

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 339 OF 2004

KEESARI MADHAV REDDY APPELLANT

VERSUS

STATE OF A.P. RESPONDENT

WITH

CRIMINAL APPEAL NO. 613 of 2006

STATE OF A.P. APPELLANT

VERSUS

KEESARI MADHAV REDDY & ANR. RESPONDENTS

J U D G M E N T

HARJIT SINGH BEDI J.

1. The judgment will dispose of Criminal Appeal Nos. 339 of 2004 and 613 of 2006. They arise from the following facts:

1.1 The deceased Keesari Kalavathi, the daughter of P.Ws. 1 and 2 of village Kondur, was married to A1 Keesari Madhav Reddy son of the other two accused A2 and A3, Keesari Venkata Reddy and Keesari Promila. The marriage between the deceased and A1 was arranged with the efforts of P.W. 4 Peddi Reddy, the elder son-in-law of P.W. 1. During the course of the settlement of the marriage P.W. 1 had agreed to pay Rs. 80,000/- towards dowry and also supply articles worth Rs. 6000/- but at the time of the pooja held at the house of the accused, P.W. 1

paid Rs. 40,000/- and promised to pay the balance amount after the accused and the deceased had lived happily and peacefully for about one month. The accused were, however, not happy with this arrangement and they told the deceased to bring the balance amount and for that purpose would beat and abuse her and when P.W. 1 visited his daughter she narrated the harassment meted out to her. P.W. 1 thereupon brought the deceased to his house with the permission of A2 and A3 but none of the accused made any effort to take her back to the matrimonial home with the result that in the first year of marriage, the deceased lived with her husband only for a month. It appears that sometime in 1998 A1 had appendicitis whereupon P.W. 1 took him to Dr. Ravinder Reddy, who hospitalised A-1. P.W. 1 also spent a huge amount of money for his operation. After his discharge from the hospital A1 took his wife with him to the matrimonial home, but the demands for the balance amount of dowry etc. were renewed by the accused sometime in the year 1999. P.W. 1 came to the house of his elder daughter P.W. 3 to find out as to why the accused were not taking the deceased back home. A dispute erupted at that time between A1 and his elder brother regarding dowry and it was decided that out of the Rs. 20,000/- due to A2 and A3, A1 and his elder brother would pay Rs. 10,000/- each to clear of the dues. This arrangement was apparently carried out, on which A1 and his wife stayed together at various places for sometime. It appears however that the demands for dowry still continued and the deceased and the couple had an on-off relationship

with each other over a period of time. On the 19th April, 2000, P.Ws. 1 and 3 went to the house of P.W.2 where P.W.9 was also present and they were told that a few days earlier the deceased had been administered a beating by the accused and that she was not being provided any food by them. On this information P.Ws 7 and 9 called A1 and A3 before them and told them not to misbehave on which they promised that they would not harass the deceased any further. The same day, however, i.e. 19th of April, 2000 A1 went to the house of P.W. 9 and called P.Ws. 1,3 and 4 and asked for Rs. 2,000/- to purchase a table fan. P.W. 1 promised to pay the said amount at a later stage. On the 20th of April, 2000, at about 8:00a.m. the deceased came running out of her matrimonial home with burn injuries raising a hue and cry and fell down in front of the house. P.W. 12 noticed the deceased with burn injuries and immediately rushed to the house of P.W. 3 who in turn rushed to the house of the accused and found the deceased lying there with burn injuries. At that time, A1 and A3 were also present whereas A2 was missing. The deceased was thereafter shifted to Dr. Jogu Kistaiah' Hospital in an auto rickshaw. The doctor refused to treat her as she was in a serious condition and they accordingly shifted her in a jeep to MGM Hospital, Warangal. On the way to the hospital, P.W. 1 enquired from the deceased as to the circumstances in which she had received the injuries and she stated that on the 19th of April, 2000, that is a day earlier, the accused had refused to give her any food and that at about 8:00 a.m. on the 20th of April, 2000, A2 and A3 had got hold of

her and poured kerosene oil on her whereas A1 had set her fire with a match stick and that she rushed out crying in pain. The deceased was ultimately admitted to the MGM Hospital at about 10:25a.m. on 20th April, 2000 and intimation was sent to the police post in the hospital itself. A Judicial Magistrate was also deputed to the hospital for recording her dying declaration and he did so on the 20th April, 2000, Exhibit P5 between 1:30 and 1:55 p.m. In this dying declaration, the deceased stated that A1 had set fire to her sari in culmination of the harassment that had been meted out to her over the last several days. The injured, however, died at about 5:30p.m. on the 21st April, 2000 and a case under Section 302 was, accordingly registered against the three accused. On the completion of the investigation the accused were charged for offences under Sections 498A, 304B, 302 and 302 read with Section 34 of the Indian Penal Code and Section 6 of the Dowry Prohibition Act, 1961. The trial court relied primarily on the evidence of P.W. 1 and P.W. 2, the parents of the deceased, P.W. 3 the sister of the deceased, P.W. 4, the sister's husband, who had deposed that he was instrumental in arranging the marriage between A1 and the deceased on 31.05.1997, P.W. 5 the mother of P.W. 4 and P.W. 9 a witness to support the proceedings of the Panchayat held on the 6th April, 2000, and to the incident of 19th April, 2000 in which an effort had been made to settle the dispute between the deceased and her in laws and to support the demands for dowry, and the actual incident of 20th April, 2000. The Court also relied on the evidence of P.W. 17 Dr.

Hanumantha Rao, the doctor who had performed the autopsy on the dead body and the Judicial Magistrate First Class, PW-15 who had recorded the dying declaration Exhibit P5.

2. The trial court relying on the aforesaid evidence held that the case against the accused had been proved beyond doubt and they were liable to conviction under Sections 498A, 304B, 302 and 302 read with Section 34 IPC and under Sections 3, 4 and 6 of the Dowry Prohibition Act. The trial court observing that the conduct of A1 in particular, had been reprehensible awarded him a sentence of death under Section 302 of the IPC whereas accused Nos. A2 and A3 were sentenced to life imprisonment with fine. All the accused were also sentenced to various terms of imprisonment under the Sections under the other provisions under which they had been found guilty. Two criminal appeals were thereafter filed in the High Court; one appeal by A1 and the second by A2 and A3 whereas a reference for the confirmation of the death sentence was also made to the High Court. The High Court by the impugned judgment set aside the conviction of all the accused for the offence under Section 302 and 302/34 and they were acquitted of that charge and a sentence of ten years was imposed on A1 under Section 304B. The conviction of A1 under Section 498A was also upheld but no separate sentence was awarded. A2 and A3 were, however, ordered to be acquitted with respect to all charges. The judgment of the High Court has resulted in two appeals before this Court, one at the instance of A1 and the other by the State of A.P. impugning the acquittal of A2

and A3 and also praying that A1 was liable for the offence under Section 302 of the IPC.

3. We have heard the learned counsel for the parties and gone through the record. It will be seen that the High Court has not really disbelieved the evidence of P.W. 1 and the others or the evidence with regard to the demands of dowry made over a period of time and the harassment meted out to the deceased by A1 in particular. The evidence of P.Ws. 1 and 2 on the aspect of dowry and harassment has been supported by the evidence of independent witnesses including those of the Panchayat and the mediators who had tried to sort out the differences between the deceased and her husband and in-laws. The High Court has, however, found that the dying declaration Exhibit P5 which had been recorded by the Judicial Magistrate was a suspicious document and could not be relied upon. It has been pointed out that in the oral dying declaration which the deceased had made to P.Ws. 1 to 5 when she was being taken to the hospital, the story was that kerosene oil had been poured on her by A3 in the presence of A2 and that A1 had thereupon lit the match and set her on fire but in the dying declaration which had been recorded by the Judicial Magistrate, Exhibit P5, there was no reference to the pouring of kerosene oil on her. The High Court was, therefore, of the opinion that this apparent discrepancy went to the root of the matter, the more so as there was no smell of kerosene oil on

the dead body and no receptacle which could have carried kerosene oil had been found when the police officer had examined the site of the incident. The High Court also observed that in Exhibit P7, that is the medico-legal examination of the deceased prior to her death, it had been noted that the injuries had been caused in an attempted suicide and the Court, accordingly, inferred that this information must have been given to the doctor either by the deceased herself or by her father who had reached the hospital in the meanwhile. The High Court also concluded that in the light of the fact that the First Information Report had been recorded about 17 hours after the death of the deceased, it appeared that there was some suspicion about the prosecution story. The High Court, accordingly, set aside the conviction under Section 302 of the IPC recorded with respect to A1 and upheld his conviction under Section 304B of the IPC and awarded him a sentence of ten years with the other parts of the sentence being maintained as per the direction of the trial court. A2 and A3, however, were acquitted in toto.

4. We are of the opinion, however, that some of the observations made by the High Court are not justified on facts. It has to be noted that the instances of harassment of the deceased had gone on for almost three years right from the marriage up to her death and for this purpose there is evidence not only of the parents or the sister of the deceased but independent witnesses as well. Repeated attempts by her parents and the others to get the accused to relent with respect to their demands had remained unsuccessful and the harassment continued unabated.

The primary evidence in this case is the dying declaration Exhibit P5. This had been recorded by PW-15 J. Ramamurthy Additional Magistrate First Class on the 20th April, 2000. This statement was recorded in the presence of Dr. Karunakar Reddy who certified that she was fit to make a statement. In this dying declaration, the deceased clearly stated that her husband A1 was always abusing her and that she had been set afire by him. PW-15 also stated that the dying declaration had been recorded after the doctor had given a certificate of fitness. It is true that there is no reference whatsoever to the fact that kerosene oil had been poured on her but we have absolutely no reason to doubt the statement made by the deceased and recorded by a Magistrate. We also see that insofar as A2 and A3 are concerned she clearly did not say anything about their involvement with the burning incident on the 20th of April, 2000. It is equally relevant that P.W. 15 also deposed that the parents of the deceased were not around at the time when the dying declaration had been recorded by him. In this view of the matter, we are of the opinion that the observation of the High Court that a case under Section 302 of the IPC was not made out against A1 does not appear to be correct. We, accordingly, dismiss Criminal Appeal No. 339 of 2004 filed by the accused A1 and allow the appeal filed by the State of A.P. - Criminal Appeal No. 613 of 2006 and order that A1 was liable to be convicted under Section 302 of the IPC. We, accordingly, award him a life sentence under that provision. The acquittal of A2 and A3 is, however, maintained.

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR.
PRASAD]

**FEBRUARY 4, 2011
NEW DELHI.**