

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

CRIMINAL APPEAL No. 116 of 2012

Date: 03.10.2018

Between:

Gokulapati Appalaraju

... Appellant/Accused

And

State of A.P., rep. by Public Prosecutor,
High Court, Hyderabad.

... Respondent/Complainant

COUNSEL FOR APPELLANT: C. Vasundhara Reddy

COUNSEL FOR RESPONDENT: Public Prosecutor (A.P.)

THE COURT MADE THE FOLLOWING:

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

This criminal appeal arises out of the judgment dated 25.01.2012 in Sessions Case No.33 of 2009 on the file of Sessions Judge, Mahila Court, Visakhapatnam (for short, 'the trial Court'). The appellant is the sole accused, convicted for the offence under Section 302 IPC, and sentenced to suffer imprisonment for life and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for one month; and was also convicted for the offence under Section 498A IPC and sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.500/-, in default, to suffer simple imprisonment for one month. Both the sentences of imprisonment were ordered to run concurrently. Aggrieved by the judgment of the trial Court, the appellant-accused is before this Court.

2. Brief facts of the case of the prosecution are that the marriage of the deceased Smt. Gokulapati Lakshmi was performed with the accused in the month of April, 2008. At the time of marriage, the defacto complainant gave an amount of Rs.50,000/- out of the amount of Rs.80,000/- demanded by the accused. The remaining amount of Rs.30,000/- was agreed to be paid during Sravana Masam. After marriage, the deceased joined her husband and led marital life with him. During that period, the accused started harassing the deceased. The accused and the deceased went to her in-laws house where the accused noticed that one Mahesh who was a distant relative of the deceased used to move with her closely. The accused suspected her fidelity and started harassing and also demanding her to bring remaining amount of

Rs.3,000/- from her parents. For Aashadam , the deceased went to her parents house and returned back to her in-laws house and informed the accused that she was carrying third month pregnancy. The accused suspected her pregnancy due to her illicit intimacy with one Mahesh and harassed her mentally and physically and compelled her to terminate her pregnancy. The deceased refused to do so and thereupon the accused put her under fear of divorce and she accepted to get terminated her pregnancy. The accused continued to demand her balance amount of Rs.30,000/- and harassed her. On 28.08.2008, at about 10:00 PM, the accused tried to send the deceased to her parents house, but as there was no conveyance, he stopped her. He decided to do away with her life. At about 10:00 PM, he poured kerosene over her person, and lit fire with a match stick. Then the accused rushed out of the house by closing the doors. On hearing the cries of the deceased who sustained burn injuries, the accused tried to extinguish the flames using bed sheet. He created in the minds of the neighbours that the deceased herself committed suicide. The neighbours shifted her in 108 Ambulance to KGH hospital for treatment. The accused requested the deceased not to reveal his act to anybody and assured her that he will look after her well. He made her to inform police that she sustained burn injuries accidentally while lighting the stove as kerosene sprinkled on her clothes. On receipt of intimation, police rushed to KGH hospital and recorded the statement of the deceased. The police sent requisition to the Chief Metropolitan Magistrate for recording dying declaration of the deceased.

On arrival of the parents and relatives, the deceased narrated the incident to them. Thereupon, the defacto complainant lodged a report

to the police. The police altered the Section of Law from Woman burns to Section 498A IPC and took up investigation. The police visited KGH hospital and examined the deceased and on the strength of her statement, added Section 307 IPC, and sent requisition to the Magistrate for recording her dying declaration. During investigation on 28.08.2008, the investigation officer inspected the scene of offence and drafted the mediators report. He got photographed the scene of offence. Thereafter, the deceased succumbed to burn injuries while undergoing treatment. The police arrested the accused on 31.08.2008 and sent him to judicial custody. The defacto complainant thereafter presented another report on 03.09.2008 to the police basing on which the Section of Law was altered to Section 302 and 498A IPC. The inspector of police recorded the statement of witnesses and held inquest over the dead body of the deceased in the presence of Mandal Executive Magistrate. The dead body was sent for post-mortem examination and the material objects seized from the scene of offence were forwarded to Forensic Science Laboratory, Hyderabad, and on completion of investigation he filed charge sheet against the accused.

The I Additional Chief Metropolitan Magistrate, Visakhapatnam, has taken the case on file under Section 302 and 498 IPC. On appearance of the accused, copies of documents were furnished to him and the case was committed to the Court of Metropolitan Sessions Judge, Visakhapatnam, who in turn made over the case to the trial Court for disposal in accordance with law.

On appearance of the accused, the learned Sessions Judge framed charges under Sections 302 and 498A IPC, read over and explained to

him in Telugu, and the accused pleaded not guilty and claimed to be tried.

The prosecution examined witnesses PWs.1 to 21, marked the documents Exs.P1 to P23, and the material objects MOs.1 to 7. The accused was examined under Section 313 Cr.P.C. and he denied the incriminating evidence appearing against him. On behalf of the defence, no witness was examined, except marking the documents Exs.D1 and D2 which are contradictions in the Statements of PW.2 under Section 161 Cr.P.C.

The trial Court, on considering the oral and documentary evidence, found the accused guilty of the charges framed against him, and accordingly convicted and sentenced him as aforesaid vide the impugned judgment. The appellant aggrieved by the conviction recorded by the trial court for the offences under section 302 and section 498A IPC preferred this appeal.

3. Heard the arguments of Ms.C.Vasundhara Reddy, learned counsel for the appellant, and the learned Public Prosecutor.

4. The learned counsel for appellant argued that the case is based on circumstantial evidence, and the main circumstance is the dying declaration recorded by the learned magistrate, and the statement recorded by the police, and the inconsistency between these two statements. It is further submitted that the recovery of material objects from the scene of offence and the alleged oral dying declarations made to the witnesses PWs.8, 9 and 10 are not proved. According to the defense, this is a case of suicide. The prosecution has failed to prove

that this is a case of homicide. It is also argued that the motive for commission of the offence has not been proved.

5. The learned public prosecutor placing reliance on the judgment of the trial court submitted that the trial court has rightly convicted the accused for the offences, and there are no grounds to interfere with the findings of the trial court. The circumstantial evidence is proved by the witnesses, dying declarations. The version of prosecution is that the accused killed his wife by pouring kerosene and set fire to her having suspected her fidelity and also for not meeting the demand of his dowry. The prosecution relied on the evidence of PW.1 to prove the motive. The motive is consisting of two parts. One, demand for balance of dowry; and the other is suspecting fidelity of the deceased and getting her pregnancy aborted when she was carrying third month pregnancy. In the cross examination, PW.1 states that he did not complain the harassment meted out by the accused to the elders of the village as nobody was present in the village at that time. He denied the suggestion that his daughter died accidentally and that he has filed a false case against the accused in order to extract money from him. Except the above said cross examination, there is not much relevant material to discredit the testimony of the witness PW1. The testimony of the PW.1 in the chief examination prima facie proves the motive of the accused for commission of the offence that he had demanded additional dowry of 30,000 which was not paid at the time of marriage, and also about suspecting the fidelity of his daughter and about his daughter getting aborted her pregnancy at the instance of accused. All these facts have not been disproved in the cross examination of this witness. The only

suggestion made to this witness was that whether this witness had approached the elders of the village complaining them about the harassment meted out by the accused. The suggestion was negated by this witness stating that the elders were not present in the village. This suggestion is not going to advance the case of the defence in any way in the light of the clear and categorical testimony of the father of the deceased about the harassment meted out by the accused by demanding balance amount of dowry of 30,000 and also suspecting the fidelity of the deceased and getting her pregnancy terminated by abortion. Therefore, the motive for commission of this offence is proved beyond reasonable doubt through this witness. PW.1 being the father of the deceased is a competent person to speak about the family affairs of the deceased and her relationship with her husband. Nothing is elicited in his cross examination to disbelieve his evidence.

6. The testimony of PW.1 is corroborated by the testimony of PW.2 and independent witness. PW.2 is the cousin of PW 1. Except that there is a small discrepancy with regard to the amount of balance of dowry there is not much to discredit his evidence. The discrepancy in the amount of dowry does not make the entire version of this witness false in the light of the testimony of PW 1. On the other hand, nothing is elicited in his cross-examination to discredit his testimony, except the fact that there is variance in the demand of balance of dowry amount of 30,000. In fact this witness stated that the demand of dowry amount balance was Rs.40,000. Therefore this is a minor discrepancy in the testimony of this witness. This witness however has supported the

version of PW.1 with regard to the motive for the commission of the offence by the accused which is the harassment for balance of dowry amount. He was also a witness for the inquest. He stated that he was present at the time of conducting inquest of the dead body of the deceased at the KGH Hospital. It is also the testimony of this witness that on the next day of the incident he went to the hospital along with 9 other villagers where the deceased informed them that the accused got aborted her pregnancy and also beat her indiscriminately and she has also stated that he treated with cruelty by demanding dowry amount. Therefore the testimony of PW.1 is corroborated by the testimony of PW.2 with regard to the demand of dowry, and the harassment meted out by the accused, by suspecting the fidelity of the deceased which is the motive for commission of the offence.

7. PW.3 is the daughter of PW.1 who has supported the version of PW.1 in toto with regard to the motive of the accused for commission of the offence. She also stated about the deceased informing him that the accused suspected her fidelity on the ground of her extramarital relationship and he got her pregnancy aborted in the hospital and he also demanded the remaining amount of dowry and he poured kerosene on her and lit fire to her. This witness is also a witness for oral dying declaration made by the deceased. Admittedly the deceased lived for six days after the incident. There was every possibility of the deceased informing about the incident to her father and her sister. Nothing is elicited in the cross examination of this witness to disbelieve her testimony. Therefore the testimony of PW.1 is supported by the

testimony of PW.3 in respect of the motive for the accused to commit the offence and the harassment meted out by him in that connection.

8. The testimony of PW.4 is that of hearsay in nature and therefore it cannot be taken into consideration.

9. PW.5 did not support the version of prosecution being neighbour of the deceased. PW.6 also did not support the version of prosecution. PW.7 is the medical officer who terminated the pregnancy of the deceased on the request of the accused. The testimony of this witness clearly reveals that the accused took her to the hospital and got her pregnancy terminated. The accused having suspected her fidelity only had taken her to the hospital to terminate her pregnancy. This fact has been proved by the testimony of the witnesses PWs.1 and 3.

10. PW.8 is a material witness who has also supported the demand of balance of dowry amount of 30,000 by the accused and about suspecting the fidelity of the deceased and getting her pregnancy terminated by the accused. The deceased had made an oral dying declaration to this witness also at the hospital. Therefore the testimony of PW.1 is corroborated by this witness with regard to the alleged incident of accused having suspected the fidelity of the deceased and also demanding the deceased for balance of dowry amount and pouring kerosene on her and setting fire. Nothing is elicited in his cross examination to disbelieve his testimony with regard to the alleged incident and about the deceased informing him about the incident. No doubt, it is elicited in his cross examination that he stated before police that the accused who is the husband of deceased also sustained burn

injuries when he tried to extinguish the flames over his wife and he tried to extinguish the flames over his wife with the help of a blanket. This fact clearly indicates that the accused was present when the deceased received burn injuries.

11. The accused has also tried to extinguish the fires by covering the blanket would indicate that he had knowledge about the incident. The accused did not come forward to explain the circumstances under which the deceased caught fire. Therefore, under Section 106 of Indian Evidence Act, when the facts which are exclusively within the knowledge of the accused have not been explained, then the presumption goes against him.

12. PW.9 is another witness who supported the version of PW.1 with regard to the demand of the accused for the balance of dowry amount and also accused suspecting the character of the deceased and getting her pregnancy aborted. She is one of the witnesses who had enquired the deceased about the incident in the hospital. Therefore she is one of the witnesses of oral dying declaration. Nothing is elicited in his cross examination to disbelieve his testimony. The testimony of this witness corroborates the testimony of PW.1 and the above witnesses with regard to motive for the commission of offence by the accused and also the accused committing the offence.

13. PW.10 is another witness for oral dying declaration made by the deceased. There is no reason to disbelieve her testimony as nothing is elicited in her cross examination to discredit the testimony of this witness in her chief examination. It is also revealed in the cross-

examination that she stated before the police that the deceased during her lifetime approached her and informed her about the harassment and cruelty meted out by her husband. She has also stated that before the death of the deceased she used to come to her house and narrated the harassment meted out by the accused. In fact she is one of the marriage elders of the marriage of the accused with the deceased. Therefore, the testimony of this witness supports the version of PW.1 with regard to the accused committing this offence.

14. At the outset, this is a case of death of married woman in her matrimonial home. The allegation of the prosecution is that the accused harassed the deceased physically and mentally, suspected her fidelity and got her three-month pregnancy aborted, demanded Rs.30,000/- towards balance dowry and poured kerosene on her and set fire to her, resulting in the death of the deceased.

15. PW.1 is the father of the deceased. PW.2 is the cousin brother of PW.1. PW.3 is the daughter of PW.1. PW.4 is the neighbour of the accused.

16. PW.1 stated about the demand of dowry of Rs.80,000/- by the accused, and as per the understanding, an amount of Rs.50,000/- will be paid at the time of marriage and an amount of Rs.30,000/- will be paid at the time of Sravana Masam. Accordingly, Rs.50,000/- was paid to the accused and the remaining Rs.30,000/- was not paid and there was constant harassment by the accused of the deceased for the remaining dowry of Rs.30,000/- and he suspected the fidelity of the deceased.

17. There is slight variance in the testimony of PW.2 with regard to the amount of dowry demanded. PW.2 is cousin brother of PW.1 According to him, PW.1 gave Rs.60,000/- in their presence for the purpose of marriage and the remaining amount of Rs.40,000/- would be paid after marriage. There is slight variance in the amount of dowry and the payment made by them. This witness denied in his cross examination that the amount of dowry demanded by the accused was Rs.80,000/-, that an amount of Rs.50,000/- shall be paid at the time of marriage and the balance of Rs.30,000/- during Sravana masam. This contradiction is marked as Ex.D1 in the evidence of this witness. There is also another contradiction marked as Ex.D2 in the evidence of this witness, with regard to his giving statement to the police, stating that on 29.08.2008, the deceased poured kerosene on her body and lit fire to herself at her in-laws' house. In fact, this witness has denied his earlier version under Section 161 Cr.P.C statement, recorded by police. Exs.D1 and D2 are the contradictions marked in the evidence of PW.2. These contradictions indicate that the witness is not speaking truth.

18. The testimony of PW.3 corroborates the testimony of PW.1 with regard to the amount of demand of dowry and the amount of dowry paid to the accused and the demand for balance amount of Rs.30,000/-.

19. The testimony of PW.4 reveals that she was neighbour of the accused. She heard cries from the house of accused on the fateful night. She along with the neighbours went there and in the meanwhile many people gathered there and ambulance came and shifted the deceased to KGH hospital, Visakhapatnam. She saw the deceased with burn injuries.

She came to know that the deceased poured kerosene on herself and lit fire as a result of that she sustained burn injuries. The testimony of this witness reveals that the incident of receiving burn injuries has occurred in the house of the accused. Thereafter, on hearing cries of the deceased, PW.4 and the neighbours went there and thereafter the ambulance came and the deceased was shifted to hospital.

20. The prosecution tried to establish the motive for commission of the offence through the witnesses PWs.1 and 3. The motive for commission of this offence was alleged to be the demand for dowry and suspicion on the fidelity of the deceased.

21. PWs.1 and 2, being the father and the father's brother of deceased have stated about the demand for dowry by the accused and the accused harassing the deceased. The inconsistency in the amount of dowry spoken by PWs.1 and 2 is not a material discrepancy. The testimony of PW.1 is corroborated by the testimony of PW.3 in respect of the dowry amount.

22. At this juncture, it is appropriate to refer to the other evidence available on record to look into the other circumstances of the case. In fact, PW.5 is also the neighbour of the deceased. She heard the cries of deceased on the fateful day between 10:30 and 11:00 PM from the house of accused. She saw some smoke in and around the house of the accused. Though this witness did not support the case of prosecution and was declared hostile as she denied her statement made under Section 161 Cr.P.C., her testimony to the effect that the incident occurred at that time is proved.

23. PW.6 is another neighbour of the deceased, who did not support the version of prosecution.

24. PW.7 deposed to the fact that she was running Krishna Maternity Home in Railway New Colony, Visakhapatnam, that on 25.08.2008, G. Raju brought G. Lakshmi to hospital and requested her to terminate the pregnancy of the deceased and that accordingly the pregnancy of the deceased was terminated and she was discharged. Nothing was elicited in the cross examination of PW-7 to disbelieve her testimony.

25. It is the case of the prosecution that the accused got terminated the pregnancy of the deceased having suspected her fidelity. The testimony of PWs.1 and 3 reveal that the deceased was being suspected by the accused. The testimony of PW.7 reveals that the pregnancy of the deceased was got terminated by the accused in the hospital. Therefore, there is some force in the contention raised by the prosecution that the accused suspected the fidelity of the deceased and got terminated her pregnancy and that there was also a demand for dowry by the accused. As far as the circumstances with regard to the demand of dowry and the suspicion over the fidelity of the deceased are concerned, they are proved by the testimony of the witnesses PWs.1, 3 and 7.

26. The testimony of PW.8 reveals that when the deceased was in her third month pregnancy, the accused got the pregnancy terminated, that on the date of incident, she heard the cries outside the house of the deceased between 10.00 PM and 11.00 PM due to burns, that she went there and found several people gathered there and in the meanwhile, and

that 108 ambulance came and the deceased was shifted to KGH hospital. She further deposed that on enquiry, somebody informed her that the accused doused the deceased with kerosene and lit fire to her body. As far as this statement is concerned, it is a hearsay evidence and, therefore, it cannot be accepted. PW-8 also supported the version of PWs.1 and 3 with regard to the demand for dowry of Rs.30,000/- by the accused and also the accused suspecting the fidelity of the deceased and getting her pregnancy terminated in the hospital. Her testimony further reveals that when she went to KGH hospital, on her enquiry, the deceased informed her that as she failed to give the remaining amount of dowry of Rs.30,000/-, the accused, suspecting her fidelity on the ground that she was leading extramarital life, got her pregnancy terminated. As far as the evidence of PW.8 is concerned, she was the witness who heard the cries of the deceased and went to the house of the deceased. Thereafter, when she went to KGH hospital, the deceased informed her about the incident as stated above. Therefore, according to the prosecution, the testimony of this witness has to be considered as an oral dying declaration.

27. PW.9 is the neighbour of the accused. She stated that on the date of incident at 11 PM, there was power cut, that at that time she heard cries from the house of accused, that she went there and found several people gathered and that in the meanwhile 108 ambulance came and shifted the deceased to KGH hospital.

28. PWs.8, 9 and 10 deposed on almost similar facts that the deceased informed them about the incident of the accused harassing her for

remaining dowry of Rs.30,000/-, suspecting her fidelity and getting her pregnancy terminated. The oral dying declaration made by the deceased to PWs.8 and 9 can be believed or not has to be decided in this appeal.

29. PW.11 is the inquest panch who deposed to the fact of cause of death of the deceased.

30. PW.12 is the learned II Additional Senior Civil Judge, who recorded the dying declaration of the deceased. Ex.P8 is the intimation given by the police. Ex.P9 is the dying declaration.

31. PW.13 is the photographer of police department. Ex.P10 is the 12 photographs taken by him along with negatives.

32. PW.14 is the panch witness for the scene of offence panchanama conducted by the police. His testimony reveals that the police seized half burnt match sticks, half burnt cotton piece, a cloth stained with kerosene, ash, glass pieces, 2 kerosene plastic tins, one match box along with half burnt hair, under Ex.P11. MOs.1 to 7 are the said material objects seized from the scene of offence.

33. The prosecution relied on this witness to prove that this is a case of accused pouring kerosene on the deceased and setting fire to her having suspected her fidelity and got aborted her pregnancy having not satisfied with the dowry. This is one of the circumstances.

34. PW.15 is the Mandal Executive Magistrate, Visakhapatnam Urban, during the relevant period. He received requisition from the

police and conducted inquest of the dead body of the deceased on 04.09.2008 under Ex.P7.

35. PW.16 is the panch witness for observation of scene of offence, who deposed that Ex.P11 panchanama was conducted and the confessional statement of accused was recorded under Ex.P-12.

36. PW.17 is the Assistant Professor of Forensic Medicine. He received the requisition from M.E.M. Visakhapatnam Urban on 04.09.2008 and conducted the Postmortem examination over the dead body of the deceased and opined the cause of death was due to “Shock due to infected burns”, and issued Ex.P14-postmortem certificate.

37. PWs.18, 19 and 20 are the investigation officers, who conducted investigation in different spells during different periods, and according to them the accused committed the offence of setting fire to his wife by pouring kerosene on her, having suspected her fidelity and dissatisfied with the non-payment of dowry of Rs.30,000/-.

38. PW.21 is the Assistant Professor, KGH Visakhapatnam, who was present at the time of recording of the statement of deceased by the learned Magistrate. The medical officer has stated that the deceased was conscious, coherent and in a fit state of mind to give her declaration. Ex.P23 is the endorsement made by him on Ex.P18.

39. The case is based on circumstantial evidence. The circumstances are:

- (i) motive for commission of the offence that the accused suspected fidelity of the deceased and also demanded the deceased for the remaining balance of Rs.30,000/-;
- (ii) he got aborted the pregnancy of the deceased when she was in third month pregnancy;
- (iii) the statement recorded by the police and the statement recorded by the learned Magistrate;
- (iv) the material objects seized from the scene of offence; and
- (v) the oral dying declarations given by the deceased to the witnesses PWs.8 and 9.

40. On a careful analysis of the evidence, it is revealed that this is a case of death due to burns. The case of defence is that this is a case of suicide. As per the prosecution version, it is a case of homicide. PW.17- Assistant Professor, Forensic Medicine, AMC, Visakhapatnam, conducted autopsy over the body and opined that the cause of death was due to shock due to infected burns. The incident has occurred on 28.08.2008 and the deceased died on 03.09.2008. She survived for about six days after the incident. Therefore, there is every possibility of the deceased informing the incident to witnesses PWs.8 and 9, who went to the hospital to see her. The testimony of the witnesses PWs.8 and 9 can be considered as oral dying declarations.

41. In the light of the oral dying declarations of the deceased made to PWs.8 and 9, it can be concluded that this is a case of homicide. The accused had poured kerosene on the deceased and set fire to her having suspected her fidelity. There is another reason that he got frustrated that she did not bring the balance dowry of Rs.30,000/-. The contradictions marked in the evidence of PW.2 with regard to the difference in amount

of dowry and the incident of deceased committing suicide need not be taken into consideration in view of the ample evidence available on record against the accused. There are two versions present before the Court. One version is in favour of the accused, that there are contradictions Ex.D1 and Ex.D2 in the testimony of PW.2 and the other is the dying declaration recorded by the learned Magistrate. In the dying declaration recorded by the learned Magistrate, the deponent has stated that it is a case of accident. The contents of dying declaration are important at this juncture for consideration. The dying declaration was recorded on 29.08.2008 at 1:16 AM, under Ex.P9. It reveals as under:

How you received injuries to your body?

Just now when I was at my house, near stove my dress was got fired and as a result my body received burn injuries. No one acted against me. Call my husband. Nothing is to say.

42. The defence relied on this statement and sought for benefit of doubt for the accused.

43. Ex.P18 is the statement of the deceased recorded by the police on 29.08.2008. Basing on the statement of the deceased, the police registered the FIR.

44. The incident occurred on 28.08.2008 at 11:00 PM and the information was received by PW.1 on 29.08.2008 at 5:00 AM and he lodged complaint on the same day at 8:00 AM. Ex.P2 is the statement recorded by the police wherein the same witness PW.1 stated that his son-in-law suspected the fidelity of his daughter and harassed her for non-payment of Rs.30,000/- dowry amount and poured kerosene on the

body of his daughter and lit fire to her. The time of recording Ex.P2 is not mentioned anywhere in the statement.

45. Ex.P3 is the statement of paternal uncle PW.2. Exs.P4, P5 and P6 are the Section 161 Cr.P.C. statements of PW3, PW5 and PW6, respectively. Ex.P7 is the inquest panchanama wherein the cause of death was stated to be the burn injuries. Ex.P8 is the requisition given by the police to the Magistrate at 8:00 AM on 29.08.2008 for recording dying declaration. Ex.P9 is the dying declaration recorded by the Magistrate. Ex.P15 is the FIR registered on 29.08.2008 at 02:00 AM.

46. The incident occurred in the house of accused at about 11:00 PM on 28.08.2008. The neighbours came there and the deceased was shifted to KGH hospital in 108 ambulance. The hospital authorities gave intimation to the learned Magistrate to record the statement of the deceased. Accordingly, the learned Magistrate recorded the dying declaration of the deceased at 1:16 AM on 29.08.2008. In the meanwhile, PW.1 (the father of the deceased) received the information at 5:00 AM through the neighbours of the accused, that his daughter was admitted in Visakhapatnam hospital. On that, he went to KGH hospital and, on enquiry, his daughter informed him that the accused poured kerosene and set fire to her having suspected her fidelity and also for non-payment of dowry amount. Ex.P15 is the complaint registered by the police at 02:00 AM that the deceased suffered burn injuries on her body when her saree accidentally caught fire while she was preparing hot water on kerosene stove in her house.

47. Ex.P16 is the alteration memo filed by the police before the Magistrate stating that the police originally registered FIR on the statement of the deceased and that thereafter, the police received a report from PW.1 at 8:00 AM on 29.08.2008 and altered the Section of Law from Woman burns to Section 498A IPC and Sections 3 and 4 of Dowry Prohibition Act. It is further stated in the memo that after the statement of the deceased was recorded by the learned Magistrate, the police also examined the deceased and recorded her statement in the presence of Duty doctor wherein she stated that her husband subjected her to cruelty and suspected her character and also demanded her to bring dowry and that on 28.08.2008 at about 22:30 hours, her husband poured kerosene on her and set fire with an intention to kill her. Basing on the statement of the deceased, the provision of Law was altered to Section 307 IPC.

48. The deceased was in the hospital for seven days and succumbed to injuries. The witnesses PWs.8 and 9 and others were having an opportunity to meet the deceased. The deceased spoke to her father PW.1 and PWs.8 and 9, the neighbours, while she was in the hospital. Therefore, there is every possibility of the deceased informing them about the incident. It is also pertinent to note that in the dying declaration, it was clearly mentioned by the learned Magistrate that the accused was present with the deceased, sitting by her side and counseling her. The very case of the prosecution is that the accused had tutored the deceased before recording of the dying declaration by the learned Magistrate. It was evident from the contents of the dying declaration

recorded by the learned Magistrate. Therefore, there is every possibility of the accused counseling the deceased to narrate the incident as an accident that has happened in his house.

49. The oral testimony of the witnesses PWs.1 and 3 and the motive for commission of offence are very strong circumstances against the accused. The accused getting the pregnancy of the deceased aborted, when she was in her third month pregnancy, is also proved by the witness PW.7 who aborted her pregnancy. There was no cross examination on this aspect by the defence counsel. Therefore, the only point raised by the defence was that in the Ex.P-9-dying declaration the deceased stated that the incident occurred due to burn injuries accidentally.

50. If the evidence and the surrounding circumstances for the deceased to give statement to the Magistrate are taken into consideration, they clearly reveal that this is a case of tutoring made by the accused before recording the dying declaration, to narrate the incident as an accident. Therefore, the contents of the Ex.P-9-dying declaration cannot be taken into consideration as reflecting true facts. The fact of the accused getting the pregnancy of the deceased terminated during third month pregnancy is proved beyond reasonable doubt in the light of evidence of PW.7. The deceased who was carrying third month pregnancy got aborted at the instance of the accused is a strong circumstance against him. The possibility of the accused pouring kerosene and setting fire to her and thereafter tutoring her to give wrong statement with regard to the cause of the incident that she caught fire

accidentally, is proved by the testimony of witnesses PW.1, PW.3, PW.8 and PW.9.

51. Learned counsel for the accused relied on the judgment reported in the case of **Dandu Lakshmi Reddy v. State of A.P.**¹, and **Maniben v. State of Gujarat**², and submitted that presumption does not arise due to inherent weakness in a dying declaration.

52. In **Dandu Lakshmi Reddy** (1 supra), the Supreme Court clearly held that there is a material contradiction between the two dying declarations pertaining to the context in which the deceased caught fire and took into consideration the evidence of neighbours that two of the cousins of the deceased were brainwashing her at the hospital and that the evidence of the parents of the deceased that the deceased told them that she caught fire while cooking milk and held that the mental soundness of the deceased was found doubtful and hence the dying declaration was not reliable.

53. Ex.P18 is the Statement of the deceased recorded by the Sub-Inspector, IV Town P.S., which reads as under:

“ Statement of Gokulapati Lakshmi, W/o.Raju, aged 18 years, Rajaka by caste, R/D.No.44-45-40/422, Sonia Gandhi Nagar, Thatichetlapalem, Block No.B.G.F11.

My parents are native of Lakkavaram Village, Chodavaram Mandal, Visakhapatnam District. I studied upto X class. I am 3rd daughter to my parents. My marriage was celebrated four months back with one Gokulapati Raju, who is a resident of Rajaka Veedhi, Thatichetla Palem. My parents gave an amount of Rs.80,000/- (Rupees eighty thousand only) towards dowry to my husband. At the time of marriage my parents presented saare, 1 tola bracelet and 1 tola of neck chain. Out of total dowry amount of Rs.80,000/- they kept due amount of Rs.30,000/-. In lieu of balance amount of Rs.30,000/- they gave a vacant site. I am 3rd month pregnant. My

¹ (1999) 7 Supreme Court Cases 69

² (2009) 8 Supreme Court Cases 796

husband stated that my husband is not responsible for my pregnancy and he used to question me through whom I got pregnancy. I used to tell that I am not such type of character. For that he used to quarrel with me every day and asked me to go to my parents house and also advised me to got abort my pregnancy. I am not interested. Even though my husband taken me to Kamala Hospital and got aborted my pregnancy. After I came to house as I am not feeling well and when my father came to see me, I narrated the above fact. On 28.8.2008 at 10.30 p.m. when she was present at house my husband came to me and told me to go to my parents house and raised a dispute and picked up a kerosene tin from my house and poured kerosene from that tin on my boxy and picked up a match box from the top of window and lit fire to my body. On that my entire body gutted fire and while burning I raised cries immediately my flames put off and shifted me to hospital. I am undergoing treatment in KGH. When I narrated all the facts they reduced into writing. When read over to me I heard the same. All the facts noted correctly. As my hands received burns I am unable to sign. I affixed my left great toe impression.

Left great toe impression of G. Lakshmi

Patient is conscious and coherent during the recording of this statement.

29.8.08.

Recorded the above statement red over to the deponent and was admitted by her to be correct.

Sd/- x x x, 29.8.08
SI, IV Town PS, Vsp. City.

29.8.2008
14.00 Hrs

Basing on the above statement the Section of law 307 IPC is added to Section 498 (A) IPC and Sections 3 & 4 of DP Act in Cr.No.444/2008 of IV Town P.S., Visakhapatnam City.

Sd/- x x x 29.8.08
S.I., IV town P.S., Vsp.City.

54. In the instant case, if the evidence of the learned Magistrate is read carefully, it reveals that the husband of the deceased was counseling the deceased before recording of the dying declaration. It is an important factor that is to be taken into consideration that prior to the recording of dying declaration, the husband of the deceased was

counseling her. Therefore, there was tutoring by the husband of the deceased to narrate the incident as if it was an accident while she was near the stove. Being under the influence of counseling, the deceased stated that she caught fire accidentally while she was near the stove. Except those few lines, she did not utter a single word about the other circumstances. The evidence of the witnesses PWs.1 and 3, who were the father and brother, and that of PWs.8 and 9, who were the neighbours, clearly reveal that the deceased informed them that the accused poured kerosene on her and burnt her having suspected her fidelity and for dowry of Rs.30,000/- and therefore the same is trustworthy. There was no need for them to falsely implicate the accused in this case.

55. The Dying Declaration Ex.P9 was recorded on the intervening night of 28/29.08.2008 at 1:16 AM by the learned Magistrate. The investigation officer has recorded the statement of the declarant on 29.08.2008 afternoon at 2:00 PM which is Ex.P18. Thereafter, the declarant died on 03.09.2008. The deceased was alive for about six days after recording her two statements. The relatives of the deceased and the villagers approached her and the declarant has informed them orally about the incident against the accused. In the light of the testimony of relatives and villagers, the statement recorded by the police is reliable and trustworthy. The trial Court has rightly believed the statement recorded by the police in the light of the evidence of the witnesses in respect of the oral dying declarations made by the deceased to her

relatives and convicted the accused. Therefore, the findings of the trial Court do not require any interference.

56. In the case of **State of Punjab v. Parveen Kumar**³, the Supreme Court enumerated the test for relying on a dying declaration in a case where there are more than one dying declaration. The Apex Court held that the court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declarations, and if there be any other reliable evidence on record, the same could be considered as corroborative evidence to test the truthfulness of the dying declarations.

57. In the case of **Sudhakar v. State of Madhya Pradesh**⁴, the while considering the issue of multiple, varying or contradictory dying declarations and the issue was as to which one amongst them to be believed, the Supreme Court enumerated the factors which should guide the exercise of judicial discretion by the Courts in such matters. In **Sudhakar** (4 supra), the wife was burnt to death by the accused on getting suspicious about her character. The wife gave three dying declarations. However, the conviction recorded on the basis of second and third dying declarations was upheld. The Supreme Court, in paragraph 21 of **Sudhakar** (4 supra) observed as under:

“21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying

³ (2005) 9 SCC 769

⁴ (2012) 7 SCC 569

declarations should be believed by the Court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the Court in such matters."

58. There are catena of decisions of Hon' ble Supreme Court in case of multiple dying declarations to the effect that the dying declaration which is corroborated by evidence trustworthy, the same can be taken into consideration for the purpose of arriving at a conclusion with regard to proof of incident. In the instant case, there are two dying declarations. In view of the foregoing reasons, we are of the considered opinion that the dying declaration which is the statement recorded by the police, and the oral dying declarations made by the deceased to PWs.1, 3, 8 and 9 are trustworthy and the dying declaration recorded by the Magistrate, being tutored, it will not come in aid of the accused to raise a doubt about the version of prosecution.

59. At this juncture, the learned counsel for the appellant made an alternative submission that the conviction recorded against the accused under Section 302 IPC may be converted to Section 304 IPC in view of attracting exception four under Section 300 of IPC.

60. In view of the facts and circumstances of the case, we are not inclined to consider the alternative plea of conversion of sentence from

Section 302 IPC to Section 304 IPC, by invoking exception four of Section 300 IPC.

61. Keeping in view the ratio laid down in the **Dandu Lakshmi Reddy** (1 supra), **Parveen Kumar** (3 supra) and **Sudhakar** (4 supra), and the facts and circumstances of the case, we are of the considered view that this is a case of death caused by the husband of the deceased by pouring kerosene on her and setting fire to her, having suspected her fidelity and for not meeting his demand for balance dowry of Rs.30,000/- balance dowry. The learned Sessions Judge has properly appreciated the evidence on record and exercised judicial discretion and arrived at a just conclusion in finding the accused guilty for the offence under Section 302 IPC. Therefore, we are not inclined to interfere with the findings of the trial Court in holding the accused guilty of the offences punishable under Sections 302 and 498A IPC, and convicting and sentencing him for the said offences.

62. In the result, the criminal appeal is dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

03.10.2018
KSM/Msr

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

CRIMINAL APPEAL No.116 of 2012

(P.D. Judgment prepared by
Hon'ble Sri Justice Gudiseva Shyam Prasad)



03.10.2018

KSM