A STATE OF A.P.

*v.*

GUVVA SATYANARAYANA

(Criminal Appeal No.1453 of 2003)

SEPTEMBER 24, 2008

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**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]**

*Evidence Act, 1872: s.32 – Dying declaration – High* C *Court discarding dying declaration on the ground that same was not free from suspicion – Correctness of – Held: On facts, correct – Statement of mother of deceased that deceased regained consciousness the next day is contrary to the evidence on record – Doctor who examined deceased when she was* D *brought to hospital after sustaining burn injuries stated that deceased had stated to him that she sustained injuries accidentally at her residence – Penal Code, 1860 – s.302.*

**Prosecution case was that deceased was harassed by her husband, the accused for bringing dowry. On the** E **day of incident at about 8.30 p.m., accused quarrelled with deceased, doused her with kerosene and set her on fire. At 9.15 p.m., uncle of deceased lodged FIR. Magistrate recorded Dying Declaration of deceased on the same night in the presence of doctor. She succumbed to injuries after few days.**

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**The Trial Court relied on the dying declaration and recorded conviction under s.498A and s.302 IPC. On appeal, High Court found that the charge in respect of s.302 IPC rested on dying declaration purportedly made by the** G **deceased at 5.40 a.m. on 12.4.1994 and the offence had taken place on 11.4.1994 at 9 p.m. High Court held that the offence under s.302 IPC was not established and the dying declaration was not free from suspicion. However, the charge relatable to s.498A was held to be proved, and**

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sentence of two years RI enhanced to three years RI. Hence the present appeal. A

Dismissing the appeal, the Court

HELD: 1.1. The first information report was given on 11.4.1994 at 9.15 p.m. i.e. immediately after the occurrence. In this report, the informant had stated that the accused demanded dowry from the deceased and was beating her; that on the date of incident he was drunk and demanded additional dowry; that unable to bear the agony, the deceased poured kerosene over her and set herself ablaze. In the first information report, therefore, the allegation was that deceased committed suicide by setting herself on fire after pouring kerosene. When the complainant was examined as PW-1, he accepted the contents of the report and stated that the report was on the basis of the information heard, given by a boy but no enquiry was made from the deceased. He also could not talk to her. The boy who had given the information was not known to him. He stated that the deceased was unconscious and regained consciousness only the next day around noon. The mother of the deceased accompanied the deceased to the hospital also claimed that the deceased was unconscious and regained consciousness only on the second day. As rightly noted by the High Court, this was contrary to the evidence on record. The Magistrate purportedly recorded the dying declaration of the deceased at 5.40 a.m. on 12.4.1994. That means the deceased was conscious at 5.40 a.m. and doctor certified that she was conscious and coherent. [Para 5] [964, F-H; 965,A-C] B C D E F

1.2. To add to the vulnerability, Ex.P/12 was record of the case maintained by the hospital. When the doctor examined the deceased she was conscious. The doctor noted that the deceased had stated to have sustained burns around 9 p.m. at her residence. She was given some treatment and referred to the resident medical of- G H

A ficer. The doctor noted that the deceased alleged to have sustained burns accidentally at her residence. It was further noted that she was conscious and coherent. It is, therefore, established that she was conscious when she was admitted to the hospital at 11.45 p.m. on 11.4.1994. If
B the accused had poured kerosene and set her on fire she would have stated the same in normal course to the doctor. Therefore, the factors highlighted by the High Court appear to be on sound footing. That being so, the order of the High Court does not suffer from any infirmity to
C warrant interference. [Paras 6, 7] [965,D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1452 of 2003

From the final Judgment and Order dated 2/7/2003 of the
D High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 1432 of 2000

D. Bharathi Reddy for the Appellant.

Kamakshi S. Mehlwal (A.C.) for the Respondent.

E The Judgment of the Court was delivered by

**DR. ARIJIT PASAYAT, J.** 1. Challenge in this appeal is to the judgment of the Division Bench of the Andhra Pradesh High Court directing acquittal of the respondent (hereinafter called as the 'accused'). The accused was convicted for offence pun-
F ishable under Sections 302 and 498A of the Indian Penal Code, 1860 (in short 'IPC') and sentenced to RI for life and two years respectively and a fine with default stipulation by the trial Court.

2. Two charges were framed against the respondent.
G Firstly, it was alleged that the accused on 11.4.1994 at about 8.30 p.m. subjected his wife (hereinafter referred to as the 'deceased') to cruelty and thereby committed the offence punishable under Section 498A. Second charge was that he had committed the murder of his wife by causing her death. Accused
H pleaded innocence and, therefore, trial was held.

3. Prosecution version in a nutshell is as follows:

Smt. Guvva Renuka (hereinafter referred to as the 'deceased') was married to the accused 7 years prior to her death at Bhongir. At the time of marriage, the accused was presented cash of Rs.5,000/- and 3 tolas of gold. For one year, their marriage life went on happily. Thereafter, accused began to demand his wife to get Rs.5,000/- from her parents, and she could not comply the said demand. He began to ill-treating and harassing her physically and mentally. In a panchayat, he was also admonished. However, he did not mend his ways and he was beating Renuka, coming fully drunk. On 11.4.1994 at about 8.30 p.m. the accused quarrelled with Renuka, doused her with kerosene and set her on fire. At 9.15 p.m. Renuka's paternal uncle Pittala Anjaneyulu (PW-1) lodged report with Bhongir town police, and Y. Venkat Reddy, Sub-Inspector (PW-11) registered the case. He rushed to the house of the deceased and prepared Ex.P.3 scene of offence panchanama in the presence of Indla Ramesh (PW-6) and another. He seized 5 litre kerosene empty tin M.O.I. He also prepared a rough sketch of the place. Renuka was shifted to Government Hospital, Bhongir, and from there to Gandhi Hospital, Secunderabad.

Sri K. Seetharam Naidu, XIII Metropolitan Magistrate, Secunderabad (PW-9), recorded the dying declaration of Renuka on the same night, in the presence of Dr. I. Bhaskara Raju (PW-12), Casuality Medical Officer, Gandhi Hospital, Secunderabad.

Renuka succumbed to injuries at 2.30 p.m. on 23.4.1994. On receiving the intimation the Sub-Inspector (PW-11) requisitioned M.R.O. PW-8 to conduct inquest, and it has been conducted in the presence of PW-7 and another panch. Ex.P.4 is the inquest panchnamma.

Dr. N. Dudaiah (PW-10) conducted autopsy over the dead body of the Renuka and issued Ex.P.8 Post-mortem examination report.

A Charge sheet was filed in the Court of Additional Judicial Magistrate, 1st Class, Bhongir, who committed the case to the Court of Sessions, Nalgonda. The I Addl. Sessions Judge, Nalgonda, framed charges under Sections 498-A and 302 IPC. The accused pleaded not guilty and claimed trial.

B 4. The trial Court relied on the dying declaration purportedly to have been made by the deceased and recorded conviction as noted above. In appeal, the High Court set aside the conviction. The High Court found that the charge in respect of Section 302 IPC rests on dying declaration purportedly to have C been made by the deceased at 5.40 a.m. on 12.4.1994. Offence had taken place on 11.4.1994 at 9 p.m. The High Court found that the accusations so far as Section 302 IPC cannot be established and the dying declaration was not free from suspicion. However, the charge relatable to Section 498A was held D to have been proved. For the same, sentence of two years RI imprisonment enhanced to three years RI.

5. In support of the appeal, learned counsel for the appellant submitted that the High Court was not justified in discarding the dying declaration. In the dying declaration deceased E stated her husband poured kerosene on her and set fire. He intended to kill her. On asking why he did so, she stated that he had asked her to bring money from her house sometime and she stated that her mother was widow and was not in a position to pay amount demanded. As noted by the High Court, the first F information report was given on 11.4.1994 at 2115 hrs. i.e. immediately after the occurrence. In this report the informant had stated that the accused demanded dowry from the deceased and was beating her. On the date of incident he was drunk and demanded additional dowry. Unable to bear the agony, the de- G ceased poured kerosene over her and set herself ablaze. In the first information report, therefore, the allegation was that deceased committed suicide by setting herself on fire after pouring kerosene. When the complainant was examined as PW-1, he accepted the contents of the report and stated that the re- H port was on the basis of the information heard, given by a boy

but no enquiry was made from the deceased. He also could not talk to her. The boy who had given the information and what was the source of information was not known to him. He stated that the deceased was unconscious and regained consciousness only the next day around noon. The mother of the deceased accompanied the deceased to the hospital also claimed that the deceased was unconscious and regained consciousness only on the second day. As rightly noted by the High Court, this was contrary to the evidence on record. The Magistrate purportedly recorded the dying declaration of the deceased at 5.40 a.m. on 12.4.1994. That means the deceased was conscious at 5.40 a.m. and doctor certified that she was conscious and coherent.

6. To add to the vulnerability, Ex.P/12 was record of the case maintained by the hospital. When the doctor examined the deceased she was conscious. The doctor noted that the deceased had stated to have sustained burns around 9 p.m. at her residence. She was given some treatment and referred to the resident medical officer. Here again the doctor noted that the deceased alleged to have sustained burns accidentally at her residence. It was further noted that she was conscious and coherent. It is, therefore, established that she was conscious when she was admitted to the hospital at 11.45 p.m. on 11.4.1994. If the accused had poured kerosene and set her on fire she would have stated the same in normal course to the doctor. Therefore, the factors highlighted by the High Court appear to be on sound footing.

7. That being so, the order of the High Court does not suffer from any infirmity to warrant interference.

8. The appeal is dismissed.

D.G. Appeal dismissed.