

THE HON' BLE SRI JUSTICE C. V. NAGARJUNA REDDY

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No. 1039 of 2011

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

This criminal appeal arises out of the judgment dated 28.03.2011 in Sessions Case No.336 of 2010, on the file of Family Court cum Additional Sessions Court, at Mahabubnagar, whereby the appellant/accused No.1 was convicted for the offence punishable under Section 302 IPC, and sentenced to suffer imprisonment for life, and to pay a fine of Rs.500/- and, in default, to undergo simple imprisonment for a period of three months; convicted under Section 498A IPC, and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.500/-; and in default to undergo imprisonment for a period of three months; and convicted under Section 4 of Dowry Prohibition Act, and sentenced to undergo rigorous imprisonment for a period of six months, and to pay a fine of Rs.500, and in default of payment of fine, to undergo simple imprisonment for a period of three months.

Brief facts of the case of prosecution are as follows:

A-1 was the mother-in-law and A-2 was the husband of one K. Sumathi (hereinafter referred to as "the deceased"). The

marriage of the deceased was performed with A2 on 16.05.2009 at Manganur village. That the parents of the deceased gave dowry of Rs.1,00,000/- on the demand of A-1 and A-2 at the time of marriage, and that the accused were not satisfied with that amount and demanded her parents to give 15 sheep or Rs.30,000/-, that the parents of the deceased agreed to give the same after one year if the couple is blessed with a child, but the accused could not wait till that time and started harassing the deceased to go to her parents' house and bring 15 sheep or Rs.30,000/- from her parents, and that the deceased used to go to her parents to inform about the demand of A-1 and A-2, but however, as her parents could not fulfill the demand of the accused, she used to return to her in-laws house. That the accused started harassing the deceased by torturing her physically and mentally for her failure to bring either sheep or cash, that as she informed her parents that she could not bear the harassment or torture, about 20 days prior to the incident, her parents came to the house of the accused and took her with them on the pretext of performing some festival and that thereafter, the parents of the deceased, PW.1 and PW.2, did not send her back to her in-laws' house. That accused No.2 came to Lingasanipalli village to the house of the parents of the deceased and asked as to why they did not send the deceased to their house, that the parents of the deceased

refused to send her and asked them to bring some elders from Manganur village and stated that after conducting Panchayat, they would send their daughter to the house of accused. That accused No.2 beat the deceased with hands for not coming back to their house, that after a few days, the accused again went to Lingasanipalli village, along with caste elders - Kuruva Nagaiah, Kuruva Venkataiah, Kuruva Parashuramulu and Golla Venkatesh (LW.6), that the said caste elders conducted a Panchayat and after hearing both the sides, they found fault with A-1 and A-2 and they advised the accused not to demand any sheep or cash. That the accused have agreed to the advice of elders and promised that they would not demand any amount from the parents of the deceased and that on the advise of the caste elders the parents of the deceased dropped her in her in-laws' house in Manganur village. That accused No.1 did not keep quiet and again started torturing the deceased physically and mentally to bring 15 sheep or cash from her parents and that the deceased used to bear the torture and harassment silently.

That on 01.05.2010, at about 6:00 PM, when accused No.2 was away from the house and the deceased was alone in the house, accused No.1 poured kerosene on the deceased, lit match-stick and set her ablaze, as a result of which she sustained 92% to 95% burn injuries and she was shifted to Area Hospital, Nagarkurnool, in 108 Ambulance. PW.14-S.I. of Police, recorded

the statement of the deceased and registered a case in Crime No.29 of 2010 for the offences punishable under Sections 498-A and 307 IPC. He also recorded the statements of PW-1 to PW-6, visited the scene of offence, drafted scene of offence panchanama and sketch in presence of LW.10 and PW-10, and seized the empty kerosene oil plastic can and match-box under cover of panchanama from the scene of offence. PW.9-learned Judicial Magistrate of First Class, Nagarkurnool, has recorded the dying declaration of the deceased.

The deceased succumbed to injuries while undergoing treatment in the night on 08.05.2010. The death intimation was received by PW.14 on 09.05.2010 at 10:00 hrs, whereupon he altered the provisions of Law from Sections 498-A and 307 IPC to Sections 498-A, 302 and 304-B IPC, and sent the alteration memo to all the concerned. PW.12-Tahsildar held inquest panchanama in the presence of PW-11 and LW-13 and recorded the statements of PWs.1, 2, 7 and 8 and sent the dead body of the deceased for post mortem examination.

PW.13, the Civil Assistant Surgeon, Area Hospital, Nagarkurnool, conducted post mortem examination over the dead body of the deceased and opined that the cause of death of the deceased was "SEPTISEMIC AND HYPOVOLEMIC SHOCK DUE TO BURNS" and issued Ex.P-9-report.

PW-15 – the Sub-Divisional Police Officer, Nagarkurnool, arrested A-1 and A-2 on 18.05.2010 and 20.05.2010, respectively, and remanded them to judicial custody and filed charge sheet against them for the offence punishable under Section 498A, 302 IPC and Section 4 of the Dowry Prohibition Act.

Basing on the evidence on record, the trial Court framed charges under Sections 498-A, 302 IPC and Section 4 of the Dowry Prohibition Act, against the accused and read over and explained the charges to them. The accused pleaded not guilty and claimed to be tried.

On behalf of the prosecution, PWs.1 to 15 were examined, and Exs.P1 to P13, and MOs.1 and 2 were marked. No oral evidence was adduced on behalf of the accused, except marking Exs.D1 and D2. The trial Court, on considering the oral and documentary evidence, found accused No.1 (mother in law) guilty of the charges under Sections 498A, 302 IPC and Section 4 of the Dowry Prohibition Act, and accordingly convicted and sentenced her as aforestated. Accused No.2 (husband) was not found guilty of any charge and he was accordingly acquitted. Aggrieved by the conviction and sentence recorded by the trial Court, the appellant/accused No.1 preferred this appeal.

Learned counsel for the appellant raised the following contentions:

(i) PW.4, an independent witness, has stated that the deceased informed her orally that she poured kerosene and set fire to herself, but the said fact has not been considered by the trial Court. He has submitted that in the light of the testimony of PW.4, the dying declarations lose their significance.

(ii) The deceased was alive for eight days after the incident and the dying declarations are the result of tutoring of the deceased by her parents and relatives and as such they are not reliable.

(iii) PW.14, the S.I. of Police who received the intimation from the Hospital at 8:00 PM about the admission of the deceased with burn injuries went to the hospital and spoke to her. He has sent a requisition to PW-9-Magistrate at 9:40 PM who recorded the statement of the deceased at 10.05 P.M. under Ex.P-5. PW-14 again has recorded the statement of the deceased at 12:30 AM. PW.14 has recorded the statements of the deceased under Ex.P10 and Ex.P13 and suppressed the original statement recorded by him at the earliest point of time as it is unfavourable to the prosecution.

(iv) PW.3, 5 and 6 did not support the version of the prosecution and therefore, the dying declarations cannot be relied upon in the absence of corroboration by material witnesses.

(v) In any event, as the deceased died eight days after the incident due to septicemia, the appellant is entitled for conversion of the offence into the one under Section 304-B IPC.

Learned Public Prosecutor has submitted that the police recorded two statements of the deceased, and the learned Magistrate recorded one dying declaration of the deceased and as there is no inconsistency between these statements, they are sufficient to convict the accused. He submitted that the trial Court has rightly appreciated the evidence and convicted the appellant/ A-1 and that as there was no incriminating evidence against A-2, he was acquitted.

This is a case of death of a married woman within one year of her marriage, due to harassment by her mother-in-law/A1. The deceased was aged about 20 years by the date of incident. The entire case of prosecution rests on the circumstantial evidence and the dying declaration recorded by PW-9, the learned Magistrate, and the statements Ex.P-10 and Ex.P-13 recorded by PW-14-S. I. of Police.

PW.1, the father of the deceased, testified about the marriage of the deceased with A-2, the payment of dowry of Rs.1,00,000/- to accused No.2, and also the payment of other customary articles at the time of marriage of the deceased. His testimony further reveals that A-1 and A-2 used to harass the deceased as the dowry paid was not sufficient. In that

connection, quarrels took place and a panchayat was held before the village elders and PW-1 persuaded his daughter to go back to her husband's house. PW-1 further deposed that on the eve of Ugadi, they brought the deceased to their house, and later A-2 came to their house for the purpose of taking back the deceased. The parents of the deceased told A-2 that they are not in a position to give any more dowry and requested A-2 to treat his daughter with love and affection. According to PW.1, the elders of the panchayat advised the accused not to demand any additional dowry from him as he expressed his incapacity to pay any more dowry and that three days after the panchayat, one of the elders, LW.6, rang up to him and informed that A-1 poured kerosene on the deceased and set fire to her. That PW-1 and PW-2, the parents of the deceased, rushed to the Government Hospital, Nagarkurnool, and found their daughter, the deceased, with burn injuries, and that when PW-1 talked with his daughter/deceased, she told him that A-1 poured Kerosene and set fire to her.

The sum and substance of the evidence of PW-1 is that there was constant harassment of the deceased by A-1 for additional dowry and as the demand was not met, she poured kerosene on the deceased and killed her. The testimony of the deceased reveals that she was conscious and coherent and she informed her father immediately after recording of the dying

declaration by the Magistrate that A-1 poured kerosene on her and set fire to her. It is also evident that at the time the Magistrate recorded the dying declaration, none others were present near the deceased.

The testimony of the learned Magistrate who was examined as PW.9 reveals that she recorded the dying declaration of the deceased on 01.05.2010 at 10:05 PM on receipt of requisition from PW-14-S.I. of Police, Bijinapalli police station, that the duty doctor Dr. R. Kranthi Kiran was present in the hospital and identified the injured and that after putting preliminary questions to the deceased, she recorded the statement. According to the learned Magistrate, when she questioned the deceased as to how she sustained burn injuries, she stated that her mother-in-law Sayamma/A-1 poured kerosene on her and set fire to her on that day in the evening hours. On further questioning by the Magistrate as to why her mother-in-law did so, the deceased stated that as the dowry brought by her was insufficient, her mother-in-law/A-1 did so. To another question as to whether her husband – Anjaneyulu/A-2 was present at that time, the deceased stated that her husband/A-2 was not present when the incident took place and that he went out for rearing the sheep. When a specific question was put to her as to whether there was any other person responsible for causing injuries to her, she stated that her mother-in-law/A-1 alone

was responsible. Nothing is elicited by the defence worth mentioning in the cross examination of the learned Magistrate to discredit her testimony with regard to the dying declaration of the deceased.

In the light of all the precautions taken for recording dying declaration - Ex.P-5 by PW-9, viz., endorsement from the medical officer with regard to the fit state of mind of the deceased to give statement, and after recording satisfaction about her condition to give declaration, we are of the opinion that the dying declaration recorded by the learned Magistrate does not suffer from any infirmity.

There are three statements of the deceased before the Court. The testimony of PW.14-S.I. of Police reveals that he spoke to the deceased on reaching the hospital orally and sent requisition to PW-9-Magistrate to record the statement of the deceased. Ex.P-5 is the dying declaration of the deceased recorded by PW-9. A perusal of Ex.P10 reveals that PW-14 recorded the same on 01.05.2010 in the Burns Ward, Area Hospital, Nagarkurnool, and obtained the Right Big Toe impression of the deceased after obtaining the endorsement of the Medical Officer. Thereafter, again PW.14 recorded the statement of the deceased under Ex.P13 under Section 161 Cr.P.C. at a later point of time during the investigation. The contention of the learned counsel for the appellant is that

there was an earlier statement recorded by PW.14 even before the learned Magistrate recording the dying declaration of the deceased wherein the deceased stated that she poured kerosene and set fire to herself as she fell sick and that the same has been suppressed by the prosecution. The testimony of PW.14 that he enquired the deceased orally when he reached the hospital does not mean that there was a statement recorded at the earliest point of time which is suppressed by the investigation officer as it was against the version of prosecution. The said contention cannot be accepted in view of the fact that all the statements Ex.P5, Ex.P10 and Ex.P13 reflect the cause of death of the deceased and the surrounding circumstances i.e., harassment for dowry. There is no inconsistency with regard to cause of death of the deceased in all the three dying declarations.

The contention that the deceased might have been tutored to implicate the appellant is demolished by the testimony of PW.9 - the learned Magistrate, who recorded the dying declaration of the deceased under Ex.P5 wherein to the question as to who was responsible for her wounds, the deceased categorically answered by stating "my mother in law alone is responsible". To the question "how you sustained the burn injuries", the deceased answered: "Today evening my mother-in-law poured kerosene and thrown match stick on me". To the

specific question put whether she was telling the truth or on anybody forced her to make the statement, the deceased stated that she was telling the real fact. Ex.P-5 – dying declaration of the deceased cannot be considered as tutored for the reason that the deceased only stated that her mother-in-law/A-1 alone was responsible for her injuries and she did not speak anything against her husband. The version of prosecution is that her mother-in-law/A-1 was constantly harassing the deceased for additional dowry, that she was not allowing the couple to live happily and was asking A-2/husband to go for grazing the cattle as a shepherd. Therefore, the circumstances of the case clearly reveal that there is no tutoring of the deceased to make the statement against A-1.

Learned counsel for appellant submits that PW.4 stated that the deceased poured kerosene and set fire to herself. It is argued that the prosecution has not declared this witness as hostile, and the defence counsel elicited in the cross examination that when PW.4 and others enquired the deceased on the way to the hospital, she stated that as she was not feeling well, she poured kerosene and set fire to herself and therefore the appellant is entitled for acquittal.

It is the duty of the prosecution to declare a witness hostile if he does not supporting the version of prosecution. If really the statement of PW.4 was true that the deceased

poured kerosene on herself and set fire to herself, the deceased would not have stated that it is the appellant who is responsible for her burn injuries in Ex.P-5-dying declaration. Therefore, the testimony of PW.4 does not inspire confidence in the light of dying declaration Ex.P5 and the statements of deceased Exs.P-10 and P-13 recorded by Investigation officer pointing to the guilt of the appellant.

The testimony of PW.5 in this connection reveals that he is a resident of Manganur village, and he knows both the parties, that three or four days prior to the incident, himself and Parashuramulu, Bala Nagaiah, PW.4 went to the parents' house of deceased, that accused No.2 complained to them that the deceased was not coming to their house and that when they enquired the deceased, she told that accused No.2/her husband was a Shepherd and therefore she was not willing to join his company. PW-5 further deposed that they tried to convince the deceased to lead marital life with accused No.2, as she married him knowing that he was a shepherd, that then the father of the deceased assured them that she would go to her in-laws' house and that the deceased stated that in case if she is forced to go to the house of accused No.2, they have to see her dead body. That at 6:00 PM, the villagers stated that the deceased sustained burn injuries, that PW.5 rushed to the house of accused No.2, and after her arrival the deceased was sent to

hospital within 15 minutes in the ambulance, that she accompanied the deceased in the ambulance and that when she asked the deceased, the deceased stated that she set fire to herself due to pain. As a matter of fact, the prosecution has declared PW-5 as hostile witness.

The evidence of PW-5 also cannot be believed in view of the dying declaration of the deceased. It is not the case of either prosecution or defence that the deceased was suffering from any ailment or any pain for her to commit suicide by setting fire to herself. The circumstances in this case clearly reveal that this is a case of dowry harassment, which resulted in killing the deceased by accused No.1 by pouring the kerosene and setting fire to her.

The learned Counsel for the appellant submitted that the deceased lived for eight days after the incident, that the cause of death was not directly because of pouring of kerosene and setting fire to her, but it was due to "septisimia" developed after sustaining burn injuries and therefore, the offence may be treated as the one under Section 304 Part-B IPC. The appellant is not entitled for conversion of the offence to the one under Section 304 Part-B IPC as the deceased died to due to 95% of burn injuries sustained by her due to pouring of kerosene and setting fire to her by the appellant/ A-1.

We are of the considered view that there is no ambiguity in the dying declaration Ex.P5, and the statements Ex.P10 and Ex.P13. They are natural and reliable. They are sufficient to convict the accused. PW-1 and PW-2, the parents of the deceased have categorically deposed about the demand for dowry and the harassment meted out to the deceased by A-1. Therefore, there is ample evidence on record to connect the accused with the crime.

In *Sharda v. State of Rajasthan*¹, the Supreme Court held that the principle on which the dying declarations are admitted in evidence is indicated in legal maxim "*nemo moriturus praesumitur mentire*" i.e., a man will not meet his Maker with a lie in his mouth. It is indicative of the fact that a man who is on the death bed would not tell a lie to falsely indicate an innocent person.

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

¹ AIR 2010 SC 408

whatever may be the nature of the proceeding in which the cause of his death comes into question.

Dying declaration, if found acceptable, alone can form the basis for conviction. The general rule is that all oral evidence must be direct viz., if it refers to a fact which could be seen it must be the evidence of the witness who says he saw it; if it refers to a fact which could be heard, it must be the evidence of the witness who says he heard it; if it refers to a fact which could be perceived by any other sense, it must be the evidence of the witness who says he perceived it by that sense. Similar is the case with opinion. These aspects are elaborated in Section 60 of the Evidence Act. The eight clauses of Section 32 are exceptions to the general rule against hearsay. Clause (1) of Section 32 makes relevant what is generally described as dying declaration though such an expression has not been used in any Statute. It essentially means statements made by a person as to the cause of his death or as to the circumstances of the transaction resulting in his death.²

Having regard to the facts and circumstances of this case, we are of the considered view that there is no reason to interfere with the findings of the learned Sessions Judge in convicting the appellant/accused No.1 for the offences under

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

Sections 498-A, 302 IPC and Section 4 of Dowry Prohibition Act, and sentencing her for the said offences.

In the result, the appeal is dismissed, confirming the judgment dated 28.03.2011 in Sessions Case No.336 of 2010, on the file of Family Court cum Additional Sessions Court, at Mahabubnagar.

C. V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

25th July, 2018
KSM



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