



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE SEVENTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY

PRSENT

THE HONOURABLE SRI JUSTICE RAKESH KUMAR
THE HONOURABLE MS JUSTICE J. UMA DEVI
CRIMINAL APPEAL NO: 820 OF 2015

Between:

1. VANGAMUDI KASIMAYAN, KURNOOL DT., S/o. Vangamudi, Petty Business,
N/o. Sambrani Village, Parayur Taluk, Madurai District, Tamilnadu State,
R/o. Orvakal Village and Mandal, Kurnool District.

...PETITIONER(S)

AND:

1. STATE OF AP., REP PP., rep. by Public Prosecutor,
High Court, Hyderabad.

...RESPONDENTS

Counsel for the Petitioner(s): DODDALA YATHINDRA DEV

Counsel for the Respondents: PUBLIC PROSECUTOR (AP)

The Court made the following: ORDER



HON'BLE SRI JUSTICE RAKESH KUMAR

AND

HON'BLE Ms. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.820 OF 2015

(Proceedings taken up through video conferencing)

JUDGMENT: (Per Hon'ble Sri Justice Rakesh Kumar)

1. The present Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Cr.P.C'), has been preferred by the sole appellant/husband of the injured (deceased), against the judgment of his conviction and sentence, dated 10.08.2015, passed in Sessions Case No.52 of 2013 (arising out of Crime No.11 of 2009 of Orvakal Police Station) by the IV Additional District and Sessions Judge, Kurnool (hereinafter referred to as the 'learned trial Judge').

2. By the said judgment of conviction, the appellant has been convicted both for the offences under Sections 302 and 304(B) of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'), in relation to murder and dowry death respectively. Under Section 302 of the IPC, the appellant was sentenced to undergo Rigorous Imprisonment for life and to pay a fine of Rs.2,000/-. In case of default in payment of fine, he was directed to undergo further Simple Imprisonment for two (2) months. Under Section 304(B) of the IPC, the appellant was sentenced to undergo Rigorous Imprisonment for seven (7) years. However, no fine was imposed. Both the sentences were directed to run concurrently.

3. Short fact of the case is that, on 22.01.2009 at about 17:00 hours, statement of appellant i.e., Vanagamudi Kasimayan, S/o.Vanagamudi, was recorded by Assistant Sub-Inspector of Police, Sri P.Babuji (not examined). The said statement was recorded in the Government General



Hospital, Kurnool. In his statement, the appellant disclosed that he was doing business of eatables (songalu) by taking a rented house in Orvakal Village of Kurnool District. The appellant was married with the daughter of PW.1. His wife's name was V.Vaneeswari. On the date of recording his statement, he stated that he was having a 3½ years old daughter. On the same date i.e., on 22.01.2009 at about 12:30 p.m. some dispute arose between the appellant and his wife (deceased) on the question of mortgage of gold by the father and husband of the deceased. In the said altercation, the deceased said that it is better to die rather to attend the function without gold. After such altercation, the appellant stated that he came outside. After some time, his wife poured kerosene on herself and lit fire. When he received smell of kerosene from his house, by that time his wife was caught in fire and she was trying to catch her daughter; any how the appellant rescued his daughter from her wife and so shouting, he poured water on his wife. On his shouting, the neighbors i.e., Krishna Murthy's wife, Kantha Reddy (PW.5) and Sarojamma (PW.4) came for help and put off the fire. Due to the flames, his wife's face, hands and legs were burnt. His daughter also got some fire injury due to flames. In the meanwhile, Thota Kantha Reddy (PW.5) gave a telephone call on 108 ambulance and admitted the injured (deceased) and her daughter in the Government General Hospital. The appellant stated that on enquiry made by the ASI, he deposed the same. The said statement was read over to him, on which he put his signature and also the ASI, who had recorded the statement, put the signature. On the basis of said statement, a Police case vide FIR No.11 of 2009 of Orvakal Police Station was registered mentioning therein 'women burnt' without mentioning any provision of IPC or the Dowry Prohibition Act, 1961. The said information was received in the Police Station on 22.01.2009 at 18:00 hours (06:00 p.m) vide General



Diary Reference Entry No.C.D.Vol-I. Column No.7 of the said FIR/Ex.P-9 further discloses burnt woman and burnt daughter of complaint namely Prathyusha, aged 3½ years and wife of the appellant namely V.Vaneeswari, aged 24 years. Subsequently, on 27.01.2009, altered FIR *vide* Ex.P-13 was registered *vide* Crime No.11 of 2009, dated 27.01.2009, for offences under Sections 498-A and 307 of IPC by Orvakal Police Station. In column No.12 of the FIR it was stated that the appellant, whose name was shown in Column No.7 of the FIR, had a dispute regarding dowry and poured kerosene and lit fire on his wife and daughter aged 3½ years, whereby they sustained burn injuries. It was further disclosed that the neighbors brought the injured (deceased) to hospital and the learned Special Judicial Magistrate of I Class for Prohibition and Excise, Kurnool (hereinafter referred to as the 'learned Special Judicial Magistrate'), took her dying declaration on 22.01.2009. The Police took a copy of the dying declaration and took another dying declaration and altered the case under Sections 498-A and 307 of IPC of women burnt. After registering a formal FIR, the Police started investigation. During investigation, fact regarding shifting of injured from Government General Hospital, Kurnool to Madurai hospital was noticed. It further transpired that after the death of injured (deceased), another FIR *vide* Ex.P-15 was lodged on 12.02.2009 in Tamil and Ex.P-16 is the English version of the said FIR, which is based on a written complaint made by A.Ramaswamy, PW.1, father of the deceased, in which it was mentioned that the injured died on 10.02.2009 in the morning at 06:30 a.m. in Grace Kennett Hospital, Madurai. Subsequently, the said FIR was transferred to Orvakal Police Station of Kurnool District, Andhra Pradesh. After death, inquest report was prepared and post-mortem was held on 13.02.2009. On the basis of materials collected during investigation disclosing involvement of the appellant in commission



of offence under Section 304(B) of IPC, Police submitted charge sheet since marriage of the appellant with the deceased was solemnized four (4) years back from the date of occurrence.

4. After submission of charge sheet, learned Judicial Magistrate of First Class, Kurnool took cognizance of offence and since it was a case triable by the Court of Sessions, the case was committed to the Court of Sessions on 13.02.2012. Thereafter, on 08.12.2013, charge under Section 304(B) of IPC was framed and trial commenced.

5. To establish its case, on behalf of the prosecution, altogether 13 witnesses were examined and total documents *i.e.*, Exs.P-1 to P-16 were got exhibited; whereas, on behalf of the defence side only one (1) document was brought on record, which was marked as Ex.D-1.

6. During trial, out of 13 witnesses PW.1 – A.Ramaswamy, father of the deceased, PW.2 – R.Thyba, sister of the deceased, PW.3 – K.Jilani, one of the so called translator from Tamil to Telugu, PW.4 – Thota Sarojamma, PW.5 – Thota Lakshmikantha Reddy, neighbors of the deceased and appellant, and also witnesses to the seizure panchanama regarding seizure of 5 liters of plastic can from the place of occurrence, did not support the prosecution case and as such they were declared hostile. PW.6 – G.Bhupal Reddy, who at the relevant time was Special Judicial Magistrate of I Class for Prohibition and Excise, Kurnool, and on 22.01.2009, he recorded the statement of injured (deceased) *i.e.*, dying declaration which was marked as Ex.P-7. PW.7 – Dr.M.Kannan, conducted post-mortem on the dead body of the deceased and he identified and proved post-mortem report, which was marked as Ex.P-8. PW.8 – S.Murthajavali, was Sub-Inspector of Police, Orvakal Police Station on the date of occurrence, partly investigated the case. PW.9,



P.Selvam, is witness to the inquest report and identified his signature on Ex.P-14 *i.e.*, inquest report. PW.10 – S.Ramnath was Sub-Divisional Police Officer, Kurnool from 23.11.2006 to 20.02.2009 and again from 09.06.2009 to 17.06.2010. This witness further investigated the case and finally submitted charge sheet to the extent of investigation made by him. PW.11 – P.Manohar Rao, who worked as Deputy Superintendent of Police from 17.06.2010 to 21.11.2011 deposed that after getting opinion, he filed charge sheet on 14.07.2010. PW.12 – Vetri Selvan, who worked as Inspector of Police, Madurai City, Tamil Nadu from 2008 ending to March, 2009 received a written statement of A.Ramaswamy, PW.1, and registered a case in S.S. Colony Law and Order Police Station *vide* Crime No.174 of 2009 under Section 174 of the Cr.P.C. He identified the original FIR of Crime No.174 of 2009 as Ex.P-15 and also identified attested translated copy of the said FIR from Tamil to English, which was marked as Ex.P-16. PW.13 – Dr.A.P.Narasimha Rao, on the date of occurrence *i.e.*, on 22.01.2009 was posted as Chief Medical Officer, Government General Hospital, Kurnool, who had admitted the injured (deceased) with alleged burn injuries and sent requisition to the concerned Magistrate for recording statement of injured (deceased). On the said dying declaration, which was recorded by the Magistrate, he put his signature. In cross-examination, he also identified a document which was brought from the defence side and it was marked as Ex.D-1. Ex.D-1 is an intimation memo of accidents and injuries given to local Police. Before completion of recording evidence of PW.13 during the trial, on 24.04.2015, charge under Section 302 of IPC was further framed, which too was denied by the appellant.

7. After completion of the prosecution evidence, evidences and circumstances which were collected during trial were explained to the



accused/appellant and his statement under Section 313 Cr.P.C. was recorded. The appellant denied the allegation and circumstances. Save except producing one document which was marked as Ex.D-1 from the defence side, no oral evidence was brought on record.

8. On the basis of the evidence on record, the learned trial Judge, by the impugned judgment, convicted the appellant both under Sections 302 and 304(B) of IPC and sentenced him to undergo imprisonment for life and with fine of Rs.2,000/- and sentenced him to undergo seven (7) years Rigorous Imprisonment respectively. The said judgment has been assailed by the appellant in the present Appeal.

9. After placing entire evidence, Sri M.Subhash Babu, learned counsel, assisted by Sri Doddala Yathindra Dev, learned counsel for the appellant, has argued that the learned trial Judge has completely failed to appreciate that the appellant was not required to be convicted for both offences *i.e.*, under Sections 302 and 304(B) of IPC in a case of death of wife of the appellant. He submits that, the learned trial Judge, it appears, was not fully satisfied as to which offence the appellant had committed and this was the reason that the appellant has been convicted for offences under Section 302 as well as under Section 304(B) of IPC in case of one death *i.e.*, death of the wife of the appellant. Learned counsel for the appellant has further argued that the prosecution has miserably failed to establish its case beyond all reasonable doubt and even then the learned trial Judge has passed the impugned judgment. According to learned counsel for the appellant, it is a peculiar case in which three (3) First Information Reports were lodged; one FIR was marked as Ex.P-9, which is based on the statement of the appellant and was recorded on the date of offence *i.e.*, 22.01.2009 by the Assistant Sub-Inspector of Police,



Orvakal Police Station, Kurnool District; second FIR *i.e.*, Ex.P-13 was formally registered on 27.01.2009, wherein penal provisions were mentioned *i.e.*, Sections 498-A and 304(B) of IPC, which was lodged by the Orvakal Police Station and third FIR has been lodged in Madurai Corporation (Tamil Nadu), C3 S.S. Colony Police Station, which has been marked as Ex.P-15 and this FIR was lodged on 12.02.2009. According to learned counsel for the appellant, there was no reason for the Orvakal Police Station to lodge two FIRs in the same transaction. Sri M.Subhash Babu, learned counsel for the appellant, has further argued that the prosecution has not given any explanation as to why after three (3) days from the date of death of the deceased post-mortem was held.

10. As per learned counsel for the appellant, in the present case, three (3) dying declarations were recorded and as such in the absence of any other admissible evidence, the learned trial Judge was not justified to convict and sentence the appellant only on the basis of one dying declaration, which has been marked as Ex.P-7. The prosecution, to the reasons best known to it, has purposefully withheld third dying declaration which was recorded by PW.8. According to learned counsel for the appellant, in a situation where there were no other admissible evidence, the learned trial Judge has selectively relied on one dying declaration, which was in favour of the prosecution, and ignored other two declarations made by the deceased and as such the judgment of conviction is liable to be set-aside.

11. Learned counsel for the appellant has further argued that the deceased herself had admitted that she poured kerosene and lit fire which was not taken note by the learned trial Judge. He has emphasized by way of referring to Ex.D-1 that when the injured (deceased) was admitted in



hospital, intimation of accidents and injuries were made to the Police, wherein it was indicated that the injured had burnt herself. This was the first document prepared by Dr.A.P.Narasimha Rao, PW.13. In cross-examination also he admitted that Column No.6 was filled up on the basis of answers given by the patient (deceased).

12. By way of referring to Ex.P-16 *i.e.*, English version of the FIR which was recorded in Madurai, learned counsel for the appellant has argued that even father of the deceased in the written complaint to the Police had not whispered regarding commission of any offence by the appellant, rather he has stated that the alleged occurrence had accidentally taken place. Learned counsel for the appellant, in view of the evidence, has argued that neither it was a case under Section 302 of IPC nor for offence under Section 304(B) of IPC. The prosecution has not come out with any cogent evidence that the deceased was administered torture due to non-fulfillment of dowry before occurrence. However, he has alternatively argued that, even in case, if it is assumed that at the time of occurrence some altercation had taken place, there was no intention on the part of the appellant. The appellant was not having any knowledge that the said altercation or dispute was likely to cause death and as such, alternatively, it has been argued that it can hardly be a case for offence under Section 304 Part-II of IPC and since the appellant is continuously in custody from the date of judgment of conviction *i.e.*, 10.08.2015, the conviction can be altered to Section 304 Part-II of IPC and sentence can be reduced to the period already he has undergone.

13. Learned counsel for the appellant has placed reliance on the following of judgments to show that dying declaration, which is the basis of conviction of the appellant, was not in accordance with law:



1. ***P.Mani Vs. State of Tamil Nadu***¹,
2. ***Panneerselvam Vs. State of Tamil Nadu***²,
3. ***Laxman Vs. State of Maharashtra***³,
4. ***Kalabai Vs. State of Madhya Pradesh***⁴,
5. ***Kamla Vs. State of Punjab***⁵,
6. ***Sivagallu Sailu Vs. The State, Station House Officer, Kothur Police Station, Mahaboobnagar District***⁶,
7. ***Umakant and another Vs. State of Chattisgarh***⁷ and
8. ***Nallam Veera Satyanandam and others Vs. The Public Prosecutor, High Court of AP***⁸.

14. Sri S.Dushyanth Reddy, learned Additional Public Prosecutor, has heavily placed reliance on the dying declaration *i.e.*, Ex.P-7, which is the basis of conviction and sentence of the appellant. According to learned Additional Public Prosecutor, the learned Special Judicial Magistrate before recording the dying declaration had tried to decipher as to whether the injured (deceased) was in a fit condition to make correct statement or not and this is the reason that he had asked number of short questions to the injured (deceased), which was replied by her in proper way. In the dying declaration, the injured (deceased) disclosed her husband's name and also disclosed that her marriage was solemnized four (4) years back to the occurrence and she was having one daughter. In the dying declaration, the injured (deceased), immediately after her admission, in the hospital stated before the learned Special Judicial Magistrate that at about 12:00 p.m. her husband had dispute with regard to dowry and poured kerosene and lit fire; her daughter also sustained burnt injuries;

¹ CDJ 2006 SC 190

² CDJ 2008 SC 1028

³ CDJ 2002 SC 495

⁴ CDJ 2019 SC 550

⁵ CDJ 1992 SC 175

⁶ CDJ 2013 APHC 314

⁷ CDJ 2014 SC 538

⁸ CDJ 2004 SC 437



her neighbors brought her to hospital and her parents were residing in Tamil Nadu. According to learned Additional Public Prosecutor, coherent declarations by the injured (deceased) inspire confidence and there is no reason to raise any doubt on such declaration. Learned Additional Public Prosecutor submits that law on the point is settled that if a dying declaration is free from any doubt is itself sufficient for approval of conviction and sentence. He has argued that besides Section 302 of the IPC, appellant has been convicted for offence under Section 304(B) of IPC. In the present case, the prosecution has established that marriage of deceased with the appellant was solemnized within seven (7) years from the date of occurrence. In the present case, four (4) years back from the date of occurrence marriage of the deceased with the appellant was solemnized. In such situation, considering the provisions contained in Section 113(B) of the Indian Evidence Act, 1872, presumption goes against the appellant. However, in the present case, in the dying declaration of the deceased, specific evidence has come that due to non-fulfillment of dowry, the appellant poured kerosene and lit fire and the said burnt injury led to the death of the injured (deceased). Learned Additional Public Prosecutor, to strengthen his submission that on the basis of only dying declaration and even in the absence of any other corroborative evidence, one can be held guilty, placed reliance on a Constitution Bench judgment of the Hon'ble Supreme Court reported in **Laxman**⁹ besides referring to the judgments of the Hon'ble Supreme Court in **Kans Raj Vs. State of Punjab**⁹, **Najjam Faraghi Vs. State of West Bengal**¹⁰ and **C.Muniappan and others Vs. State of Tamil Nadu**¹¹.

⁹ 2000 LawSuit (SC) 827

¹⁰ 1997 LawSuit (SC) 1401

¹¹ 2010 LawSuit (SC) 571



15. According to learned Additional Public Prosecutor, the learned trial Judge, rightly, on the basis of a dying declaration, which is free from any doubt or suspicion, has passed the impugned judgment of conviction and sentence. According to him, the impugned judgment requires no interference.

16. Besides hearing learned counsel for the parties, we have examined the entire evidence on record. After going through the entire evidence available on record, this Court is of the opinion that save except dying declaration, recorded by the learned Special Judicial Magistrate *i.e.*, Ex.P-7, there is no other material to approve the judgment of conviction and sentence. It is true that, even in the absence of any other evidence, if a dying declaration is free from any doubt or it has got no ambiguity, conviction can be approved. However, in the facts and circumstances of the present case, it would be difficult to place full reliance on Ex.P-7, due to the simple reason that during trial, PW.13, who was posted as Chief Medical Officer in Government General Hospital, Kurnool, has admitted that after the injured (deceased) was admitted, immediately intimation and requisition was sent to the Police. The said intimation *i.e.*, Ex.D-1 was prepared by him. He has also admitted that in column No.6 of Ex.D-1, after enquiry from the injured (deceased), he recorded that the injured had burnt herself. Accordingly, as per the evidence, it was first declaration by the injured (deceased) and as such contrary to the said declaration, the dying declaration *i.e.*, Ex.P-7 cannot be treated as free from all the doubts. The other reason for not fully placing reliance on the said dying declaration is that the Investigating Officer, PW.8, in his evidence, has stated that subsequent to recording of dying declaration by the learned Special Judicial Magistrate, he went to hospital and recorded the statement of injured (deceased). However, to the reasons best known to



the Investigating Officer, the dying declaration of the deceased has not been brought on record by exhibiting the same. Meaning thereby that third version of the deceased which was said to be recorded by the Investigating Officer was suppressed. During cross-examination, the Investigating Officer, PW.8, has admitted *'that on 24.01.2019 in Government General Hospital, he examined the victim Vaneeswari and recorded her statement. The deceased did not tell in her statement that her husband set fire to her by pouring kerosene.'* This examination and cross-examination was held on 10.11.2014. However, surprisingly, this witness was recalled much belatedly on 30.07.2015 and he tried to water down his evidence which was brought on record in cross-examination recorded on 10.11.2014 and stated that due to confusion he had deposed earlier. But the fact remains that the said statement *i.e.*, third statement of the deceased was not brought on record and it was not got exhibited and as such it would not be safe to place full reliance on Ex.P-7 and approve the judgment of conviction and sentence. Besides this, there are many things which have not been explained by the prosecution. Firstly, no explanation has been given by the prosecution as to under what provision of law on the basis of a statement of the appellant on 22.01.2009 first FIR was lodged *i.e.*, Ex.P-9. In the FIR, no penal provision has been mentioned nor was any suspicion raised against any one as accused. Again, subsequently, on 27.01.2009, an altered FIR was drawn giving the same Crime number *i.e.*, Crime No.11 of 2009, wherein Sections 498-A and 304(B) of IPC were incorporated. But nothing has been clarified as to what was the occasion for altering and registering another FIR with same number. In such situation, in normal course, had the first FIR was sent to the Court, with the permission of the Court, penal provision was required to be added. During the trial, the prosecution has not at all whispered as



to on which date the first FIR, whether lodged on 22.01.2009 or 27.01.2009, was received in the Court of learned Judicial Magistrate of First Class, Kurnool. The prosecution has also not clarified as to what was the reason that post-mortem on the dead body of the deceased was conducted after about three (3) days from the date of death. Ex.P-16 *i.e.*, the FIR translated English version from Tamil lodged in Madurai Police Station, depicts that death of the deceased had occurred on 10.02.2009 and the written report was made by father of the deceased on 12.02.2009 and, in the said report, he had disclosed that accidentally his daughter received burnt injuries and in the said statement he had not made any allegation against the appellant. In this case post-mortem report shows that it was held on 13.02.2009, without any explanation of delay in conducting autopsy. Father and sister of deceased, examined as PWs.1 and 2, have not supported the prosecution case nor they have whispered regarding either demand of dowry or administering torture to the deceased due to non-fulfillment of demand of dowry. According to their evidence, there is no element of application of either Section 302 of IPC or Section 304(B) of IPC. It is also surprising that in case of death of injured wife of the appellant, how her husband can be convicted both under Sections 302 and 304(B) of IPC. This depicts learned trial Judge, at the time of passing judgment of conviction, was not sure as to which offence was committed by the appellant. During the entire evidence only incriminating material has been brought on record is second dying declaration *i.e.*, Ex.P-7. Of course, it was recorded by the learned Special Judicial Magistrate but in view of two other declarations made by the deceased *i.e.*, one made immediately after her admission in Hospital and third made after recording of the second declaration, it would be difficult to approve the conviction of the appellant on the basis of second dying declaration *i.e.*, Ex.P-7. It is



true that if, in a criminal trial, a dying declaration is free from any doubt, the conviction can be approved but, in view of the peculiar facts and circumstances of the present case, it would not be safe to approve the conviction and sentence of the appellant on the basis of one dying declaration, which is not free from all the doubts. Accordingly, the Court is of the opinion that the prosecution has not been able to establish its case beyond all reasonable doubt and, by way of extending benefit of doubt, the appellant can be acquitted.

17. Accordingly, the judgment of conviction and sentence, dated 10.08.2015, passed in Sessions Case No.52 of 2013 by the learned IV Additional District and Sessions Judge, Kurnool, by way of extending the benefit of doubt, is hereby set-aside and, consequently, the Criminal Appeal is allowed. Since the appellant is in jail and his conviction and sentence has been set-aside, it is hereby directed to release the appellant, forthwith, if not required in any case.

RAKESH KUMAR, J

J.UMA DEVI, J

Date: -09-2020.
Dsh