



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3547]

WEDNESDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

THE HONOURABLE SRI JUSTICE SUBBA REDDY SATTI

CRIMINAL APPEAL NO: 2019/2018

Between:

1. PAGIDIPALLI SRINIVASA RAO @ SRINU, R/O INDIRA COLONY,
DACHEPALLI, DACHEPALLI, GUNTUR DISTRICT.

...APPELLANT

AND

1. THE STATE OF A P, Rep by its Public Prosecutor, Hyderabad.

...RESPONDENT

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to may be pleased to set aside the judgement and sentence Dt 05.02.2018 passed in Sessions Case No. 158 OF 2013 by the X Addl. District and Sessions Judge, Gurazala and further be pleased to pass

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to condone the delay of (89) days in preferring the present Appeal and further be pleased to pass

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to enlarge the petitioner/accused on bail who is convicted by the Judgment and sentence dated 05-02-2018 passed in Sessions Case

No.158 of 2013 by the X Addl. District and Sessions Judge, Gurazala pending disposal of the above Criminal appeal and further be pleased to pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to release the petitioner on bail in Crl.A.No. 2019/2018 before this Hon'ble Court which is filed against the judgment passed in S.C.No. 158 of 2013 by the Court of the X Additional District and Sessions Judge, Gurazala, Guntur District, Andhra Pradesh, dated 05-02-2018, pending disposal of Crl.A before this Hon' Court and pass

Counsel for the Appellant:

1.Dr CHALLA SRINIVASA REDDY

2.-

Counsel for the Respondent:

1.PUBLIC PROSECUTOR (AP)

The Court made the following:

JUDGMENT: *(Per Hon'ble Sri Justice K.Suresh Reddy)*

Sole accused in Sessions Case No.158 of 2013 on the file of the Court of the learned X Additional District & Sessions Judge, Gurazala (for short, 'the learned Additional Sessions Judge') is the appellant. He was tried by the learned Additional Sessions Judge under the following charges:

- (i) 1st charge was under Section 498-A IPC
- (ii) 2nd charge was under Section 302 IPC
- (iii) 3rd charge was under Section 3 of the Dowry Prohibition Act, 1961, and
- (iv) 4th charge was under Section 4 of the Dowry Prohibition Act, 1961

2. Substance of the charge is that prior to 08.07.2012, the accused used to harass his wife by name Pagidipalli Mani @ Yesudayamani (hereinafter referred to as 'the deceased') both physically and mentally demanding her to bring additional dowry from her parents and on 08.07.2012 at about 11.00 A.M., the accused poured kerosene on her and set fire to her with a match stick in his house situated at Indira Colony, Dachepalli Village & Mandal and while undergoing treatment, she succumbed to injuries on 13.07.2012, thereby committed offences punishable under Sections 498-A & 302 IPC and Sections 3 & 4 of the Dowry Prohibition Act, 1961.

After completion of trial, learned Additional Sessions Judge convicted the appellant under Section 302 IPC and sentenced him to suffer imprisonment for 'LIFE' and also to pay a fine of Rs.10,000/-.

Learned Additional Sessions Judge further convicted the appellant under Section 498-A IPC and sentenced him to undergo Rigorous Imprisonment for a period of three years and also to pay a fine of Rs.5,000/-, in default to undergo Simple Imprisonment for a period of one month.

Learned Additional Sessions Judge also convicted the appellant under Section 3 of the Dowry Prohibition Act, 1961 and sentenced him to undergo Rigorous Imprisonment for a period of five years and also to pay a fine of Rs.15,000/-, in default to suffer Simple Imprisonment for a period of one month.

Learned Additional Sessions Judge further convicted the appellant under Section 4 of the Dowry Prohibition Act, 1961 and sentenced him to undergo Simple Imprisonment for a period of six months and also to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for a period of 15 days.

All the substantive sentences were directed to run concurrently.

3. Case of the prosecution, briefly, is as under:

(a) The accused is a resident of Dachepalli Village. The material prosecution witnesses are residents of Gundlapalli Village, Nekarikallu Mandal. The marriage between the accused and deceased was performed about 8 years prior to the date of incident and the couple blessed with a son aged about six years. The accused looked after the deceased well for sometime and for the last six years the accused has been harassing the deceased demanding her to bring money from her parents' house. When the

deceased went and informed her parents, they gave a Double bed cot, Iron Almirah and cash of Rs.10,000/- to the accused, about one month prior to the date of incident. While so, on 08.07.2012 morning, again the accused demanded her to bring money from her parents. Immediately, the deceased went to her parents and informed her father, who stated that he will arrange money shortly as he does not have money at that point of time. On the same night, the deceased returned to matrimonial home. At about 11.00 P.M., the accused came to the house in a drunken state and enquired the deceased as to whether she brought money from her parents or not. The deceased replied stating that her father informed her stating that he will arrange money shortly and at present he does not have money. Immediately, the accused picked up a quarrel, poured kerosene on her and set fire to her. Unable to bear the flames, the deceased raised cries. Hearing her cries, her in-laws, brother-in-law and co-sister came there and put off the flames and shifted the injured to the Government General Hospital, Guntur.

(b) On 09.07.2012 at about 1.00 P.M., PW.4 Head Constable, attached to the Outpost Police Station, G.G.H., Guntur went to the Hospital and recorded statement Ex.P1 from the injured. On 12.07.2012, the Sub-Inspector of Police PW.13 received hospital intimation Ex.P7 along with Ex.P1 statement recorded by PW.4. On the basis of the same, PW.13 registered a case in Cr.No.111/2012 under Sections 498-A & 307 IPC and Sections 3 & 4 of the Dowry Prohibition Act. He issued copies of F.I.R. to all the concerned. F.I.R. was marked as Ex.P8. Immediately, he proceeded to the G.G.H.,

Guntur and recorded statements of PWs 1, 2 & 11. He visited the scene of offence on 12.07.2012 and prepared a Rough sketch Ex.P9. On 15.07.2012, he prepared an Observation Report Ex.P2. He got the scene photographed through PW.12. Photographs and C.D. were marked as Ex.P10. He seized Kerosene Plastic Tin M.O.1 and Burnt Saree M.O.2 at the scene of offence under a cover of Panchanama. Further investigation was taken over by the Inspector of Police PW.14. He visited the scene of offence and verified the investigation conducted by PW.13. While undergoing treatment, the deceased succumbed to injuries on 13.07.2011. Thereafter, PW.14 went to G.G.H., Guntur, collected the death intimation and held inquest over the dead body in the presence of PW.9 and another. Inquest report is marked as Ex.P4. After inquest, he recorded statements of PWs 1, 2, 5 & others. He sent the dead body for Postmortem examination.

(c) PW.8 Civil Assistant Surgeon conducted Autopsy over the dead body. He opined the cause of death was due to burns. He issued Postmortem Certificate Ex.P3.

(d) On 18.07.2012 at about 11.00 A.M., PW.14 arrested the accused at Dachepalli. On 19.07.2012, PW.14 recorded the statement of PW.12. After receiving all the documents and after completion of investigation, PW.14 laid the charge sheet.

4. In support of its case, the prosecution examined PWs 1 to 14, marked exhibits P1 to P11 and exhibited M.Os 1 & 2. On behalf of the defence, D.W.1

V Additional Junior Civil Judge, Guntur was examined, and Exs.D.1 and D.2 were marked.

5. When the accused was examined under Section 313 Cr.P.C., he denied the incriminating evidence appearing against him.

6. Placing reliance on the evidence of PWs 1 to 6 coupled with Ex.P1, learned Additional Sessions Judge convicted the appellant as aforesaid.

7. Heard Dr. Challa Srinivasa Reddy, learned counsel for the appellant, and Sri Marri Venkata Ramana, learned Additional Public Prosecutor representing the State.

8. Learned counsel for the appellant strenuously contends that the prosecution deliberately withheld the dying declaration recorded by the Judicial Officer D.W.1 for the best reasons known to them. It is only when the appellant made an application before the trial Judge and brought to its notice stating that the dying declaration was recorded by the Judicial Officer, learned trial Judge summoned DW.1 and marked Exs.D.1 and D.2. Learned counsel for the appellant further contended that in the dying declaration recorded by the Judicial Officer, examined as DW.1, the deceased has stated that she committed suicide. She stated that she poured kerosene on herself and set fire to her because of some altercation that took place at about 11.00 P.M. on 08.07.2012. But, curiously in the statement recorded by PW.4 subsequently, she narrated the entire story. As such, learned counsel for the appellant

contends that there are two inconsistent dying declarations made by the deceased and no reliance can be placed on both these dying declarations. He further contends that so far as the oral evidence adduced by the prosecution through PWs 1 to 3, 5 and 6 is concerned, admittedly they are not present at the time of offence. Their evidence simply speaks about the harassment made by the accused towards the deceased. He further contends that so far as the independent witnesses i.e., PWs 10 to 12 are concerned, they did not support the prosecution and they were declared hostile. As they are inconsistent dying declarations, learned counsel for the appellant requests this Court to allow the appeal by setting aside the conviction and sentence recorded by the learned Additional Sessions Judge.

9. On the other hand, learned Additional Public Prosecutor opposed the appeal contending that the learned Additional Sessions Judge has considered each and every aspect while convicting the accused.

10. We have carefully scrutinized the entire evidence on record.

11. PWs 1 to 3, 5 and 6 are none other than the relatives of the deceased. All these witnesses in their evidence have categorically stated that the accused used to harass the deceased demanding her to bring additional dowry from her parents. Of course, PWs 10 to 12, independent witnesses, did not support the prosecution. Though PWs 1 to 3, 5 and 6 were cross-examined at length, nothing adverse has been elicited from their evidence with regard to the harassment made by the accused towards the deceased.

As such, the prosecution is able to prove the guilt of the accused for the offence under Section 498-A IPC and Sections 3 & 4 of the Dowry Prohibition Act. As such, the conviction and sentence recorded by the learned Additional Sessions Judge under Section 498-A IPC and Sections 3 & 4 of the Dowry Prohibition Act are hereby confirmed.

12. So far as the offence under Section 302 IPC is concerned, according to the prosecution, DW.1, having received intimation from the hospital, went and recorded the statement of the injured, marked as Ex.D2. Hospital intimation was marked as Ex.D1. According to DW.1, statement under Ex.D2 was recorded at about 04.40 A.M. on 09.07.2012. The incident took place at about 11.00 P.M. on 08.07.2012. So far as Ex.D2 first dying declaration of the deceased is concerned, it was withheld by the prosecution. It is only when the appellant made an application before the learned trial Judge, DW.1 was summoned.

At Para 35 of the Judgment, it is stated as follows:

“35. D.W.1 – S.Sreedevi the then V Additional Junior Civil Judge, Guntur, appeared before the Court on receipt of summons and deposed that on receipt of requisition / Ex.D1, she reached casualty, G.G.H., Guntur, and recorded dying declaration / Ex.D2 of deceased after ascertaining that patient was conscious and by putting some preliminary questions.”

As such, we have no hesitation to come to a conclusion that the prosecution deliberately withheld the dying declaration Ex.D2 recorded by the Judicial Officer DW.1.

(a) So far as the dying declaration recorded by PW.4 is concerned, the same cannot be relied upon. PW.4 in his evidence has stated that he obtained right toe impression of the deceased as the hands were burn. The said contention cannot be accepted. In the Postmortem report Ex.P3, in the column of "injuries", it is stated as follows:

"Infected burns present all over the body except right and left palms and both soles - Above injuries are antemortem in nature, red in colour."

13. In view of the above findings by the Doctor, who conducted Postmortem, the contention of PW.4, that he obtained right toe impression of the deceased as her both hands were burnt, cannot be accepted. Though Ex.P1 was recorded by PW.4 on 09.07.2012 at about 01.00 P.M, the same could not be sent to the Police Station till 12.07.2012. PW.13 in his evidence has stated that he received Ex.P1 statement and Ex.P7 hospital intimation on 12.07.2012. The prosecution has not explained as to why the aforesaid Ex.P1 statement was not sent to the Police Station till 12.07.2012, though it was recorded on 09.07.2012 itself. Though the said F.I.R. was registered on 12.07.2012, the same was received by the Court at about 04.00 P.M. on 13.07.2012. Absolutely, the prosecution has not explained the delay in registering the crime and also the delay in sending the F.I.R. to Court. As

such, we have no hesitation to come to a conclusion that Ex.P1 statement was created by the prosecution subsequently and filed into the Court.

14. As already pointed out, the prosecution deliberately withheld Ex.D2 dying declaration recorded by the Judicial Officer at about 04.40 A.M. on 09.07.2012. As seen from both the dying declarations, they are inconsistent to each other. As such, no reliance can be placed on the dying declaration Ex.P1. The observation made by the trial Judge that Ex.P1 is the last statement given by the deceased. As such, he has given importance to Ex.P1 statement. The said version of the learned trial Judge is not proper. Learned trial Judge ought not to have taken into consideration Ex.P1 by discarding Ex.D2 on the ground that the last version of the deceased has to be accepted.

15. In view of the above facts and circumstances, the conviction and sentence recorded by the learned Additional Sessions Judge under Section 302 IPC is not sustainable in law and the same is liable to be set aside.

In the result, this Criminal Appeal is allowed in part and the conviction and sentence recorded by the learned X Additional District & Sessions Judge, Gurazala under Section 302 IPC in Sessions Case No.158 of 2013 vide judgment dt.05.02.2018, is hereby set aside and he is acquitted for the offence under Section 302 IPC.

So far as conviction under Section 498-A IPC and Sections 3 & 4 of the Dowry Prohibition Act is concerned, the conviction and sentence recorded by

the learned X Additional District & Sessions Judge, Gurazala in Sessions Case No.158 of 2013 vide judgment dt. 05.02.2018, are hereby confirmed.

As the appellant was released on bail by order in I.A.No.1 of 2023 dt. 08.05.2023 in terms of the order of the combined High Court passed in **Batchu Rangarao v. State of A.P.**¹, and as he had already served more than five years of imprisonment, he is directed to surrender before the concerned Superintendent of Central Prison and complete the formalities in terms of the order in **Batchu Rangarao** (supra). The fine amount, if any, paid by the Appellant / Accused for the offence under Section 302 IPC shall be refunded to him.

As a sequel, interlocutory applications pending, if any, shall also stand closed.

K.SURESH REDDY, J

SUBBA REDDY SATTI, J

Date: 10.12.2025
MVA

¹[2016(3)ALT (CrI.) 505 (DB) (A.P.)]