evidence was adduced on behalf of the accused except marking of Ex.D1-

relevant portion in Ex.P1 and Exs.D2 and D3 relevant portion in 161 Cr.P.C., statement of PW.2.

5) Placing reliance on the evidence adduced by the prosecution, the Sessions Judge convicted the accused for the offences, in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellants mainly submits that there is absolutely no evidence on record to show that all the accused were responsible for the incident. It is her version that entire family has been implicated though there is no material on record to show the complicity of the accused, more so, when the postmortem report does not conclusively establish that it was a case of murder. Relying upon the postmortem report, the learned counsel for the appellants would contend that when is a case of suicide and that the trial Court erred in convicting all the accused under Section 302 IPC. It is urged by the learned counsel for the appellant that even the postmortem doctor is not sure as to how the deceased died. In support of her plea, she relies upon the judgment of the Apex Court in *Kans Raj v. State of Punjab and another*¹ and judgment of this Court in *Kasturi Subbarao v. State of A.P.*² Insofar as the presence and participation of accused Nos.4 and 5 is concerned, learned counsel for the appellants would submit that they have nothing to do with the

¹ (2000) 2 ALT (CrI.) 50 (SC)

² (2001) 2 ALT (CrI.) 429 (D.B.) (A.P.)

family of accused No.1 and they were living elsewhere along with their husbands.

7) On the other hand, the learned Public Prosecutor would contend that the evidence of postmortem doctor is very clear that the death was due to strangulation. It is his plea that after causing the death of the deceased by strangulation, the accused removed the cloths of the deceased except jacket and then set her on fire by creating as if the deceased committed suicide. Taking into consideration the various factors, the doctor gave opinion that the burn injuries are postmortem in nature. Therefore, the plea of the accused that the manner in which the death is caused is doubtful, cannot be accepted. Insofar as the presence of accused Nos.4 and 5 in the house of accused No.3, he took us through the evidence of independent witnesses namely PWs.4 and 5 to show their presence in the house of accused No.3 at the time of incident. Hence, pleads that the finding of the trial Court warrants no interference.

8) The point that arises for consideration is whether there was any harassment and whether the accused are responsible for the incident.

9) Coming to the issue as to whether there was any harassment before the death, the prosecution placed reliance on the evidence of PWs.1 to 3, who are the mother & brother of the deceased and co-brother of accused No.3 by courtesy. It would

be useful to extract the relevant portion in the evidence of PWs.1 to 3, which is as under:

10) PW.1 in her evidence deposed as under:

“The marriage between A.1 and Sridevi was settled through elders by name Kakipada Uma Maheswara Rao (LW.8), Palathirdhapu Venkata Chari (LW.13), Smhadri Veeracharyulu (LW.14) and Gollapalli Prasad. At the time of marriage we gave cash of Rs.2,00,000/- towards dowry and Rs.25,000/- towards adapaduchu katnam to both the sisters of A.1. We also gave silver plate, silver tumbler and silver wedding card for the marriage of my daughter Sridevi.

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Prior to this marriage there was a marriage alliance of my daughter Sridevi with another person and for that marriage we agreed to give Rs.4,00,000/- as dowry. Accused having come to know about the same started demanding Sridevi to bring Rs.2,00,000/- mere thinking that there was a deposit of Rs.2,00,000/- in the name of Sridevi. We own a house in Rajahmundry. It is named as Sridevi Nilayam by my husband. Accused thinking that Sridevi would get a share in that house asked her to ask for a share in that house. Accused Nos.1 to 5 used to harass Sridevi with a demand to bring Rs.2.00 lakhs and also share in the house at Rajahmundry.

Sridevi lived with A.1 for five months in Gunthakal. A4 also lived in the house of A.1 for five months. All these months daily A.4 used to harass Sridevi on the ground that she did not bring Rs.2.00 lakhs and share in the building. A.2, A.3 and A.5 used to harass Sridevi daily on phone with a demand for Rs.2.00 lakhs and share in the building. A.1 also used to harass Sridevi daily with a demand for Rs.2.00 lakhs and share in the building.”

11) PW.1 was cross-examined at length. Insofar as demand for dowry is concerned, a suggestion was put to her that cash of Rs.2.00 lakhs as dowry and Rs.25,000/- towards Adapaduchu Katnam was not paid but the same was denied by her. The suggestion about non-presentation of silver plate, silver tumbler and silver wedding card, was denied, but however the investigating officer in his evidence deposed that PW.1 did not state in her earlier statement about presenting silver plate, silver tumbler and silver wedding card. Though PW.1 did not state in Ex.D1 that on seeing the name of Sridevi Nilayam on their house in Rajahmundry, the accused asked for a share in the said house, but during the course of investigation and also while giving evidence in the Court PW.1 stated that the accused demand a share in the house at Rajahmundry, as the house was named as Sridevi Nilayam. Even in the first information report, PW.1 did not state that there was a marriage alliance to deceased with another person, wherein they agreed to give Rs.4.0 lakhs and on coming to know about the same, the accused started demanding additional dowry of Rs.2.00 lakhs. Though the said fact is not mentioned in Ex.P1, it appears that in the statement recorded by the police during the course of investigation, the said fact came to be mentioned. Further, PW.1 did not state in her earlier statement about accused No.3 demanding PW.1 to deliver sare saman at Guntakal and when she brought the same to the notice of elders, they asked accused No.3 to take sare saman along with the deceased. Further, PW.1 did not state in her earlier statement

that accused No.1 having left the deceased in Dharmavaram, went to the house of accused No.5 in Rajahmundry, stayed there for a day and then went to the house of accused Nos.2 and 3 along with accused No.5. She further did not mention that when she telephoned to accused No.1 he informed her that they will come to her house at Rajahmundry on Monday.

12) The omissions in the earlier statement mainly relate to presentation of silver articles at the time of marriage; accused No.3 coming to the house of PW.1 to take the deceased after mediation and his demand for delivery of sare saman at Guntakal; accused Nos.2 and 3 taking the deceased to Dharmavaram and after three days of taking her to Guntakal, accused No.4 staying in the house of accused No.1 for a period of five months (period of stay); accused No.1 leaving Sridevi in Dharmavaram prior to the incident and going to the house of accused No.5, staying there over night and then joining accused Nos.2 and 3 in Dharmavaram along with accused No.5; accused No.1 informing PW.1 that he would come to Rajahmundry along with the deceased on Monday; one Prasad informing her about the demand of accused in giving old cot instead of new cot and the deceased in standing posture with the support of a stick.

13) A reading of the first information report would show that when the elders questioned the accused, they replied that had their son got married another girl, they would got Rs.4.00 lakhs and thus demanded additional dowry of Rs.2.00 lakhs.

Insofar as a share in the property is concerned, it is categorically mentioned that whenever the deceased telephoned to PW.1 from Guntakal, she was saying that her husband and in-laws and sisters-in-law were harassing mentally and physically to get a share in the property.

14) Coming to the evidence of PW.2, in his evidence in chief, he deposed as under:

“At the time of marriage we gave Rs.2.00 lakhs towards dowry. We also gave Rs.25,000/- towards adapaduchu katnam. We also gave silver plate, silver tumbler and silver wedding card.

We informed the marriage elders Kakinada Uma Maheswara Rao, Palathirdhapu Venakta Chari, Smhadri Veerachari, Gollapalli Prasad about accused not taking Sridevi to their house. Whenever elders asked accused used to same some reason or the other. After we pressurized the marriage elders, A1 put up family in Gunthakal.

Myself, Sridevi, A2 and A4 went to Gunthakal. A3 at that time picked up a quarrel stating that we have to bear the expenses of transporting sare articles to Gunthakal. We informed the elders about the behaviour of A.3, elders warned A.3. A.3 himself took away the sare samans.

First Sridevi was taken to the house of accused in Dharmavaram. After three days we all went to Gunthakal. While the function of entering into the rented house of a.1 in Gunthakal was going on, A.2 and A.4 scolded Sridevi saying that if they preferred some other girl in marriage to A.1 they would have get Rs.4 to 5 lakhs dowry. A.2 and A.4 also beat Sridevi. A.1 was also present and he kept quiet. I stayed in the house of A.1 in Gunthakal for two

days and returned to Rajahmundry. I informed about the behaviour of A.1, A2 and A.4 to my mother PW.1.

Accused having come to know our proposal to give Rs.4.00 lakhs as dowry for the marriage of Sidevi with another person, A.1 to A.5 harassed Sidevi to bring Rs.2.00 lakhs.

My parents got the name of Sidevi scribed on our house in Rajahmundry. Accused thinking that Sidevi has got share in the building in Rajahmundry, A.1 to a.5 pressurized Sidevi to get her share in the building. Sidevi used to telephone to my mother-PW.1 and informed me about the harassment by accused for Rs.2.00 lakhs and the share in the house at Rajahmundry.”

15) In the cross-examination, PW.2 admits that he has not mentioned in his earlier statement about the details of desires of the accused, such as in case the marriage of A.1 was performed with another girl they would get Rs.4.00 or 5.00 lakhs as dowry and about accused Nos.2 and 4, abusing the deceased. He further failed to mention in his earlier statement about accused No.1 keeping quiet while accused No.2 and 4 abusing the deceased. He further admits that he did not state before the police with regard to giving information to PW.1 about the behaviour of Accused Nos.1, 2 and 4 in Gunthakal. With regard to demand of dowry and their demand of additional dowry, it was mentioned by him in his earlier statement and there was no cross-examination to discard the same. On the other hand, it has been elicited through PW.2 that the family of the deceased asked the deceased to inform the accused that the balance of RS.2.00 lakhs which was spent for the

marriage expenses has to be paid. It would be useful to extract the said statement, which was elicited in the cross-examination.

“We asked Sidevi to inform the accused that the balance of Rs.2.00 lakhs spent towards marriage expenses.”

16) He further admits that he did not mentioned in his statement that accused No.3 picked up a quarrel regarding transportation of Sare Saman to Guntakal and informed the same to the elders who found fault with accused No.3. He also failed to mention in the earlier statement about the deceased being first taken to Dharmavaram and after staying there for three days, being taken to Guntakal. He also did not mentioned before the police that he stayed for two days in Guntakal in the house of accused No.1.

17) From the evidence of PW.2, who is the brother of the deceased, it is clear that he failed to mention giving of silver plate, silver tumbler and silver card to the deceased; staying in the house of the accused for two days; dispute with regard to transport of sare saman, accused Nos.2 and 4 scolding the deceased in the presence of accused No.1, when he went along with the deceased to the house at Guntakal and informed PW.1 about the behaviour of accused Nos.1, 2 and 4.

18) PW.3 who is the co-brother of accused No.3 by courtesy. In his evidence he deposed about PW.1 agreeing to give dowry of Rs.1,50,000/- and Rs.50,000/- towards purchase of

motor cycle and cash of Rs.20,000/- towards Adapaduchu Katnam besides clothes to accused Nos.4 and 5 and their husbands. In his chief examination he states that at the time of marriage itself there was some controversy regarding payment of dowry which got subsided at the intervention of the elders. His evidence show that PW.1 informed him about accused not taking the deceased to their house on one pretext or the other. Then himself along with others asked accused No.3 about the same, to which accused No.3 stated that there was no auspicious date. However, the version of PW.1 was that the accused were demanding payment of additional dowry. At the instance of elders, the issue was settled then accused No.3 took the deceased to their house at Dharmavaram and from there to Guntakal. His evidence is to the effect that PW.2 informed him about accused Nos.2 and 4 beating the deceased in Gunthakal. His evidence also shows that one or two months later, PW.1 came to him and informed about accused No.1 harassing the deceased by demanding dowry and a share in the house. On the intervening night, accused No.3 telephoned to him and informed him that Sridevi died and asked all of them to come to Dharmavaram. While he was about to start, PWs.1 and 2 came to his house and informed him that they have received a phone call and asked them to come to Dharmavaram. He asked PWs.1 and 2 to proceed Dharmavaram and that he would come later. On the way to Dharmavaram, PW.2 met him at Kovvur and informed that Sridevi died and asked him to come to police station.

Accordingly, he along with PW.2 went to police station and lodged a report.

19) In the cross-examination, it was pointed out that he did not state before the police about the payment of Rs.50,000/- towards purchase of motor cycle. He denied the suggestion that he has not acted as marriage elder for the marriage of accused No.5. He denied the suggestion that on account of dispute between him and accused No.3, he got a false report foisted.

20) PW.4 is a neighbour to the house of accused No.3 in Dharmavaram, where the deceased died. According to him on the intervening night of 15.08.2006, he heard some galata from the house of accused No.3 and on the next day morning PWs.1 and 2 and others came to the house of accused No.3 and wept loudly. Then he went to the house of accused No.3 and saw the dead body of the deceased with burn injuries. Accused Nos.2 to 5 were present in the house of accused No.3. He further states that he does not know when accused Nos.4 and 5 came to the house of accused No.3 but they were present when he went to the house of accused No.3. Though he was cross-examined, nothing useful was elicited to discredit his testimony.

21) Similarly, PW.5, who is resident of Dharmavaram village and President of Primary Agricultural Co-operative Credit Society, Kapavaram, deposed that on the intervening night of 14/ 15.08.2006 at about 4.00 a.m., accused No.3 came to his house and informed him that his daughter-in-law poured kerosene

on her and set fire. He asked accused No.3 to inform the parents of the deceased and also advised him to inform to the police. On the next day morning at about 11.00 a.m., he went to the house of accused No.3, by which time, the police were present. He noticed the deceased with burn injuries. The persons, who gathered there raised suspicion that it may be on account of dowry. According to him, accused Nos.1 to 5 were kept in another house and locked the house to prevent the police from beating them. However, in the cross-examination it was elicited that he did not inform S.D.P.O. about accused Nos.1 to 5 being kept in a separate room.

22) This in substance is the evidence on record to prove the allegation of harassment and the death of the deceased under un-natural circumstances in the house of accused No.3 at Dharmavaram Village.

23) The cross-examination done to the witnesses as referred to above, mainly relates to whether ingredients constituting an offence punishable under Section 304-B IPC is made out or not. But the same would be some use if the conviction was for the offence under Section 304-B IPC.

24) Now, the first thing to be seen is whether it is the case of homicide or a suicide as pleaded by the learned counsel for the appellant.

25) In order to prove the same, the evidence of the post-mortem Doctor requires to be analyzed. The certificate issued by the Doctor would show that the death was due to strangulation and the burns on the body are postmortem burns, meaning thereby that the deceased sustained burn injuries after her death. The material placed before the Court further shows that by the time P.Ws.1 and 2 went to the house of accused No.3 at Dharmavaram, the body was almost naked. Except the jacket there was nothing on the body of the deceased. Though there is some dispute as to whether the deceased was in standing posture, but the fact is that her body was burnt. The question is whether the deceased died due to burns or whether she was subjected to burn injuries after she was done to death by strangulation. In order to appreciate the same, it would be useful to refer to the evidence of the Doctor, which reads as under:-

“ On 15.08.2006 at 6.00 p.m., I received a requisition from M.R.O., Kovvur to conduct P.M.Examination on the body of Saripalli Sridevi W/ o. Srinivas aged 26 years.

Myself and Doctor C.Aruna conducted P.M.Examination on the body of Saripalli Sridevi on 16.08.2006 from 10.00 a.m., to 12.00 noon and found the following:

Appearance:

The body is in supine position. Hair and scalp is smoky black and singeing present. Face is smoky black, skin is peeled off. Exposing the superficial tissue white in colour. Eye balls are protruding out. Tongue is protruding out and clinched between upper and lower jaw. Burn injuries are present on it with Buckal mucosa is congested. Hypermic ears are smoky black. Nose is smoky black. Blood stained

liquid is coming through mouth and nostrils. Neck is smoky black.

Right side of neck there is a contusion extending upto right side of the chest, size 6 x 4 –underlying tissue is red in colour.

Skin is peeled off both upper and lower limb. Thorax, abdomen due to burn injuries. Underlying subcutaneous tissue white in colour.

External genitalia, burn injury is present, smoky black in colour.

Back side of the skin is peeled off exposing the superficial tissue smoky black in colour.

Faecal matter is present over anal orifices and perineum.

Internal examination:

1. Skull bones intact. Meninges and brain are pale and congested. There is a hematoma over right side neck red in colour extending upto right side of chest size is 6" x 4".
2. Brain started to liquefaction.
3. The trachea and oesophagus are congested. Stasis of blood in the vessels of neck. There is no smoky material in the lumen of trachea and oesophagus.
4. Thoracic cage and ribs are intact. Lungs are congested. Heart is dilated. Blood is present in the chambers of heart. Liver, Kidneys are pale and congested.
5. Stomach contained semi solid food material rice with 50 ml. quantity along with foul smelling gasses. Bowels are distended with gas. Uterus normal in size, empty. Ovaries are normal. Urinary bladder is empty.

6. The approximate time of death is around 36 to 48 hours prior to postmortem examination. We both opined that the cause of death is due to cardio respiratory failure due to shock due to asphyxia due to smothering.
7. The burn injuries on the body of Sridevi noted above are postmortem burn injuries.”

26) From the evidence of the Doctor, it appears to be a case where the deceased was done to death by strangulation and thereafter the accused sought to create a situation as if she committed suicide by setting herself on fire. If really, the plea of the accused that the deceased committed suicide is correct, the question would be as to who subjected her to strangulation, which is the cause of death. Definitely, it cannot be a self-inflicted one and it is not even the case of the accused that the deceased strangled herself. Therefore, we feel that it is case where the deceased was strangled first and thereafter a situation was created as if the deceased committed suicide, which gets falsified by the medical evidence. If it was a case of suicide by hanging, how did she receive burn injuries. Obviously she could not have subjected to the same, after strangulating herself. Hence, we are of the opinion that in the instant case, the death was a homicidal one.

27) When once it is established that it is a case of homicidal death and that the death took place inside the house of A-3, under Section 106 of the Evidence Act, the burden is on the accused as to explain how the deceased died. The accused never

came forward with any explanation in their 313 Cr.P.C. examination, except denying the evidence adduced against them. The issue would be, who is responsible for the death, whether all the five accused are responsible for the death?

28) Admittedly, the house where the incident took place was that of A-3, who was living there along with A-2. The evidence on record further shows that A-1 went to the said house on Saturday. From the above, it is clear that all the three accused were present in the house on the date of incident. The learned counsel for the appellant submits that A-4 and A-5 who are the sisters of A-1 have no role to play and they have been falsely implicated in the case. According to her, they were not even present in the house at that time. Infact during the course of arguments, the counsel pressed only for A-4 and A-5. Admittedly A-4 and A-5 were married women, living elsewhere. PW.4, the neighbour is the best person to speak about the presence of A-4 and A-5 in the house. According to him, on coming to know about the incident, he proceeded to the said house and found all the five accused in the house. But he admits that he does not know, at what time A-4 and A-5 came to the house. Therefore, the possibility of A-4 and A-5 coming over to the house of A-3 after the incident or on coming to know about the incident from their place of stay, cannot be ruled out. In fact, P.W.4 speaks about the presence of only A-1 to A-3 in the house.

29) In *Trimukh Maroti Kirkan v. State of Maharashtra*³, the Apex Court held as under:

“15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

30) The record also shows that on the date of incident, all the three accused were present in the house and no explanation is forthcoming from them as to how the deceased died. It is not their case that a third person entered into the house and caused the death of the deceased nor is it their case that they were not present in the house at that time. Their plea is that the deceased committed suicide. But the evidence of post-mortem Doctor, which we have discussed at length above, shows that it is not a case of suicide, but one of homicide. As no possible explanation is forthcoming as to how the deceased died, we feel that it is a fit case where the accused failed to explain the facts, which are

³ (2006) 10 SCC 681

within their knowledge more so when the incident happened within the four corners of the house.

31) Coming to an offence punishable under Section 498-A IPC, the acts of harassment i.e., demand for additional dowry of Rs.2.00 lakhs stands proved through the evidence of P.Ws.1 and 2. Further, the evidence of P.W.3, who is the co-brother of A-3, would show that right from the date of marriage there were some disputes regarding payment of dowry and the deceased was subjected to harassment.

32) PW.1 in her evidence deposed that accused No.1 used to harass the deceased daily with a demand for Rs.2.00 lakhs and share in the building. PW.2 in his evidence deposed that the deceased used to telephone to his mother-PW.1 and informed him about the accused demanding Rs.2.00 lakhs and the share in the house at Rajahmundry. PW.3 in his evidence deposed that at the time of marriage itself there was some controversy regarding payment of dowry which got subsided at the intervention of elders.

33) Since the presence of A-1 to A-3 stands established, and as they failed to explain as to how the deceased died and since it is not their case that they were not present in the house at that time except taking plea that it is a case of suicide, we feel that A-1 to A-3 are liable for punishment under Section 302, 498-A and 201 IPC.

34) Accordingly, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellants/ accused Nos.4 and 5, in the judgment, dated 18.01.2013 in S.C.No.1 of 2007 on the file of the Additional District and Sessions Judge, West Godavari, Kovvur is set aside. Consequently, accused Nos.4 and 5 shall be set at liberty, forthwith, if they are not required in any other case or crime. The conviction and sentence recorded against the appellants/ accused Nos.1 to 3 is hereby confirmed.

35) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J. UMADEVI

29.03.2018
gkv/ gm

