

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CRIMINAL APPEAL NO.1140 OF 2013
AND
CRIMINAL APPEAL NO.165 OF 2014

COMMON JUDGMENT
(Per Hon'ble Sri Justice Sanjay Kumar)

On the intervening night of 13th and 14th of March, 2011, Asma Banu was brutally murdered at her residence at Chandoor Village, Varni Mandal, Nizamabad District. Her husband, Shaik Khaleel (A1), was charged with the offence of having committed her murder under Section 302 IPC, while Shaik Mukthar (A2), his brother, and Shaik Naseema Begum (A3), his sister, were charged under Section 498-A IPC for having harassed her to bring additional dowry. They were tried by the learned Sessions Judge, Nizamabad, for the said offences in Sessions Case No.22 of 2013. By judgment dated 03.12.2013 rendered therein, the learned Sessions Judge held them guilty on the charges framed and convicted them under Section 235(2) CrPC. A1 was sentenced to undergo rigorous imprisonment for life under Section 302 IPC apart from paying a fine of Rs.1,000/- and in default, he was to undergo simple imprisonment for one month. A1 to A3 were sentenced to undergo rigorous imprisonment for two years and pay a fine of Rs.1,000/- each under Section 498-A IPC and in the event of default in payment of the fine, they were to undergo simple imprisonment for one month each.

Aggrieved by their conviction and the sentences imposed upon them, A1 to A3 are in appeal under Section 374(2) CrPC. Criminal Appeal No.165 of 2014 was filed by A1 in relation to his conviction and sentence under Section 302 IPC and Section 498-A IPC while Criminal Appeal No.1140 of 2013 was filed by A2 and A3, aggrieved by their conviction

and sentence under Section 498-A IPC. By order dated 19.12.2013 passed in CrI.A.M.P.No.2029 of 2013 in CrI.A.No.1140 of 2013, a learned Judge suspended the sentence of imprisonment visited upon A2 and A3 and directed their release on bail on the same terms and conditions as were imposed by the Sessions Court.

In terms of Rule 154(1) of the Criminal Rules of Practice and Circular Orders, 1990, both the appeals were clubbed for disposal by a Division Bench.

The charges framed against A1 to A3 were as follows:

‘Firstly:

That on the intervening night of 13/14th day of March, 2011 in the house bearing No. 10-60/1 at Chandoor village, you accused A1 suspecting that your wife Smt.Asma Banu had illegal contacts with one Sardar Khan son of her younger paternal aunt, did commit her murder by intentionally or knowingly causing her death, to wit, while your wife Smt.Asma Banu was sleeping on the mat you accused A-1 took out axe from the house and caused incised wounds on her neck and throat due to which she died, and that A-1 of you have thereby committed an offence of murder punishable u/s 302 of the Indian Penal Code and within my cognizance.

Secondly:

That you accused A-1 being the husband, you accused No.2 being the brother-in-law and you accused No.3 being sister-in-law of the deceased Smt.Asma Banu subjected her to cruelty, to wit, you accused A1 to A3 harassed her for additional dowry of Rs.50,000/- and that you accused A1 to A3 have thereby committed an offence punishable with 498-A of the Indian Penal Code, and within my cognizance.’

A1 to A3 however denied the charges and claimed to be tried.

The prosecution examined 14 witnesses during the trial and marked in evidence 12 exhibits and 12 MOs. Two witnesses were examined by the defence but no documentary evidence was adduced.

The oral and documentary evidence on record may now be examined: P.W.1, the father of the deceased, stated that she was his third daughter and was given in marriage to A1. A2 and A3 were the

brother and sister respectively of A1. He claimed that he had given 4 tulas of gold, anklets and house hold articles at the time of the marriage, which was performed 12 years ago. The deceased gave birth to a son and a daughter, who were aged about 12 years and 7 years respectively. The deceased used to live in Chandoor Village along with her husband A1, her mother-in-law, A2 and A3. P.W.1 stated that initially relations between his deceased daughter and A1 were good but A1 to A3 continuously harassed her to give money and other items. He claimed that he used to meet the demands of A1 to A3. He gave a sum of Rs.50,000/- to A1 about 3 years back for construction of a house. He said that his daughter used to inform him about the demands and the quarrels between her and the accused. He stated that he retired 6 years ago and expressed his inability to meet further demands raised by A1 to A3. According to him, when A1 to A3 raised a demand for Rs.40,000/- or Rs.50,000/- about 3 years back, he had panchayats conducted 2 or 3 times in the presence of elders - P.W.3, Manzoor Ahmed (L.W.8), P.W.6 and Abdul Gaffar Khan (L.W.10). A1 to A3 were present in the panchayats. Even in the presence of elders, A1 to A3 made demands for additional amount to enable A1 to establish some business. The elders pacified A1 to A3 and sent them away without meeting their demands. A1 and his daughter lived happily thereafter for about 4 months but again, A1 to A3 started demanding and harassing his daughter for additional amounts. He said that his grandson, Mazhar Khan, telephoned and informed him about the harassment meted out to his daughter by A1 to A3. As they were habituated to harassing her for additional amounts, he kept quiet for some time. His daughter also informed him many times of the harassment. According to P.W.1, about 2 or 2½ years back, P.W.3 telephoned at about 9.00 or 9.30 AM and informed him that A1 had murdered his daughter. He immediately went

along with his family members to the house of A1 to A3 at Chandoor Village. They reached there by 10.00 AM. The distance between their villages was about 16 kilo metres. Upon reaching there, they found the dead body of his daughter lying on the ground with injuries on the neck, shoulder and other parts of the body. He immediately went to the Police Station at Varni and submitted a report to the police. He lodged the report at about 11.00 AM or 12.00 Noon on that day. The contents of the report were read over to him, as he was illiterate, and thereafter he signed the report. P.W.1 admitted the contents of Ex.P1 report dated 14.03.2011, which was read over to him by the Public Prosecutor, and affirmed that the said report was lodged by him with the police on that day. He also identified his signature in the said report. P.W.1 asserted that A1 to A3 had committed the murder of his daughter for additional dowry. He said that his grandson, P.W.5, informed him that A1 hacked his mother with an axe on that night and confessed to commission of the murder.

In his cross-examination by A1, P.W.1 stated that the elders of their village also visited Chandoor Village on that day. A1 to A3 ran away from the scene and when they reached the house of A1, no police personnel were present. The mother of A1 was also not present. P.W.3 accompanied him and his family members to the house of A1. He stated that no written document was executed in the panchayats. He claimed that A1 and his deceased daughter, along with their children, attended a marriage at Hyderabad 4 days prior to her death and then came to his house. On the next day morning, all of them returned to their house. He denied the suggestion that A1 and his daughter left their children at his house on that day. He denied the suggestion that A1 to A3 did not demand any money or harass his daughter for additional dowry. He denied the suggestion that there were no panchayats held with regard to

the demands made by A1 to A3. He denied the suggestion that he did not pay Rs.50,000/- to A1 to A3. He claimed that he saw an axe near the dead body. He also denied the suggestion that A1 was not in his house at Chandoor Village on that night as he went to Badapahad Dargah and that on receipt of information on the next day with regard to the death of his wife, he came home and informed the police about the murder of his wife and also informed the same to him and his family members. He denied having tutored P.W.5 to depose against the accused but admitted that P.W.5 and his granddaughter were living with him after the death of his daughter. He denied the suggestion that the deceased was murdered for gain when she was alone at her house at Chandoor Village and that A1 to A3 had no connection with her murder.

In his cross-examination by A2 and A3, P.W.1 stated that A2 got married before his daughter's marriage and it might have taken place 20 years back. A2 had two houses at Chandoor Village—one belonging to his in-laws and the other, his own house, adjoining the house of A1. He denied the suggestion that A2 resided at a house in the old locality and not at the house adjoining the house of A1. He stated that the distance between the two houses was about half a kilometre. He said that A2's mother resided in the old house near the house of A1 and she had a separate room for living. He stated that A3 got married 5 or 6 years back and was given in marriage to a person of Navipet Village but her husband deserted her. He admitted that he did not state to the police that A1 to A3 were living at one house and that he did not mention the same in Ex.P1 report also. He denied the suggestion that A3 was living at Navipet Village along with her husband and that her husband did not desert her. He also denied the suggestion that A2 and A3 were innocent and were falsely implicated in this case.

P.W.2, the son of P.W.1 and the brother of the deceased, stated as follows: The deceased was his third sister and she was hacked to death by A1, her husband, with an axe. A2 and A3 lived by the side of A1's house at Chandoor Village. His sister was blessed with a son and a daughter. She and A1 lived together happily for about 6 months. Thereafter, his sister used to come to the house and cry, stating that her husband was demanding money, gold and other articles. He said that 2 or 3 times they convinced his sister and sent her back. Panchayats were conducted 3 or 4 times with regard to the demands made by the accused. He and his father were present in the panchayats. P.W.3 and Manzoor Ahmed (L.W.8) were present on their behalf. Two and a half years back they received telephonic information with regard to the death of his sister and they went to the house of A1 at Chandoor Village, where they found the body of his sister in a pool of blood with injuries on the neck and other parts of the body. A blood-stained axe was beside the dead body near a showcase. A1 committed the murder of his sister for additional dowry.

In his cross-examination by A1, P.W.2 stated that they visited the house of A1 at about 9.30 AM and their elders reached after their arrival. A1 used to leave the deceased at their house for additional dowry. All the panchayats were held at Chandoor Village. P.W.1 lodged a report with the police and he also accompanied him. At the instance of P.W.1, a police personnel scribed Ex.P1 report. He denied the suggestion that A1 was present at home when they reached there. He stated that his nephew i.e., the son of his sister, informed him that his father murdered his mother.

In his cross-examination by A2 and A3, P.W.2 stated that in Chandoor Village, there were two localities - one is old and the other is new. A1 resided in the new locality. He denied the suggestion that A2 was living in the old locality and not beside A1. He stated that he did not know

whether A3 was married but denied the suggestion that she did not reside by the side of the house of A1.

P.W.3 stated that he was a resident of Aneesanagar Colony in Bodhan town and was a businessman by occupation, apart from being an Ex-Councilor. He stated that three months prior to the murder of Asma Banu, a panchayat was held. According to him, panchayats were held at Aneesanagar in Bodhan town and also at Chandoor Village. A1 to A3 were present in those panchayats. He, along with P.W.1 and P.W.2, Mansoor Ahmed (L.W.8), P.W.6 and Abdul Gaffar Khan (L.W.10) were present in the panchayats. The dowry harassment meted out to Asma Banu by A1 to A3 was the subject of these panchayats. Asma Banu informed them in those panchayats that A1 to A3 demanded money from P.W.1, her father. In those panchayats, some money was also paid to A1 by P.W.1. He said that they advised A1 to A3 to live amicably with the deceased and sent them away. He further stated that two and a half years back he received a telephonic call from a telephone booth at about 7.00 AM about the murder of Asma Banu at her house in Chandoor Village. He immediately informed the same to the family members of the deceased. He then proceeded to Chandoor Village along with the family members of the deceased at about 9.00 or 10.00 AM. They found the dead body of Asma Banu at her house with hacking injuries. They found an axe by the side of the dead body. The locality people were also present there. Thereafter, he along with the parents of the deceased went to Varni Police Station and the father of the deceased lodged a report. He claimed that six months prior to the death of Asma Banu, a panchayat was held and another was held 1 ½ months prior to her murder and he was present in both. According to him, A1 mainly used to harass the deceased for more dowry and there was lesser dowry harassment on the part of A2 and A3.

In his cross-examination by A1, P.W.3 said that he was a Municipal Councilor for 5 years. He denied the suggestion that no panchayat was held and that A1 did not harass the deceased. He volunteered that A1 used to harass the deceased more. He denied the suggestion that he did not receive a telephone call as to the murder of Asma Banu and that he fabricated a false case against A1 by influencing the police. He denied the suggestion that A1 did not murder Asma Banu and that some unknown persons murdered her for gain.

In his cross-examination by A2 and A3, P.W.3 stated that the distance between Bodhan and Chandoor was about 12 kilometres. He further stated that A1 married Asma Banu about 12 years ago. He said that he found that A1 to A3 were living side by side at Chandoor Village but he did not know how many houses A1 to A3 possessed in the village. He said that he did not know what was the new locality and what was the old locality of the village and the distance between the two localities. He said that A3 was married but he did not know where she was residing. As per his knowledge, A1 to A3 were residing side by side. He denied the suggestion that A2 and A3 were not residing by the side of the house of A1 and that A2 was residing at the old locality in Chandoor Village while A3 was residing at Navipet Village in her in-laws' house. He denied the suggestion that A2 and A3 did not attend any panchayat and that they did not advise A1 to A3 to live amicably with the deceased.

P.W.4, the photographer, spoke of taking ten photographs and a video of the body of the deceased at Chandoor Village.

P.W.5, the son of the deceased and A1, was aged 11 years at the time of his examination. The learned Sessions Judge posed simple questions to him to ascertain as to whether he was capable of giving rational answers. Having satisfied himself that the witness was capable of

giving evidence, in terms of Section 118 of the Indian Evidence Act, 1872, his testimony was recorded. P.W.5 stated that he was studying 6th class in English medium at Bodhan. He said that A2 and A3 were residing at Chandoor Village side by side. He said that the name of his mother was Asma Bhanu and that she was murdered by his father. Speaking of the events on that fateful night, he said that his father came home in a drunken state and at that time, his mother, sister and he were present in the house. The statement made by P.W.5 in Hindi was recorded verbatim in English language by the learned Sessions Judge and the same is extracted hereunder.

'Mere Baap mere maaku kulhadi lekhe maarke katham kardiya, uske badd muje uthake bole teri maako katham kardiya, jaake dekhle, my jaake dekha to meri maa khun me lapte huye aur mere ghar ke room me chatai par thi, ushi din subah mere baap ghar se kuladi leke chale gaye, kuladi khun se bhara huva tha.'

P.W.5 further stated that his father used to get wood from the forest, sell the same and use the money to drink continuously and then beat his mother. He used to harass her to get money from her parents. A2 and A3 also used to beat his mother, demanding money. A1 to A3 used to beat her by pulling her hair. He used to go to his maternal grandfather to get money. A1 to A3 used to send him by auto to the house of his grandparents to get money. His grandfather used to send Rs.2,000/- or Rs.3,000/- through him and he used to give that money to his mother who, in turn, used to give it to his father. A1 used that money for drinking. He said that he and his sister were crying on that day at their house after their father left the house. Thereafter, his maternal grandparents came and brought him to their house in Aneesanagar in Bodhan town. Since then, he and his sister were residing with his maternal grandparents. He said that he found injuries on his mother's

neck and back. Even one day before her death, his father quarreled with his mother. On the night of her murder also, his father quarreled with her. His father always used to quarrel with his mother to get money from his maternal grandparents. His maternal grandmother also used to send rice for them.

In his cross-examination by A1, P.W.5 said that he could understand Telugu and also speak the language to some extent. He admitted that 4 days prior to his mother's murder he, his sister and his mother came to Aneesanagar from Hyderabad and stayed there for the night. The next morning they went to their house at Chandoor Village. He denied the suggestion that he and his sister were dropped off at Aneesanagar and that A1 went to Chandoor Village along with his mother only on that day morning. He added that on the night of the incident, he was with his parents and he knew who murdered his mother. He denied the suggestion that on the date of his mother's murder, his father left to Badapahad and some unknown persons committed the murder of his mother and took away her ornaments. He again added that on that night, he along with his sister, mother and father had dinner and thereafter, he, his mother and sister slept and then his father went outside to drink. He denied the suggestion that on the night of the murder of his mother, he was with P.W.1 at Aneesanagar and that he along with P.W.1 and others reached Chandoor Village after coming to know about her murder. He also denied the suggestion that he was deposing falsely upon being tutored by P.W.1. He added in Hindi as follows:

'NAHI HOTHAI, JUTH HAI, KATHAI NAHI HOTHAI, JO MAI ANKHONSE DEKHUVU VOH BOL RAHA HU'

He denied the suggestion that A1 to A3 did not beat his mother and did not demand money from her and P.W.1. He also denied the

suggestion that he was deposing falsely at the instance of P.W.1 and others. He added in Hindi as follows:

‘US DIN MERE PAPP(A1) UTHAKE MERERU BOLE, TERE MAAKU KATHAM KARDIYA, UNKE HAATH ME KHUNSE LAGI HUI KULADI THI’

In his cross-examination by A2 and A3, P.W.5 stated that A2 resided in the old locality of Chandoor Village but also resided by the side of their locality. He said that A3 got married to a person belonging to Navipet Village but denied the suggestion that A1 to A3 were not residing beside their house at Chandoor Village.

P.W.6, a resident of Aneesanagar, Bodhan town, stated that he was a businessman and an Ex-Municipal Councilor. He said that there were disputes between Asma Banu and A1 and he conducted mediation between them. The disputes were about household matters and money. The counseling took place at Aneesanagar 4 or 5 months prior to the death of Asma Banu. Thereafter also, there were quarrels between Asma Banu and A1. He saw the dead body of Asma Banu at her house in Chandoor Village with hacking injuries on the neck and other parts.

In his cross-examination by A1, P.W.6 stated that he went to the police station when P.W.1 lodged a report. He denied the suggestion that he did not inform the police about the counseling that took place 4 or 5 months prior to the murder of Asma Banu. He denied the suggestion that he was deposing falsely because P.Ws.1 to 4 belonged to his locality.

There was no cross-examination of this witness by A2 and A3.

P.W.7, a resident of Chandoor Village, stated that he had a kirana shop there and that A1 to A3 were his neighbours. He said that about two and a half years back, Asma Banu was murdered and he went and saw the dead body. He found hacking injuries on the neck of the deceased and the blood-stained axe was by the side of the dead body. According to him,

A1 and the deceased were living together without any disputes. He was declared hostile at this stage and cross-examined by the prosecution. Thereupon, he denied having stated as in Ex.P3 statement, allegedly recorded under Section 161 CrPC, to the effect that A1 and the deceased came to his kirana shop on 13.03.2011 at 8.30 PM to buy sugar and tea powder and thereafter, A1 informed him in a fully drunken state that when he returned from Hyderabad and proceeded to the house of his in-laws, they tied and beat him up and that his wife was not co-operating with him and was roaming with somebody due to which he wanted to see her end. He also denied having stated that he advised A1 not to do as there were small children. He added that A2 resided at the old locality and not by the side of the house of A1 and also not at his house.

There was no cross-examination of this witness by A1 but in his cross-examination by A2 and A3, he stated that 7 or 8 years back, the marriage of A3 was performed with a person living at Navipet Village and they started living at Navipet. According to him, A1 was residing by the side of his house.

P.W.8 was a panch witness and confirmed having participated in the inquest, the scene of offence and the seizure panchanamas. Nothing useful was elicited during her cross-examination.

P.W.9 was a witness to the confession panchanama (Ex.P8). According to him, on 21.03.2011 at 8.00 AM he was called by the Circle Inspector of Police, Bodhan, to the house of A1 along with Kotholla Pothareddy (L.W.16). At that house, he found A1 along with the C.I. of Police and other persons. He enquired with A1, who confessed to the commission of the offence on 13.03.2011. Pursuant to the confession, A1 informed them that he kept his blood-stained clothes and axe on a sajja (loft) in a room of his house. A1 then brought out his clothes and the axe

and produced the same before them. The clothes and axe were seized under cover of a panchanama (Ex.P9). P.W.9 identified M.O.5 as the blood-stained jeans, M.O.6 as the blood-stained readymade black colour T-shirt and M.O.7 as the blood-stained axe, seized under Ex.P9.

In his cross-examination by A1, P.W.9 stated that he did not visit the house of Asma Banu on the date of commission of the murder. He said that he was informed by the C.I. that he was on the way to Chandoor Village and the police personnel reached the house of A1 before he did. He stated that this was the only case in which he acted as a panch witness till date. He denied the suggestion that A1 did not confess to the commission of the offence leading to recovery of M.Os.5 to 7.

A2 and A3 adopted A1's cross-examination of P.W.9.

P.W.10, a Civil Assistant Surgeon at Government Area Hospital, Bodhan, conducted the autopsy over the body of the deceased. He stated that he found the following ante-mortem injuries on her body:

- '1)Cut injury of the throat (laceration) right side, in front of neck, below the mandible, measuring 4" x 5" x 4". Cutting the neck muscles, major blood vessels, trachea and esophagus, margins irregular.
- 2)Laceration on right side beside sterno-mastoid muscle two in number ½" distance measuring 2" x 1" x 1" margins irregular.
- 3)Laceration on right side above clavicle 4" x 3" x 3", margins irregular.
- 4)Laceration, right side below clavicle 1" x 1" x 1"
- 5)Right side collar bone fractured'

He confirmed that the cause of death was hemorrhage as a result of the cut injuries on the throat, right side, in front of neck, cutting major blood vessels, trachea and oesophagus. He further stated that Injury No.1 was sufficient to cause death and all the injuries were possible with M.O.7 axe. Ex.P10 is the post-mortem examination report.

There was no cross-examination of this witness.

P.W.11 was a witness to the scene of offence panchanama (Ex.P4), the sketch map (Ex.P5) and the inquest panchanama (Ex.P6). He spoke of the seizure of M.O.8 (blood-stained pillow cover), M.O.9 (blood-stained plastic mat), M.O.10 (blood-stained blanket), M.O.11 (blood-stained earth) and M.O.12 (controlled earth) which were seized by the police under Ex.P4. He also identified M.Os.1 to 4, the clothes of the deceased, which were seized by the C.I. of Police under Ex.P7.

Nothing useful was elicited in his cross-examination.

P.W.12, the Sub-Inspector of Police, Varni Police Station, stated that he received a report under Ex.P1 from P.W.1 at 12.00 noon on 14.03.2011. He then registered a case in Crime No.56 of 2011 against A1 to A3 under Sections 498-A and 302 IPC. Ex.P11 is the FIR. He sent Ex.P11 to the Court of the Judicial Magistrate of First Class, Bodhan, and copies thereof to his superior police officers. He also informed the Circle Inspector of Police, Bodhan. He recorded the statement of P.W.1 in Varni Police Station around 12.15 PM on that day and then handed over the case diary file to the Circle Inspector of Police for further investigation.

In his cross-examination, P.W.12 said that a person who accompanied P.W.1 scribed Ex.P1 report. He further stated that he accompanied the Circle Inspector of Police, Bodhan (P.W.13), to the scene of offence. They reached there at around 1.00 PM. Around 1.30 PM they dispatched Ex.P11 FIR along with Ex.P1 complaint to the Court through a police constable. He stated that it takes about 20 minutes to reach the Court from Varni Police Station but did not remember which police constable took the FIR to the Court. He admitted that as per the endorsement on Ex.P11, the FIR was received by the Magistrate at about 6.30 PM on 14.03.2011 but could not give a reason for the delay. He denied the suggestion that A1 reached Varni Police Station in the morning

hours on 14.03.2011 and informed the police that some unknown persons had committed robbery and murdered his wife when he was out of station and that he gave a written report, but after arrival of the C.I. of Police, he issued a false FIR under Ex.P11 against the accused at the instance of P.W.1, P.W.3 and P.W.6. He denied the suggestion that Ex.P1 was prepared after the arrival of the C.I. of Police and that was the reason for the delay.

P.W.13, the Circle Inspector of Police, Bodhan Rural, stated that P.W.12 informed him of the murder and he immediately reached Varni Police Station around 12.30 PM on that day. He verified the investigation conducted by P.W.12, found it to be on correct lines, and then took up investigation. He along with P.W.12 reached the scene of offence at Chandoor Village and found the blood-stained dead body of Asma Begum at the house of A1. She appeared to have been hacked to death with an axe in the front room of the house of A1. He spoke of various steps taken by him during the investigation and stated that he handed over the entire case diary file to the regular Circle Inspector of Police, Bodhan Rural (P.W.14). In his cross-examination, P.W.13 stated that he received information from P.W.12 at around 12.10 PM. He said that the distance between Chandoor Village and Varni Village was about 12 kilometres and that no information had been received by Varni Police Station with regard to the murder of Asma Banu till 12.00 noon on 14.03.2011. He admitted that an FIR has to be sent to Court immediately after its issuance in grave offences and stated that he instructed P.W.12 to immediately send Ex.P11 FIR to the Court but could not say at what time it was dispatched. He was cross-examined on the steps taken by him during the investigation. He stated that P.W.5 was present near the scene of the offence but he was not in a position to talk as he was in shock. He denied the suggestion that

some unknown persons committed the murder of Asma Banu for gain and that P.W.5 and his sister were not present at home on the fateful night. He also denied the suggestion that A1 was not there on that night as he had gone to Badapahad. He denied the suggestion that on 14.03.2011 morning, A1 lodged a report at Varni Police Station stating that some unknown persons murdered his wife for gain while he was at Badapahad and that without considering the said report, a case was registered against A1 to A3 at the instance of P.W.1, P.W.3 and P.W.6 after he took up investigation. He denied the suggestion that A2 and A3 did not harass Asma Banu for additional dowry and that they were falsely implicated.

P.W.14, the Circle Inspector of Police, Bodhan Rural, stated that he took up the investigation on 16.03.2011 from P.W.13. He spoke of the various steps taken by him thereafter. He said that on 21.03.2011, on reliable information, he rushed to Chandoor Village with his staff and apprehended A1 at his house. He spoke of the recoveries made pursuant to the confession of A1. He said that after completion of the investigation, he filed a charge-sheet against A1 to A3. In his cross-examination, P.W.14 denied the suggestion that M.O.7 axe was lying at the scene of the offence and it was not seized pursuant to the confession made by A1. He denied the suggestion that on the intervening night of 13th and 14th March, 2011, Asma Banu was alone at her house and some unknown persons committed her murder for gain and that A1 was not even with her on that night as he went to Badapahad. He also denied the suggestion that having come to know of the murder of his wife, A1 lodged a report with the Station House Officer, Varni Police Station, and the said report was suppressed so as to fabricate this case against A1 to A3.

Coming to the oral evidence adduced on behalf of the defence, D.W.1, a resident of Chandoor Village, stated that two years back he went

to Badapahad Dargah and A1 also reached there. A person by name Neeradi Sailoo also came there and the three of them stayed at Badapahad on that night. According to him, at 7 o'clock, A1 received a telephone call informing that somebody had murdered his wife. D.W.1 then stated that they reached Chandoor Village by auto by 8.00 AM at the house of A1 and saw the dead body of A1's wife with injuries. In his cross-examination by the prosecution, D.W.1 stated that A1 resided in the new locality while A2 resided at the old locality in Chandoor Village. He said that he did not know the occupation of A1 and that he was a resident of the old colony at Chandoor Village. He said that A1 used to reside in his house along with his wife and two children. He claimed that he went to Badapahad at 7.00 PM on that day but could not give the date, day, month and season when he went to Badapahad. A1 reached Badapahad 15 minutes after his arrival there. A1 received the telephone call at 7 AM in the morning but he did not know who telephoned him. He denied the suggestion that he did not go to Badapahad two years back and that A1 did not reach there on that night and that they did not stay there together but he was deposing falsely to help A1.

D.W.2, another resident of Chandoor Village, stated that his house was situated on the main road of the village beside the house of A1. According to him, A2 resided in the old colony of Chandoor Village and the distance between their houses was 1 kilometre. A2 was stated to be residing at the old colony from 30 years. D.W.2 claimed that A3 resided at Navipet Village from 8 years. In his cross-examination by the prosecution, D.W.2 stated that A1 used to reside with his wife in their village and he did not know whether A3 had divorced her husband. He denied the suggestion that the houses of A2 and A3 and their mother were situated beside the house of A1. He said that he did not know much about A1 to

A3. He stated that his house was one furlong from the house of A1 and the mother of A1 was residing by the side of the house of A1. He further stated that A3 was also residing with her mother.

These appeals were taken up for hearing during the morning session of the special sitting of this Division Bench on Saturday, the 2nd March, 2019. Sri Indra Prakash, learned counsel for the appellant/A1 in CrI.A.No.165 of 2014, was present and advanced arguments till the lunch break. The matter was thereafter taken up in the post-lunch session and Sri Indra Prakash, learned counsel, concluded his arguments. Sri K.Ravi Mahender, learned counsel for the appellants/A2 and A3 in CrI.A.No.1140 of 2013, did not choose to appear and advance arguments either in the morning session or in the post-lunch session. When this Court is sitting on Saturdays to take up these cases, it is expected that the learned counsel appearing for the parties would co-operate and make themselves available in the interest of their clients. However, as Sri K.Ravi Mahender, learned counsel, did not deem it necessary to appear before this Court and advance arguments, we are constrained to proceed with the adjudication of both these appeals on the strength of the arguments advanced by Sri Indra Prakash, learned counsel.

Sri Indra Prakash, learned counsel, would contend that as per the charge-sheet filed by the police, A1 suspected that his wife was having illegal contact with one Sardhar Khan, the son of her younger paternal aunt, leading to his developing a grudge and deciding to murder her and therefore, the case would fall in the Exception 1 to Section 300 IPC. It may however be noted that the prosecution did not lay any stress on the motive and surprisingly, this aspect of the matter was also not raised by the defence during the cross-examination of any of the witnesses. It was only P.W.7 who denied having stated on these lines, during his cross-

examination by the prosecution. In his chief-examination, P.W.7 stated that A1 and the deceased were living together without any disputes. All along the only suggestion put to witnesses by the defence during their cross-examination was that Asma Banu had been murdered by some unknown persons for gain while she was alone at home on the fateful night. In any event this Court is at a loss to understand as to how this new version which is now sought to be projected would help A1. No evidence has been let in to support any claim of grave and sudden provocation at this belated stage.

However, that being said, the case of the prosecution is clearly riddled with discrepancies and contradictions. Significantly, there is no consistency in the prosecution's case as to the murder weapon, M.O.7 axe. The witnesses for the prosecution, P.Ws.1, 2, 3 and 7, all claimed that the axe was lying beside the dead body. However, P.W.5, the child witness, stated that his father took it away along with him. The police authorities who were examined during the trial also supported this version and claimed that the axe was recovered pursuant to the confession made by A1. It may be noted that the offence occurred during the intervening night of 13th and 14th March, 2011 while A1 was arrested on 21.03.2011. In the event P.W.5's version is to be accepted, A1 left the house along with the blood-stained axe during the morning hours of 14th March, 2011. There is no indication of A1 having returned to the house as P.W.5 himself did not claim so and on the other hand, people gathered there by 10.00 AM or so. There is therefore no possibility of A1 secreting either M.O.7 axe or his blood-stained clothes inside the house, whereby the same could be recovered from there. This so-called recovery under Section 27 of the Indian Evidence Act, 1872 is therefore unbelievable on the face of it. However, this singular finding by itself would be wholly insufficient to

extend the benefit of doubt to A1. Another discrepancy is as to who drafted Ex.P1 report – P.W.1 claimed that it was scribed by the police while P.W.12 said it was written by a person who accompanied P.W.1. That apart, there is unexplained delay, albeit not very long, in dispatch of Ex.P11 F.I.R. However, these discrepancies, even if they are taken cumulatively, are not sufficient to discredit the case of the prosecution.

Be it noted that in *KARNEL SINGH V/ s. STATE OF M.P.*¹, the Supreme Court was also dealing with a case of defective investigation. Having expressed unhappiness over the nature of the investigation, the Supreme Court observed that the Court has to be circumspect in evaluating the evidence but it would not be right in acquitting the accused solely on account of a defect, as to do so would tantamount to playing into the hands of investigating officers, if the investigation is designedly defective. It was further observed that to acquit solely on the ground of defective investigation would be adding insult to injury.

In cases of this nature, the police tend to resort to over-enthusiasm and take unnecessary steps to strengthen the case of the prosecution, but inevitably end up by weakening it. The case on hand is a prime example. The discrepancy in the witnesses' evidence as to the presence of M.O.7 axe is sufficient to show that the recovery claimed by the police on the strength of the confession made by A1 cannot be accepted. That being said, the unshaken evidence of P.W.3 and P.W.6, independent witnesses and former Municipal Councilors, stands testimony to the fact that the deceased was subjected to harassment time and again in relation to dowry demands.

That apart, this Court must also take into account the evidence of P.W.5. The evidence of a child witness would have to be viewed carefully,

¹ (1995) 5 SCC 518

given the fact that he is of tender age and would be susceptible to tutoring. Reference in this regard may be made to K.VENKATESHWARLU V/ s. STATE OF ANDHRA PRADESH², wherein the Supreme Court observed that the evidence of a child witness has to be subjected to closest scrutiny and can be accepted only if the Court comes to the conclusion that the child understood the questions put to him and was capable of giving rational answers. It was further observed that a child witness, by reason of tender age, would be a pliable witness and could be tutored easily either by threat, coercion or inducement and therefore, the Court must be satisfied that the attendant circumstances did not show that the child was acting under the influence of someone or was under threat or coercion. The Supreme Court concluded that the evidence of a child witness can be relied upon if the Court, with its expertise and ability to evaluate the evidence, comes to the conclusion that the child is not tutored and his evidence has a ring of truth.

Applying the aforestated standards to the evidence of P.W.5, it may be noticed that the learned Sessions Judge satisfied himself by posing questions as to the level of understanding of the child and his capacity to give rational answers, before recording his evidence. The evidence of P.W.5 remained unshaken in cross-examination. He spoke with utter conviction and remained immutable despite cross-examination by two learned counsel appearing for A1, on the one hand, and A2 & A3, on the other. Be it noted that P.W.5 was not of such a tender age and was 11 years old by the time of his examination in Court. The clarity with which he spoke inspires confidence. The statements that he made in vernacular, which have been extracted *supra*, have the ring of truth and remained unshaken in the cross-examination. There is no reason as to why a child

² (2012) 8 SCC 73

of 11 years of age would try to target his own father and his paternal aunt and uncle, if it was not the truth.

The feeble story put forth by the defence was that A1 was not even present at home on the fateful night as he went to Badapahad and that Asma Banu was murdered by some unknown persons for gain. No evidence was however let in as to any ornaments or valuables having gone missing from the body of the deceased or from the house. Further, it is not believable that A1 and the deceased would have left the children at Aneesanagar and returned home if A1 intended to leave the deceased alone there and go to Badapahad, but that is the version put forth by the defence. In any event, the claim that A1 was at Badapahad on that night falls to the ground in the light of the shaky testimony of D.W.1. While stating that he stayed along with A1 and one Neeradi Sailoo at Badapahad Dargah and that he knew A1, who belonged to his village, D.W.1 confessed that he did not even know what the occupation of A1 was. He further compounded it by admitting that he could not say the date, day, month or season when he went Badapahad, though he remembered at what time he reached there and within how much time thereafter, A1 reached there. He could also recall at what time A1 received a call but could not state as to who had made the call. He further claimed that they reached Chandoor Village by 8.00 AM at the house of A1 and saw the body but he said nothing about A1 going to the police station at Varni to give a report. Be it noted that if D.W.1's version is to be believed, having accompanied A1 to the house where he saw the body of the deceased, D.W.1 would have ordinarily accompanied A1 to the police station also. In the normal course of events, A1 would not have gone to the police station alone. When he already had the company of D.W.1, who came with him supposedly from Badapahad to his house and saw the dead body too, he

would have taken him along to the police station, but this is neither the claim of D.W.1 nor of A1. The suggestion put to the police witnesses during their cross-examination was that A1 alone went to the police station to submit a report to the effect that some unknown persons had murdered his wife for gain while he was away at Badapahad. No other witness was examined by the defence in evidence of A1 being at Badapahad Dargah on the fateful night.

As regards the evidence of D.W.2, cross-examination by the prosecution completely destabilized his testimony. He admitted that he did not know much about A1 to A3 and also contradicted himself by stating that A3 resided with her mother beside the house of A1, though he had stated in his chief-examination that she resided at Navipet since 8 years.

A1 was therefore unable to lead any cogent and believable evidence in support of his claim that he was at Badapahad Dargah on the fateful night or that his wife's murder was committed by some unknown persons for gain, inasmuch as no evidence whatsoever was let in of any theft having been committed either from the person of the deceased or from their house. The version as to A1 having a grudge against the deceased owing to her infidelity, that finds mention in the charge-sheet and in the cross-examination of P.W.7, was not referred to at all during the cross-examination of other witnesses for the prosecution and in any event, it does not have any impact on the case, even if accepted. On the other hand, the clinching evidence of P.W.3, P.W.6 and others and more particularly, the testimony of P.W.5, the child witness, inspires confidence and leads to the irrefutable conclusion that what he stated was the truth. In the light of the case law cited *supra*, such evidence would be sufficient in itself to sustain the conviction. This Court therefore finds no grounds to

interfere with the conviction of A1 under Section 302 IPC and the sentence imposed upon him.

As regards the conviction of A1 to A3 under Section 498-A IPC, the independent evidence of P.W.3 and P.W.6, coupled with the evidence of P.W.5, brings out in no uncertain terms that Asma Banu was physically tortured for money not only by A1 but also by A2 and A3. D.W.2 let out that A3 resided along with her mother beside the house of A1. No other evidence was adduced in proof of her residing with her husband and in-laws at Navipet Village. P.W.3 and P.W.6 also affirmed her presence during the panchayats. A2 had two houses in Chandoor Village and one such house was close to the house of A1. His presence in the village and the oral evidence fully support the charge of harassment attributed to him. As the evidence placed on record clearly brings out that P.W.1 earlier gave in to their demands and paid money time and again, it would be in the nature of things for A1 to A3 to continue to exploit the golden goose by pressurizing the deceased so that P.W.1 would give in to their further demands. The charge leveled against all the accused under Section 498-A IPC was therefore clearly established and the Sessions Court rightly held so by way of the judgment under appeal. The conviction and consequential sentence therefore do not warrant interference.

Both the appeals are devoid of merit and are accordingly dismissed. Bail granted to A2 and A3, the appellants in Criminal Appeal 1140 of 2013, shall stand cancelled. They shall immediately surrender before the learned Sessions Judge, Nizamabad, and be sent to prison to serve the rest of their sentence. Upon such surrender, the bail bonds and sureties furnished by them shall stand cancelled. In the event they fail to surrender forthwith, as directed *supra*, the learned Sessions Judge,

Nizamabad, shall initiate necessary measures to execute the sentence imposed upon them.

SANJAY KUMAR, J

ABHINAND KUMAR SHAVILI, J

20th MARCH, 2019

Svv

