

THE HON'BLE DR. JUSTICE G. RADHA RANI**CRIMINAL APPEAL No. 677 OF 2013****JUDGMENT:**

This Criminal Appeal is filed by the appellant-A1 aggrieved by the judgment of conviction and sentence imposed against him in S.C.No.479 of 2012 dated 05.08.2013 by the Special Judge for trial of Offences under SC and ST (POA) Act cum VI Additional Metropolitan Sessions Judge, Secunderabad.

2. The case of the prosecution in brief was that on 06.07.2011 at about 10:00PM, the Accused No.1 poured kerosene on his wife by name Smt.Shyamala and lit fire due to which she sustained 40% burn injuries and died on 12.08.2011 while undergoing treatment. On receipt of telephonic message from Gandhi Hospital, Secunderabad on 07.07.2011 at about 00:15hrs, the Head Constable of PS Begumpet proceeded to Gandhi Hospital, Female Burns Ward and recorded the statement of the victim. Basing on the said statement, another Head Constable (3006) of Begumpet PS registered a case vide Crime No.210 of 2011 under the head 'Woman Burnt' and handed over the case file to the SI of Police, PS Begumpet for investigation. The SI also recorded the statement of the victim at Gandhi Hospital, thereafter proceeded to the scene of offence i.e., to the house of the victim and conducted observation-cum-seizure panchanama in the presence of the witnesses and seized a kerosene

stove from the said house. He also drafted a rough sketch of the scene of offence and got the scene of offence photographed with the help of a photographer. On requisition by the SI of Police, on 08.07.2011, the XII ACMM, Nampally recorded the dying declaration of the victim at female Burns Ward, Gandhi Hospital. Subsequently on telephonic message from Gandhi Hospital that the victim intended to give a second dying declaration, the SI of Police of PS Begumpet gave a requisition to XI ACMM, Secunderabad who recorded the same on 18.07.2011. While undergoing treatment, Smt.Shyamala succumbed to burn injuries on 12.08.2011 at 09:35PM at Gandhi Hospital, Secunderabad. On requisition by the SI of Police, the Deputy Tahsildar Smt.S.Geetha conducted inquest over the body of the deceased in the presence of the witnesses. She also examined the parents of the deceased, who stated that their son-in-law harassed their daughter for want of more dowry and after three (03) days of the incident they were also informed by their daughter (deceased) that their son-in-law Rajkumar poured kerosene in drunken condition on their daughter and lit fire by closing the doors from inside. After inquest, the body of the deceased was subjected to autopsy by the Professor, Department of Forensic Medicine, Gandhi Medical College, Secunderabad. The doctor, who conducted autopsy, opined that the cause of death of the deceased was "Shock due to burns".

3. Basing on the statements of witnesses recorded by the Deputy Tahsildar, as the death of the deceased occurred within seven (07) years of her marriage, the SI of Police altered the Section of Law from 'woman burns' to Section 304-B IPC and handed over the case file to the Assistant Commissioner of Police, Begumpet Division, Secunderabad for further investigation. The Assistant Commissioner of Police visited the scene of offence, recorded the statements of the neighbours, parents and another relative of the deceased. He effected the arrest of A1 on 29.11.2011 and produced before the court. On his transfer, the subsequent Assistant Commissioner of Police who took charge, basing on the second dying declaration effected the arrest of A2 to A5 on 23.05.2012 and produced them before the court. After completing the investigation, he filed charge sheet against A1 for the offences punishable under Sections 498-A and 304-B IPC, against A2 and A3 for the offence under Section 498-A IPC and against A4 and A5 for the offence under Section 498-A read with Section 109 IPC.

4. The case was taken cognizance by the XI ACMM, Secunderabad and committed it to the court of sessions, which was made over to the VI Additional Metropolitan Sessions Judge, Secunderabad.

5. On appearance of the accused, the VI Additional Metropolitan Sessions Judge framed charges against the Accused-A1 for the offences under

Sections 304-B and 498-A IPC, against A2 and A3 for the offence under Section 498-A IPC and against A4 and A5 for the offence under Section 498-A read with Section 109 IPC.

6. During the course of trial, the prosecution got examined PWs 1 to 15 and got marked Exs.P1 to P12. The stove seized from the scene of offence was marked as MO1. No defence evidence was adduced by the accused. On considering the oral and documentary evidence on record and on hearing both the Special Public Prosecutor and the learned defence counsel, the Sessions Court acquitted A1 for the offence under Section 304-B IPC, acquitted A2 and A3 for the offence under Section 498-A IPC and acquitted A4 and A5 for the offence under Section 498-A IPC read with Section 109 IPC. The trial court found A1 guilty for the charge under Section 498-A IPC and convicted and sentenced him to undergo rigorous imprisonment for a period of one year and fine of Rs.1000/- and in default of payment of fine, to suffer simple imprisonment for a period of three (03) months for the said offence.

7. Aggrieved by the said judgment of conviction and sentence imposed against Accused No.1 for the offence under Section 498-A IPC, the Accused No.1 preferred this appeal contending that the trial court failed to appreciate the conflicting versions given by the deceased in Exs.P2, P4, P7 and P11 and came to a conclusion that the deceased stated about the harassment of

A1. In both Exs.P4 and P11 also, the deceased stated that due to unbearable words, she poured kerosene on herself and set ablaze. The deceased had not stated in Exs.P2 and P7 what she had stated in Exs.P4 and P11. The trial court failed to see that the evidence of PWs 1 to 3 and the statements of the deceased deposed in Exs.P2, P4, P7 and P11 would not attract the ingredients of Section 498-A IPC and prayed to set aside the judgment of conviction and sentence imposed against him by the trial court.

8. Heard the learned counsel for the appellant and the learned Assistant Public Prosecutor.

9. The learned counsel for the appellant submitted that there were four (04) dying declarations given by the deceased in this case, each one was an improvement over the other, when contradictory dying declarations were given by the deceased, the benefit of doubt should be given to the accused. He further contended that there was delay in recording the statements of PWs 1 to 3, as such no reliance could be placed upon them, all the witnesses were interested and prayed to allow the appeal by setting aside the judgment of conviction and sentence recorded against the appellant-Accused No.1.

10. The learned Assistant Public Prosecutor on the other hand contended that the trial court acquitted A1 for the major offence under Section 304-B IPC and convicted only for the minor offence under Section 498-A IPC and that too, had

taken a lenient view and had imposed a sentence of imprisonment of one year only, there was no reason to interfere with the said judgment and prayed to dismiss the appeal.

11. Now the point for consideration is: Whether the judgment of the trial court in convicting the Accused No.1 for the offence under Section 498-A IPC and sentencing him as above is in accordance with law or requires any interference by this court.

12. On a perusal of the evidence of the witnesses, PW1, the father of the deceased stated that on 26.05.2010, he performed the marriage of his deceased daughter with A1. At the time of marriage, on the demand of the Accused, he gave Rs.55,000/- of cash, gold and household articles, they lived happily for a period of six months. Thereafter A1 demanded additional dowry. On that issue, on two (02) occasions, a panchayat was held. On 06.07.2011 he received telephone from A2, the father of A1, that his daughter was admitted in Gandhi Hospital. He saw his daughter with burn injuries in hospital. She was not in a position to give statement. After three (03) days, his daughter told him that A1 had stolen Rs.500 kept in the almurah, went out, came in drunken condition and assaulted her. She further stated that A1 lit fire by pouring kerosene on her body and A2 to A5 supported A1. He stated that A1 harassed his daughter physically and mentally, on 12.08.2011, his daughter died due to burn injuries.

In his cross-examination, he stated that his daughter sustained burn injuries on face, nose, mouth, lips and on head and for three (03) days from the date of admission into hospital, she was in unconscious state of mind. He denied that they tutored the deceased to give statement improving her earlier statements. He also stated that A1 and the deceased used to reside separately from A3 to A5 in one room.

13. The mother of the deceased examined as PW2 also stated that on 26.05.2010, they got married the deceased with A1, on the demand of accused at the time of marriage they gave Rs.55,000/- of cash, six and half tulas of gold and Rs.25,000/- for utensils, she lived happily for a period of six (06) months. Thereafter, A1 demanded additional dowry and the same was informed by their daughter to them. Panchayat was held on two (02) occasions. After Panchayat, A1 and the deceased lived separately in the same locality. Her daughter informed her that A1 poured kerosene and lit fire on her due to which she sustained injuries. After one month, due to injuries her daughter died. In her cross-examination, she stated that one (01) month after her daughter was admitted in the hospital, Police recorded her statement.

14. PW3, who was related to the deceased as a grand father stated that he was present at the time of marriage between the deceased and A1. On the demand of the accused at the time of marriage, PWs 1 and 2 gave Rs.55,000/- of cash,

six and half tulas of gold and household utensils. He received information from PW1 that his daughter received burn injuries and was shifted to hospital. Two (02) days later on his enquiry, the deceased Smt. Shyamala told him that A1 lit fire by pouring kerosene.

15. The evidence of PWs 1 to 3 is not specific as to what was the additional dowry amount demanded nor any details of it as to when the demand was made, when and where the panchayats were held, who held the panchayats, etc. Their evidence is vague with regard to the demand of additional dowry by A1.

16. As per the prosecution case, immediately on receiving the telephonic message from Gandhi Hospital, the Head Constable (7045) by name Giddaiah of Begumpet PS, Secunderabad went to Gandhi Hospital, female Burns Ward and recorded the statement of the victim on 07.07.2011 at 00:15hrs. The said statement was marked as Ex.P4. In the said statement, the victim stated that she was married with A1 about one year one month ago, on 06.07.2011 at about 10:00PM A1 came home in drunken condition and when she questioned him for not bringing the provisions, he tried to beat her and abused her. Unable to tolerate his abusive words, she poured kerosene available in the stove over her body and set fire to herself.

17. Subsequently, as per the prosecution case, the SI of Police visited the Gandhi Hospital on 07.07.2011 and he also recorded the statement of the victim.

In the said statement, it was recorded that the marriage of the victim was performed with A1 one year ago, A1 was addicted to alcohol and used to come home in drunken condition daily. On 06.07.2011 A1 came home in drunken condition and forced the victim to bring household articles from her parents' house and tried to beat her and used vulgar language against her. Unable to bear the abusive words by her husband, the victim poured kerosene available in the stove and set herself ablaze. On her hue and cry, A1 came there extinguished the flames and shifted her to Gandhi Hospital for treatment. The said statement was marked as Ex.P11. There was no signature of victim on Ex.P11, but the signature of the victim was obtained on Ex.P4. As per the evidence of PWs 1 to 3, the victim was not in a position to speak and she was in unconscious condition for 2 to 3 days. But, the Head Constable, as well as the SI recorded her statement immediately after the incident on 06.07.2011 at 01:20AM as well as on 07.07.2011 and the Head Constable also obtained her signature on the statement.

18. On the requisition given by the SI of Police, the XII ACMM recorded the dying declaration of the deceased on 08.07.2011 at 12:55PM. In the said dying declaration, the victim stated that A1 poured kerosene on her and set fire to her, when she raised hue and cry, the neighbours opened the door, bet A1 and brought her to the hospital, her husband was harassing her daily as she was not begetting children and was threatening that he would perform second marriage,

he had taken all her gold ornaments including her mangalasutram chain and mortgaged all the articles and when she asked him about them, he used to beat her. To perform second marriage, he burnt her. The evidence of PW5, the XII ACMM, who recorded the dying declaration on 08.07.2011 marked as Ex.P2 would disclose that she had taken all the necessary precautions in recording the dying declaration, obtained the certificates of the duty doctor about the condition of the declarant before recording the dying declaration as well as after recording the dying declaration that she was in a fit state of mind to give her statement and after putting some preliminary questions and ascertaining the mental condition of the declarant and on satisfying herself, recorded the statement. The witness also stated that as the victim was unable to put her signature due to pain on her hand due to burn injuries, she obtained the left thumb impression of the declarant. She also stated that except she and the duty doctor, no others were present at the time of recording the statement.

19. Another dying declaration was recorded by the XI ACMM, Secunderabad on 18.07.2011 at 00:45hrs. The said witness was examined as PW11 and he stated that on the requisition given by the SI of Police, PS, Begumpet, he proceeded to the Gandhi Hospital, Secunderabad and recorded the dying declaration of the deceased. His evidence would also disclose that he had also taken all precautions in recording the dying declaration. In the said declaration, the victim stated that her husband came in drunken condition and poured

kerosene on her, he was unnecessarily abusing her since she had not given birth to children, the doors were broke open by the outsiders and her mother-in-law poured water and bet her with kettle (binde) on her loin, her father-in-law also used to abuse her in drunken condition daily, her parents gave 6 tulas of gold which was taken away by her husband by beating her and gave the same to her in-laws, who pledged the said gold and even though she was asking they were not getting it released, the elder sister of her mother-in-law and the husband of the elder sister of her mother-in-law also instigate her parents-in-law to abuse her. The old woman who was staying by the side of their house also used to create quarrels between her and her husband. The said statement was marked as Ex.P7. PW11 stated that he had taken the right thumb impression of the declarant on each page of the statement. He also obtained the endorsement of the duty doctor with regard to the fitness of the declarant prior to and after recording the statement. He also stated that except the witness, duty doctor and the victim no one were present at the time of recording the statement. The mother of the declarant by name Smt. Leela Mallamma was present at the bed of declarant but he sent her away and recorded the statement in her absence.

20. Thus, though the trial court recorded that PWs.5 and 11 followed the requisite procedure and had taken all the precautions while recording the statements, as there were improvements in the dying declarations considered that the said dying declarations were given by the declarant on tutoring and the

allegations made against A2 to A5 were later development. The trial court also observed that as the deceased had not stated in her earlier statements recorded by the Head Constable and the SI about A1 pouring kerosene on her and set her ablaze but stated that she herself poured kerosene and set her ablaze, considered that the later version of her stated before the Magistrates PWs 5 and 11 was also an afterthought and the said version did not repose any confidence.

21. The trial court relied upon the judgment of the Hon'ble Apex Court in **Smt. Kamala v. State of Punjab**¹ wherein it was held that:

"if there were more than one dying declaration they should be consistent particularly in material particulars".

22. The trial court also relied upon the judgment of the AP High Court in **Chinnapattu Naga V. State of Andhra Pradesh**² where in it was held that:

"the oral dying declaration appeared to be the first in time and there was a chance for the interested witnesses to tutor the deceased. Therefore, the subsequent dying declarations involving the accused in the crime appeared to be an afterthought".

23. The trial court also recorded the decision of the Division Bench of the AP High Court in **Public Prosecutor Hyderabad v. Jangili Nirmala and another**³, wherein it was held:

"when there are conflicting views in between two dying declarations, acquittal was justified".

¹ (1993) CrI.L.J. 68

² 1992 (2) ALD (CrI) 942 (AP)

³ 1996 (2) ALD (CrI) 940 (A.P.) (D.B.)

24. It also recorded the decision relied by the accused of AP High Court in **Chakiri Saidulu and others v. State of Andhra Pradesh**⁴, wherein it was held that:

"The second dying declaration was definitely an improvement over the earlier dying declaration and in the absence of any other evidence on record corroborating the version contained in the second dying declaration, it cannot be accepted".

25. The trial court also relied upon the judgment cited by the learned counsel for the accused, of AP High Court in **Kadapa Subba Ranga Swamy @ Subba v. State of Andhra Pradesh**⁵ wherein it was held that:

"It was settled principle of law that if a dying declaration was true and voluntary, it can be relied upon. But when a doubt or suspicion arises regarding the statement of the deceased viz., dying declaration, it was not safe to rely on such dying declaration to base the conviction of the accused".

26. The trial court observed that in view of the vital discrepancies in the dying declarations, the same could not be accepted. In the first two dying declarations i.e., Exs.P4 and P11, the declarant had taken a stand that she poured kerosene on herself and lit fire, she also stated in Ex.P11 that it was her husband A1, who put off the fire and admitted her in the hospital, but in the later dying declarations Exs.P2 and P7, the deceased developed the version as if A1 poured kerosene and lit fire to her and A2 to A5 used to harass her. Considering the time gap in recording the subsequent dying declarations, the

⁴ (1994) CrI.L.J. 3782

⁵ 1993 (2) ALT (Crl) 581 (D.B)

trial court opined that there was development about the involvement of A2 to A5.

27. But however considering that the presence of A1 was mentioned in the earlier statements made by the declarant and though there were developments in the subsequent statements, the deceased was specific in both Exs.P4 and P11 that A1 tried to beat her and used most vulgar language against her and the conduct of A1 in abusing the deceased would attract the provisions of Section 498-A IPC which would amount to cruelty defined in the Section driving the deceased to commit suicide, the trial court found A1 guilty for the offence under Section 498-A IPC.

28. This Court does not find any illegality in the observation of the trial court in coming to the conclusion of the guilt of A1 for the offence under Section 498-A IPC. The trial court had also taken into consideration the contention of the defence counsel with regard to the delay in recording the 161 Cr.P.C. statements of PWs 1 to 3 and observed that the evidence of PWs 1 to 3 was not considered with regard to the harassment by A1 to A5 for dowry as such the delay in recording their statements would not cause any prejudice to A1 since his case was appreciated considering Exs.P4 and P11 and other circumstances.

29. The contention of the learned counsel for the appellant was that Exs.P4 and P11 were also not consistent with each other and the said statements would

not attract the ingredients of Section 498-A IPC. Though there were some contradictions in both these statements, wherein in Ex.P4 it was stated by the deceased that when she questioned A1 about not getting the provisions he came on to beat her and abused her in filthy language, whereas in Ex.P11 she stated about A1 forced her to bring household articles from her parents' house and tried to beat her and used most vulgar language against her and there was also an improvement in the statement recorded under Ex.P11 about A1 trying to extinguish the flames and that it was he, who shifted her to Gandhi Hospital for treatment. Both these statements are consistent with regard to the quarrel ensued between the deceased and A1 and that he came in drunken condition, abused her and came upon to beat her. Unable to bear the same, she poured kerosene oil from the stove on her body and set herself ablaze, which is sufficient to attract the ingredients of Section 498-A IPC. Even after removing the exaggerations, the statement of the deceased in Exs.P4 and P11 is consistent with regard to the harassment and cruelty met by her in the hands of A1 which drove her to commit suicide. As such, this Court does not find any illegality or impropriety in the judgment of the trial court in coming to the conclusion about the guilt of the Accused No.1 for the offence under Section 498-A IPC. The sentence imposed by the trial court is also very meager. The trial court sentenced A1 to rigorous imprisonment for a period of one year only and

imposed fine of Rs.1,000/-. This Court does not find any necessity to interfere with the sentence inflicted against A1 for the offence under Section 498-A IPC.

30. Hence, the Criminal Appeal is dismissed confirming the conviction and sentence inflicted against the Appellant-A1 vide judgment dated 05.08.2013 passed in S.C.No.479 of 2012 by the Special Judge for trial of Offences under SC and ST (POA) Act cum VI Additional Metropolitan Sessions Judge, Secunderabad for the offence under Section 498-A IPC. The bail granted to the Appellant-A1 shall stand cancelled. The appellant-A1 is directed to surrender before the court below within fifteen (15) days from the date of this order and in case he failed to do so, the court below is directed to take steps in accordance with law to take him into custody.

Miscellaneous applications pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

**Date: 11 -11-2022
nsk.**