

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.846 OF 2012

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

Alleged to have caused the death of his own wife, the Sessions Judge at Mahabubnagar, by its judgment dated 12.07.2012, in S.C.No.605 of 2010, has convicted the accused, Mohammed Muneer, for offences under Sections 498-A and 302 of the Indian Penal Code (IPC). For the offence under Section 302 IPC, the accused has been sentenced to life imprisonment, and imposed with a fine of Rs.1,000/-, and in default, to undergo a simple imprisonment for three months; for the offence under Section 498-A IPC, he has been sentenced to rigorous imprisonment for one year, imposed with a fine of Rs.500/-, and in default, to undergo a simple imprisonment for 45 days. It was further ordered that both the sentences and default sentences shall run concurrently. The accused has challenged the said conviction and sentence before this Court.

2. Briefly stated, the facts of the case are that on 03.06.2010 at about 7.30 pm., Mohd. Osman (P.W.1), the father of the deceased, Ghousia Begum, lodged a complaint (Ex.P.1) before the Police Station, Mahabubnagar II Town, wherein he stated that he has performed the marriage of his third daughter, Ghousia Begum (hereinafter, referred to as the deceased), with the accused. Four to five years prior to the death of the deceased, the accused started harassing her physically and mentally and used to beat her. On

the demand of the accused, he also paid certain amounts to the accused expecting that the accused would change his attitude towards the deceased, but he did not change. While so, on 02.06.2010 at about 12:30 am., he got information that the accused picked up quarrel with the deceased, and beat her mercilessly, due to which, she poured kerosene on her body and set fire to herself. Immediately, P.W.2, the son of P.W.1, went to the house of the deceased to save her. But at that time, he was beaten by the accused, as a result of which, P.W.2 sustained injury on his hand. However, P.W.2 shifted the deceased to the Government Headquarters Hospital, Mahabubnagar for treatment.

3. On the strength of the complaint, the Sub-Inspector of Police, Mahabubnagar II Police Station (P.W.9), registered a case in Crime No.110/2010 for the offences punishable under Sections 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act. Subsequently, on receipt of information that while undergoing treatment, the deceased died on 07.06.2010 at 8.00 pm, P.W.9 altered section of law to Sections 498-A and 306 IPC. He proceeded to the hospital, and he recorded the statements of blood relatives of the deceased including P.W.1. P.W.9 arrested the accused on 11.06.2010. On 24.06.2010, while investigation was in progress, dying declaration of the deceased (Ex.P.6) was received by P.W.9, wherein she stated that the accused set fire to the deceased, after she poured kerosene. Then P.W.9 again altered section of law to Sections 498-A and 302 IPC. As the offences were grave in nature, further investigation was taken up by the Circle Inspector of Police

(P.W.10). On the strength of the evidence collected during the course of investigation, P.W.10 filed the charge sheet. The accused was charged for offences under Sections 498-A and 302 IPC.

4. In order to support its case, the prosecution examined ten witnesses, and exhibited eleven documents. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against him in the evidence of prosecution witnesses, to which he denied. After appreciating the evidence brought on record, the trial Court found the accused guilty. Accordingly, the learned trial Court convicted and sentenced the appellant as aforestated. Challenging the same, the present appeal came to be filed.

5. Smt. A. Gayathri Reddy, the learned counsel for the appellant, contended that there is delay in lodging the FIR as the incident had taken place on 02.06.2010, at about 12:30 am, but the complaint (Ex.P.1) was lodged on 03.06.2017 at 7:30 pm. She further contended that the dying declaration (Ex.P.6), which is said to have been recorded by the Special Judicial First Class Magistrate, Mahabubnagar (P.W.7), is not reliable one, as the Investigating Officer did not record any statement from the deceased before her death, and that there are no two dying declarations in the record. She further stated that as seen from the evidence of P.W.9, he deposed that he recorded the statements of the close relatives of the deceased under Section 161 Cr.P.C., but strangely such statement copies were neither filed before the trial Court, nor furnished to the accused who is entitled to examine and

use them at any point of time in the cross-examination of the prosecution witnesses. She further contended that in Ex.P.1, P.W.1 stated that the deceased herself poured kerosene on her body and set fire to herself. Thus, there is no evidence available on record to prove that the accused set the deceased on fire. Alternative argument made by the learned counsel is that the accused also attempted to put off the flames by covering the deceased with bedding. Assuming that there was a quarrel between the deceased, and the accused, on the fateful night, throwing of matchstick on the deceased was due to sudden provocation and unintentional. Thus, the death cannot be treated as homicide. It is not a case to be dealt with under Section 302 IPC, but it falls under Section 304 Part II IPC. She further contended that even if the appellant was responsible for the death of the deceased, as the contents of the dying declaration disclose, he used to drink every day, therefore, he would neither have the intention, nor the knowledge to kill his wife. Hence at worst, he may be liable for conviction for the offence punishable under Section 304 Part II IPC. In support of her contentions, the learned counsel has relied upon the judgment of the Apex Court in **Kalu Ram Vs. State of Rajasthan**¹ and the decisions of this Court in **Kota Peda Nagesh Vs. State of A.P.**², and **Mohammed Jahangeer Vs. State of Andhra Pradesh**³.

6. On the other hand, Mr.C.Pratap Reddy, the learned Public Prosecutor for the State, contended that P.W.7, after being satisfied

¹ 2000 SCC (CrI) 86

² 1999 (1) ALD (CrI.) 519 (AP)

³ 2017 (1) ALD (CrI.) 330

that the patient was in a conscious, coherent and fit state of mind for making statement, has recorded the dying declaration (Ex.P.6), wherein the deceased stated that when she poured kerosene on her body, the accused first lit his cigarette and then threw the matchstick on her, and set her ablaze. When the flames flared, the accused brought the bedding and put on her. He further contended that mere non-furnishing the statements under Section 161 Cr.P.C., would not cause any prejudice to the defence case, and this aspect which is a subsequent development at this stage, is liable to be rejected. The prosecution has succeeded in proving its case against the accused. Hence, the learned Public Prosecutor has supported the impugned judgment. He relied on the judgments of Apex Court in **Santosh Vs. State of Maharashtra**⁴ and **Ramesh Vs. State of Haryana**⁵.

7. Coming to the decisions cited by the learned counsel for the appellant, in **Kalu Ram**'s case (supra), the accused was having two wives. The accused in a highly inebriated condition asked his wife to part with her ornaments so that he could purchase more liquor, which led to an altercation when the wife refused to do so. Infuriated by the fact that his wife had refused his demands, the accused poured kerosene on her and gave her a matchbox to set herself on fire. On her failure to light the matchstick, the accused set her ablaze. But when he realized that the fire was flaring up, he threw water on her in a desperate bid to save her. In such facts and circumstances, the Apex Court held that the accused would

⁴ (2015) 3 SCC (Crl) 276

⁵ 2017 (1) ALD (Crl.) 387 (SC)

not have intended to inflict the injuries which she sustained on account of the act of the accused and the conviction was altered from Section 302 IPC to Section 304 Part II IPC. In **Kota Peda Nagesh's** case (supra), this Court held that non-furnishing of the statements recorded under Section 161 Cr.P.C., to the accused, has occasioned great prejudice to the accused. In **Mohammed Jahangeer's** case (supra), this Court, basing upon the content of the dying declaration that the accused therein was fully drunken state on the night when the incident took place, modified the conviction from Section 302 IPC to Section 304 Part-I IPC.

8. Coming to the decisions cited by the learned Public Prosecutor, in **Santosh's** case (supra), the accused therein poured kerosene from a nearby lamp and set the deceased ablaze. While the deceased was shifting to hospital, the deceased is said to have made a statement about the overt act of the accused and the same was corroborated with the dying declaration. In those circumstances, the Apex Court confirmed the conviction of the accused therein under Section 302 IPC. But, the facts of the present case can be distinguishable with the facts of the said case. In **Ramesh's** case (supra), while the deceased was sleeping, her husband and her in-laws sprinkled kerosene on her and her husband lit the matchstick and set her ablaze. After setting her ablaze, all of them fled away from the spot. In those circumstances, the Apex Court confirmed the conviction of the accused therein under Section 302 IPC. Here, the facts are slightly different from that case.

9. Coming to the facts of the present case, from perusal of the impugned judgment of the trial Court, it is clear that it has believed Ex.P.6-dying declaration in convicting the accused. The operative portion of the impugned judgment is as follows:

“61. The evidence on record is consistent and gives an irresistible conclusion that the deceased was set on fire by her husband with an intention to kill her and that the statement given by the deceased in this regard is corroborated by other circumstantial witnesses who said that there was harassment on her by her husband by not providing sufficient amount to meet the expenditure to her family needs and was asked her to get the amounts from her parents to meet the family needs, hence there cannot be any doubt for the court to record conviction. This court on close scrutiny of the dying declaration of the deceased, and other evidence on record noticed that the case is free from blemish or suspicion, hence, the court finds that there cannot be any doubt on prosecution case. Having been satisfied with the material on record including the statement of the deceased and other supporting evidence, the court has no hesitation to hold that the prosecution proved its case against the accused for the offences punishable U/Secs., 498-A and 302 IPC.”

10. A reading of the dying declaration (Ex.P.6) recorded by P.W.7 would show that the deceased stated that *“daily her husband used to come to house in drunken state. He is giving me for house expenses only Rs.1500/- or 2000/- only. I am having two male issues. He did not give the above amount also. He used to tell me to bring money from my parents’ house. In this connection quarrel took place in the night at about 12 noon between me and my husband. He used to abuse me as he like. He instigate to me to die. He assaulted me with knife which used to cut Ulligadda. I pushed me aside. He brought kerosene oil and kept before me and instigated to pour the kerosene on my body and he can see. I poured kerosene oil on my body, immediately he taken matches first burnt his cigarette*

after words he thrown the matches stick on me and set fire. When flames come out he brought bed and put on me. Meanwhile, my brother came and saved and taken to hospital for treatment”.

11. As per the dying declaration of the deceased, the accused used to come to house in drunken condition daily and therefore the presumption that the accused was in drunken state even on the fateful day can be drawn as there is no rebuttal or contra evidence to such presumption. Further, in the instant case, there is no another dying declaration recorded by the Investigating Officer or any such declaration made by the deceased prior to her death either to the prosecution witnesses or her relatives stating that the accused was not in a drunken state and that he intentionally with a criminal bent of mind set fire to her.

12. This Court is not satisfied the manner in which the investigation is made and the documents made available to the Court. P.W.9 makes a contradictory statement in his deposition that “he orally examined the victim-Ghousia Begum, but she was not in a position to make any statement before him”. He also did not mention in the CD or in the alternation memos Exs.P.10 and P.11 that he could not record the statement of the victim as she was not in a position to speak, but in Exs.P.10 and P.11 he categorically stated that he has recorded the statement of the victim-Ghousia Begum, who was getting treated at Headquarters Hospital, Mahabubnagar.

13. Even considering the decisions relied on by the prosecution counsel, the instant case differs with the facts of **Santosh**'s case (supra) and **Ramesh**'s case (supra). The present case has a single dying declaration recorded by the Special Judicial First Class Magistrate, (P.W.7), after following due procedure and after certification by the medical officer that the deceased was in a conscious and fit state of mind to give statement. Therefore the dying declaration (Ex.P6) recorded by the Magistrate is reliable and cannot be doubted. Furthermore, the statement of the deceased would go to show that the accused was in drunken condition daily. Hence, in the absence of any contra evidence that the accused was not in drunken condition on the fateful day, it can be presumed that the accused was, indeed, in drunken condition even on the fateful day.

14. Therefore, we are in agreement with the view taken in the decisions **Kalu Ram** (supra) and **Mohammed Jahangeer** (supra). In the facts and circumstances of the case, we are of the opinion that this is a fit case where the appellant is liable to be convicted for the offence punishable under Section 304 Part II IPC.

15. The other argument advanced by the learned counsel for the appellant is that no offence under Section 498-A is made out. According to the counsel, petty quarrels happen regularly in married life. The same will not fall within the ingredients constituting the offence under Section 498-A IPC.

16. It is necessary to refer to Section 498-A IPC which reads as under:

“ 498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purpose of this section, “cruelty” means—

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”

17. A reading of the second limb of Section 498-A would show that where the harassment is for any property or valuable security or is on account of failure by her or any person related to her to meet such demand, the same amounts to cruelty. From perusal of the depositions of P.Ws.1 to 3, it is clear that they have in one voice deposed that the accused has been harassing the deceased for dowry. The deceased, in her dying declaration, also categorically stated that the accused used to tell her to bring money from her parents' house. Having regard to the findings on facts given above, the argument of the learned counsel for the appellant that no offence under Section 498-A is made out, cannot be accepted.

18. For the reasons stated above, the conviction and sentence awarded by the learned trial Court in S.C.No.605 of 2010, by Judgment dated 12.07.2002, for the offence punishable under Section 302 IPC, is converted to that of the offence punishable

under Section 304 Part II IPC, and the sentence is reduced from life imprisonment to rigorous imprisonment for a period of ten years, while confirming the conviction and sentence under Section 498-A IPC. The period undergone by the accused shall be given set off under Section 428 Cr.P.C. The bail granted during the pendency of the criminal appeal shall stand cancelled. The appellant/accused shall surrender forthwith before the Superintendent, Central Prison, Cherlapally, and suffer the rest of the sentence, as confirmed by this Court. In the event the appellant fails to do so, the Court below shall initiate steps in accordance with law to apprehend and incarcerate him for the balance period as per the confirmed sentence.

19. The Criminal Appeal is accordingly partly allowed, as indicated above.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 28.01.2019
TJMR