

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

CRIMINAL APPEAL No.855 OF 2013

J U D G M E N T

*(Per Hon'ble Sri Justice Sanjay Kumar)*

By judgment dated 01.07.2013 passed in Sessions Case No.499 of 2011, the learned III Additional District & Sessions Judge, Gadwal, held A1 guilty under Section 302 IPC and acquitted A2 and A3 of charges under Sections 498-A, 304-B and 302 IPC read with Section 4 of the Dowry Prohibition Act, 1961. A1 was sentenced to life imprisonment and levied with a fine of Rs.15,000/-. In default of payment of the fine, he was to suffer simple imprisonment for a period of six months. The fine amount was directed to be invested in a fixed deposit in a nationalized bank and paid to Lavanya, aged about 3 years, the daughter of A1 and the deceased, as compensation under Section 357(1) CrPC, upon her attaining majority. Aggrieved by his conviction and the sentence imposed, A1 is in appeal under Section 374(2) CrPC.

The charges framed against A1 and the other accused read thus:

'FIRSTLY:- That you accused Nos 1 to 3, you accused No.1 being the husband, you accused No.2 being mother-in-law, you accused No.3 being sister-in-law of the deceased Boya Sandya after the marriage of you accused No.1 with the deceased, subjected the deceased to cruelty by demanding additional dowry amount of Rs.30,000/- and tortured the deceased that female child was born to her and suspecting the character of the deceased and that you thereby committed an offence punishable under section 498-A IPC and within my cognizance.

SECONDLY:- That you accused Nos 1 to 3, you accused No.1 being the husband, you accused No.2 being the mother-in-law and you accused No.3 being the sister-in-law of the deceased Boya Sandhya on or about 2-5-2-11 at about 6-00 AM at the house of you accused No.1 at Bureddipally village caused the death of Smt.Boya Sandhya by burns that her death occurred within seven years after marriage, that she was subjected to cruelty and

harassment in your hands in connection with demand for additional dowry amount and that you thereby committed an offence punishable under section 304-B IPC and within my cognizance.

THIRDLY: That you accused No.1 on or about 2-5-2011 at about 6-00 AM at your house at Bureddipally village committed murder intentionally causing death of Boya Sandhya by pouring kerosene on her and setting her fire and she succumbed to burns on 7-5-2011 while undergoing treatment and that you thereby committed an offence punishable under section 302 IPC and within my cognizance.

FOURTHLY: That you accused Nos 1 to 3, after the marriage of you accused No.1 with Boya Sandhya which took place about one and half years ago from 7-5-2011 demanded her additional dowry amount of Rs.30,000/- and that you accused Nos 1 to 3 thereby committed an offence punishable under section 4 of the Dowry Prohibition Act and within my cognizance.'

The accused however pleaded not guilty and claimed to be tried.

During the trial, the prosecution examined 15 witnesses and marked in evidence 20 exhibits and 4 MOs. The defence did not adduce any oral evidence but entered Ex.D1 in evidence. Upon consideration of the oral and documentary evidence, the Sessions Court convicted A1 and let off the other accused.

The gist of the prosecution's case is as follows: P.W.9, the Assistant Sub-Inspector, Gadwal Town Police Station, received information at about 7.15 AM on 02.05.2011 from the Government Area Hospital, Gadwal, that the deceased was admitted in the hospital with severe burns. He thereupon went to the Government Hospital and from there to P.W.13, the Judicial Magistrate of First Class, Gadwal, for submitting a requisition to record the dying declaration of the deceased. Ex.P10 is the requisition. P.W.12, the Sub-Inspector of Police at Dharur Police Station received information on 02.05.2011 that a lady had been admitted at Gadwal Government Hospital with burns and was thereafter shifted to Kurnool General Hospital. He thereupon went to the Government General Hospital,

Kurnool, and recorded the statement of the deceased. Ex.P13 is the said statement. He then returned to the police station and registered a case in Crime No.39 of 2011. Ex.P14 is the FIR. He recorded the statements of the deceased, P.W.1, P.W.2 and P.W.3 under Section 161 CrPC. Ex.P15 is the statement of the deceased. He then examined P.W.9 and also recorded his statement under Section 161 CrPc. He proceeded to the scene of the offence in the presence of P.Ws.7 and 8, viz., the house of the deceased in Bureddipally Village. There, he seized a match box, burnt cotton petty coat, burnt saree and an empty small tin, used as a kerosene lamp, in the presence of mediators under a Crime Details Form (Ex.P16). M.O.1 is the match box, M.O.2 is the burnt petty coat, M.O.3 is the burnt saree and M.O.4 is the small tin used as a kerosene lamp. On 07.05.2011, P.W.12 received intimation of the death of the deceased from the Government General Hospital, Kurnool. Thereupon, he altered the section of law and submitted a Memo to the Court (Ex.P17). He gave a requisition to the Tahsildar to conduct an inquest over the body of the deceased. P.W.11 conducted the inquest. P.W.12 took three photographs of the deceased (Ex.P18). He then handed over further investigation to the Sub-Divisional Police Officer, Gadwal. P.W.15, the Sub-Divisional Police Officer, Gadwal, went to the Government General Hospital, Kurnool, on 07.05.2011. There, he recorded the statement of the mother of the deceased (P.W.1). He also examined P.Ws.2 and 3 and recorded their statements under Section 161 CrPC. He inspected the scene of the offence on 08.05.2011. He examined P.W.4, P.W.5, P.W.6 and Padma (L.W.7) and recorded their statements under Section 161 CrPC. He arrested A1 to A3 on 13.05.2011 and sent them to judicial custody after completing the formalities. He filed a charge-sheet against the accused after completion

of the investigation. The charge-sheet reflects that the prosecution projected this as a case of dowry harassment and murder.

During the trial, most of the prosecution witnesses, including the family members of the deceased, turned hostile. P.W.1 (the mother of the deceased), P.W.2 (the brother of the deceased), P.W.3 (the father of the deceased) and P.Ws.4, 5, 6, 7 & 8, the villagers of Bureddipally, all claimed that the deceased had committed suicide as she was suffering from stomach pain. They also asserted that the accused had not harassed the deceased for additional dowry and had not committed her murder. Apart from P.W.1 and P.W.3 who also stated so, P.W.2, a child witness of 12 years, stated that his parents tutored the deceased to give a statement against the accused as they would get money for the daughter of the deceased only then. According to him, the deceased gave a false statement before the Magistrate. He further stated that they had a good relationship with the accused and that he treated the deceased very well.

Significantly, the Sessions Court did not follow the due procedure prescribed under Section 118 of the Indian Evidence Act, 1872, to test whether the child witness was capable of understanding the questions put to him or giving rational answers, by reason of his young age. In *K.VENKATESHWARLU V/ s. STATE OF ANDHRA PRADESH*<sup>1</sup>, 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

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<sup>1</sup> (2012) 8 SCC 73

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. Viewed thus, the evidence of P.W.2 necessarily has to be eschewed.

P.W.3, the father of the deceased, supported the version of P.W.1 and P.W.2 by stating that he and his wife, P.W.1, tutored the deceased to give a complaint against the accused and give a statement before the Magistrate against the accused. He further stated that it was only upon their tutoring that the deceased gave a statement against the accused before the Magistrate. Be it noted that such a statement was not made by any of these witnesses in their chief examination but was elicited from them only in cross-examination. The residents of Bureddipally Village echoed the version of the family that the deceased had committed suicide by setting herself on fire. Significantly, all of them had stated otherwise earlier and that was the reason why they were declared hostile.

P.Ws.7 and 8, apart from being the residents of Bureddipally Village, were witnesses to the scene of offence panchanama and the Crime Details Form. They also turned hostile and while admitting their signatures therein, they stated that they signed at the instance of the police though the police did not observe the scene of the offence and did not prepare the rough sketch in their presence.

P.W.10, an inquest witness, also turned hostile. He however admitted his signature (Ex.P11) in the inquest report (Ex.P12). P.W.11, the other inquest witness, did not turn hostile and affirmed that the inquest was conducted over the dead body in his presence and in the presence of P.W.10. He also confirmed that the inquest panchayatdars

were of the opinion that A1 had poured kerosene on the deceased and set her on fire. In his cross-examination, he stated that the police drafted the inquest report (Ex.P12) and denied the suggestion that he had signed on blank papers at the instance of the police.

P.W.13, the Judicial Magistrate of First Class, Gadwal, stated that she received a requisition through a police constable at Dharur on 02.05.2011 to record the dying declaration of the deceased at Government Area Hospital, Gadwal, and that she immediately went to the hospital where she identified the deceased with the help of the duty doctor, Dr.S.M.Haneef. She further stated that before recording the dying declaration, she obtained the endorsement of the duty doctor to the effect that the patient was conscious, coherent and in a fit state of mind to give a statement. She stated that she put preliminary questions to know the mental condition of the patient and only upon satisfying herself that the answers given to the questions indicated that the patient was conscious and coherent, she recorded the dying declaration. She spoke of the contents of the dying declaration and stated that after completion of the recording, the contents were read over to the declarant and after she admitted the same to be true and correct, she obtained the thumb impression of the declarant thereon. She then obtained the signature of the doctor to the effect that the declarant was conscious and in a fit state of mind throughout the recording of the dying declaration. Ex.P19 is the dying declaration. In her cross-examination, P.W.13 stated that she asked all the persons present, including the police, to go away before she started recording the dying declaration. She denied the suggestion that the declarant was not in a fit condition and that she was under the influence of sedatives. She admitted that she had failed to mention the page numbers correctly on the dying declaration and in the concluding

page, the page number was shown as 3. She denied the suggestion that she did not take required precautions while recording the declaration.

P.W.14, an Assistant Professor in the Department of Forensic Medicine, Medical College, Kurnool, conducted the post-mortem examination of the body of the deceased. He confirmed that there were ante-mortem mixed degree burns of about 85% over the body surface area. He stated that, in his opinion, the deceased died due to septicemia resulting from mixed degree burns. Ex.P20 is the post-mortem certificate.

P.W.15, the IO, conceded in his cross-examination that the complete dying declaration of the deceased was not furnished under Ex.D1 certified copy, as one page was missing therein.

As all the critical prosecution witnesses turned hostile, this case essentially turns upon the dying declaration (Ex.P19) recorded by P.W.13.

Well settled is the legal position that a truthful and reliable dying declaration can be the sole basis for a conviction. The Supreme Court affirmed that such a dying declaration can form the basis for conviction even without corroboration (See KUSHAL RAO V/ s. THE STATE OF BOMBAY<sup>2</sup>, RAJU DEVADE V/ s. STATE OF MAHARASHTRA<sup>3</sup> and DEEPAK VERMA V/ s. STATE OF U.P.<sup>4</sup>).

Perusal of Ex.P19 dying declaration demonstrates that P.W.13 meticulously followed the procedure prescribed under Rule 33 of the Criminal Rules of Practice and Circular Orders, 1990, while recording it. She satisfied herself as to the state of mind of the deceased by putting simple questions to her before proceeding to record the dying declaration. That apart, she also secured medical opinion from the duty doctor as to the state of mind of the deceased both before and after the recording of

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<sup>2</sup> AIR 1958 SC 22

<sup>3</sup> (2014) 14 SCC 646

<sup>4</sup> (2015) 8 SCC 299

the dying declaration. To the question as to how she sustained the burn injuries, the deceased replied to the effect that on that day morning, her husband (A1) demanded that she should get Rs.1,00,000/- or otherwise he would sell the 10 tulas of gold given to her. She further stated that she had a nine month daughter and her in-laws alleged that the child was not born to her husband though the child resembled him. According to her, her husband used to threaten that he would divorce her. She said that on that day morning, her husband (A1) poured kerosene over her and set her afire. When she started raising cries, the neighbouring people started coming and her husband (A1) poured water over her as if he knew nothing about it. She further stated that even after she was admitted in the hospital, her husband and her mother-in-law came to her and told her not to state anything against them to the Magistrate and having held out such a threat, they left. P.W.13 recorded, in parentheses, that the patient, even while giving this statement, was fearful that her mother-in-law and her husband would beat her if they knew that she had said that they were responsible for her burns.

Juxtaposed to the aforestated dying declaration, the statement of the deceased (Ex.P13) recorded by P.W.12 prior to the registration of Crime No.39 of 2011 reflects that it was on the same lines. She stated that on 02.05.2011 at 6.00 AM while she was cooking, her husband (A1) poured kerosene over her and set her on fire. She further stated that when she ran out raising cries, her husband and her brother doused the fire. Ex.P15, the statement of the deceased, recorded under Section 161 CrPC, is on identical lines. Thus, there are no discrepancies in the dying declaration when compared with the other statements made by the deceased. The version remained one and the same throughout. That apart, P.W.13, the Judicial Magistrate, recorded her own perception that

the deceased was fearful as to what would be the consequence of her complaining about the acts of her husband and mother-in-law.

The version put forth by the family members and the villagers before the Sessions Court is wholly unworthy of reliance given the aforestated confidence-inspiring and clear dying declaration. According to the family members and the villagers, the deceased was suffering from unbearable stomach pain leading to her suicide. However, the post-mortem examination shows that there was no abnormality in the stomach of the deceased, a young woman of 20 years of age, which could account for the so-called unbearable pain projected by these witnesses. It is not unusual in cases of this nature for such family solidarity being displayed after the event, notwithstanding the death of a close relation. Perhaps the family members are guided by the misconceived notion of protecting the child from the stigma of being labeled the daughter of a murderer or at a more mundane and selfish level, they may seek to let off the offender so that he would himself take on the responsibility of rearing the child. Be it for whatever reason, the united front put forth by the family members of the deceased and the villagers is set at naught by the dying declaration of the deceased which remained unshaken.

Sri P.Prabhakar Reddy, learned counsel for the appellant/A1, would argue that the concession by the deceased herself that her husband put out the flames would show that he had no intention to kill her, even if the dying declaration is believed. This Court is not persuaded to agree. The deceased clearly spelt out in the dying declaration as to why he resorted to putting out the fire. She stated in clear terms that when she ran out in flames raising cries and the neighbouring people gathered, her husband poured water over her as if he had nothing to do with it. Therefore, it was not out of any sense of remorse or lack of intention that the appellant

came to put out the fire but only to project himself in a favourable light in front of the neighbours. In SANTOSH V/ s. STATE OF MAHARASHTRA<sup>5</sup>, a similar act by the husband was held to be not a mitigating factor because it was an attempt to cloak his guilt as he did it only when the deceased screamed for help.

Sri P.Prabhakar Reddy, learned counsel, would also rely upon the truncated dying declaration furnished under Ex.D1 certified copy in support of his contention that the investigation was defective. However, the lapse on the part of the authorities in furnishing the full dying declaration does not have the effect of diluting its contents. P.W.13, the Judicial Magistrate, also explained the mistake on her part in numbering the pages. These factors therefore do not taint the dying declaration.

On the above analysis, this Court finds that the prosecution brought home a fool-proof case against the appellant/A1 on the strength of Ex.P19 dying declaration and no grounds are made out to interfere with the judgment of the Sessions Court holding to this effect.

The appeal therefore fails and is accordingly dismissed, confirming the conviction and sentence visited upon the appellant/A1.

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SANJAY KUMAR, J

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ABHINAND KUMAR SHAVILI, J

20<sup>th</sup> MARCH, 2019

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<sup>5</sup> (2015) 7 SCC 641