A GOVINDAPPA & ORS.

v.

STATE OF KARNATAKA

(Criminal Appeal No. 1469 of 2008)

MAY 11, 2010

B

[P. SATHASIVAM AND H.L. DATTU, JJ.]

Penal Code, 1860: ss.498-A/34, 302/34 – Conviction under – Accused persons poured kerosene on deceased-
C *daughter-in-law and lit fire on her – Dying declaration recorded by Magistrate – Certificate of doctor that the deceased was in fit state of mind to give dying declaration –Conviction based on dying declaration – Interference with – Held: Not called for – The evidence of doctor clearly showed that the deceased*
D *was in a sound state of mind while giving the dying declaration before Magistrate – Such a dying declaration has got due weight in the evidence – Further, evidence of eye-witnesses proved that accused ill-treated the deceased and subjected her to cruelty and that they were involved in the commission*
E *of the offences – Conviction upheld – Crime against Women – Evidence Act, 1872 – s.32 – Dying declaration.*

Prosecution case was that the accused persons who were the in-laws of the deceased burnt her by pouring
F **kerosene and lighting fire on her. The neighbors extinguished the fire and took the deceased to the hospital. The doctor, PW-7 treated the deceased and informed the police. The magistrate PW-12 recorded the dying declaration of the deceased in the presence of PW-7. Trial court convicted the appellants A-1, A-2, A-4 as also**
G **A-3, mother-in-law and A-5, grandmother-in-law for offences under Section 498-A/34 IPC and Section 302/34 IPC. On appeal, High Court upheld conviction of appellants; however it acquitted A-3 and A-5. Hence the appeal.**

H

Dismissing the appeal, the Court A

HELD: 1. It is essential that the person who recorded the dying declaration must be satisfied that the deceased was in a fit state of mind. The certification by the doctor is essentially a rule of caution and, therefore, the B voluntary and truthful nature of the declaration can be established otherwise. The evidence of doctor (PW-7) clearly showed that the deceased was in a sound state of mind while giving the statement before the Tahsildar PW-12. In such circumstances, such a dying declaration C has got due weight in the evidence. Further, the doctor explained that though the deceased sustained 100% burn injuries, she was in a position to talk. In such circumstances, her statement cannot be rejected on the ground that she sustained severe burn injuries. Normally, the person on the verge of death would not implicate D somebody falsely. In the light of dying declaration coupled with the evidence of eye-witnesses, there was ample evidence on record to hold that the appellants ill-treated the deceased and subjected her to cruelty by giving both mental and physical torture and in E. furtherance of their common intention only to commit the murder of the deceased, poured kerosene and set fire on her who ultimately succumbed to the injuries. The dying declaration fully corroborated the evidence of Doctor and Tahsildar who recorded it. [Para 15] [970-F-H; 971-A-D] F

2. The analysis of the prosecution witnesses, particularly, PW-3, PW-4, PW-10 elderly person of the village and PW-12 Taluk Executive Magistrate who recorded the dying declaration of the deceased clearly G proved the involvement of appellants in the commission of offence as charged and they were rightly awarded sentence of life imprisonment. Though, it was pointed out that there were certain discrepancies, they all were minimal and did not affect the case of the prosecution. H

A **In view of the oral evidence of PW-3, PW-4, PW-6, PW-7, PW-9, PW-10, PW-12 coupled with dying declaration Ex. P-9, the prosecution fully established its case against the appellants. [Para 16] [971-E-F]**

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1469 of 2008.

From the Judgment & Order dated 04.10.2007 of the High Court of Karnataka, Bangalore in Criminal Appeal No. 2573 of 2006.

C

Sanjay Jain, Vinay Arora, Mukesh Kumar for the Appellants.

Sanjay R. Hegde, A. Rohen Singh, Ramesh K. Mishra, Vikrant Yadav, Ramesh Kr. Mishra for the Respondent.

D

The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. This appeal is directed against the final judgment and order dated 04.10.2007 passed by the High E Court of Karnataka at Bangalore in Criminal Appeal No. 2573 of 2006 whereby the High Court partly allowing the appeal acquitted Laxmibai – A-3, the mother of the appellants herein and Bhagirathi-A-5, the grandmother of appellants and affirming the sentence passed by the trial Court convicted A-1, A-2 and F A-4, appellants herein, for offences under Section 498-A/34 IPC and Section 302/34 IPC.

2. The facts leading to the present appeal are as follows: The deceased - Renuka, was married to appellant No.1 about 10 years prior to the date of the incident. As per the prosecution G case, on 10.12.2005, at about 12 noon, the appellants herein, along with their mother and grandmother tried to pour kerosene oil and lit fire on the deceased and because of that she raised hue and cry. On hearing her noise, five neighbours came and requested them not to do so but the accused persons asked H them not to interfere in their family matter. Appellant No.3

poured kerosene on the deceased and appellant No.2 set fire in the presence of the neighbours. After pouring kerosene, the accused persons ran away from the house and the neighbours extinguished the fire and covered the deceased with blanket and had taken her immediately to the Government Hospital Bagalkot. At about 2.30 p.m., the Doctor (PW-7) informed the police and the Magistrate (Tehsildar) (PW 12) came to the Hospital at 4.30 p.m. and recorded the dying declaration of the deceased which is filed as Ex. P-9. The Police Officer came to the hospital after 7 p.m. and taken the statement of the deceased which was written by Govindagowda Patil – PW-11, the neighbour, and F.I.R. was registered at the police station at 7.15 p.m. which is Ex. P-10. The Investigating Officer, PW-17 came to the hospital at 8.30 p.m. and again tried to take the statement of the deceased but she was not in a position to give any statement and at 9.00 p.m., she died. The Inquest Panchnama was prepared at about 11.00 p.m. On 11.12.2005, post mortem was conducted by the Doctor, PW-7, the report of which is Ex. P-5. The Investigating Officer filed the charge sheet on 23.01.2006. On 26.06.2006, the Fast Track Court, Bagalkot framed the charges against all the five accused persons under Sections 498-A, 143, 147, 341, 302 read with Section 149 I.P.C. By order dated 03.10.2006, the Fast Track Court, Bagalkot convicted all the five accused for the offence punishable under Sections 498-A, 143, 147, 341, 302 read with Section 149 I.P.C. and sentenced them to undergo rigorous imprisonment for two years and also sentenced them to pay a fine of Rs.2000/- each in default, simple imprisonment for three months for the offence punishable under Section 498-A read with Section 149 I.P.C. and further convicted them for the offences punishable under Section 302/149 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.10,000/- each in default, simple imprisonment for one year. All of them filed a Criminal Appeal being Appeal No. 2573 of 2006 before the High Court. By order dated 04.10.2007, the High Court by partly allowing the appeal acquitted A-3 and A-5 of all the charges leveled against them and affirming the

A B C D E F G H

A sentence passed by the trial Court on A-1, A-2 and A-4 convicted them for the offence punishable under Section 498-A/34 I.P.C. and Section 302/34 I.P.C. Aggrieved by the said order, accused Nos. 1, 2 and 4 have preferred this appeal by way of special leave petition.

B

3. We have heard Mr. Sanjay Jain, learned counsel for the appellants-accused and Mr. Sanjay R. Hegde, learned counsel for the respondent-State.

4. Points for consideration in this appeal are:-

C

(i) Whether the Trial Court was justified in convicting the appellants-accused A-1, A-2, and A-4 for offences punishable under Section 498A, read with Section 34 IPC and Section 302 read with Section 34 IPC?

D

(ii) Whether the sentence imposed upon the appellantsaccused is justifiable?

(iii) Whether the High Court is right in confirming the conviction and sentence imposed on the appellants?

E

5. In this appeal, we are concerned only with A-1, A-2 and A-4, since the other accused A-3 and A-5 were acquitted by the High Court.

6. Apart from various materials in the form of oral and

F documentary evidence, the Trial Court accepted the evidence of eye-witnesses, namely, PW-3, PW-4, PW-5, PW-6 as well as Dr. Uma Kant PW-7 who treated Renuka, father of the deceased PW-9, one elderly person of the village PW-10 and Taluk Executive Magistrate PW-12 who had recorded the dying

G declaration of Renuka. Learned counsel for the appellants-accused pointed out that as per the prosecution, there were five witnesses present at the spot of incident, even before the victim was burnt, but none of them stopped the accused or tried to prevent the incident. He also submitted that the Trial Court and

H the High Court committed an error in relying upon the dying

declaration recorded by PW-12 since PW-12 has neither taken the certificate from the Doctor nor asked any question to verify the mental condition of the deceased Renuka, particularly, when she suffered 100% burns as shown in the post-mortem report. A

7. At the foremost, let us verify the evidence of Dr. Uma Kant PW-7 who treated the injured Renuka when she was brought to the hospital. Though, he had stated that injured Renuka had sustained 100% burn injuries, at about 4.45 p.m., according to him, she was in a fit state of mind to give statement. Based on the statement of doctor PW-7, Taluka Executive Magistrate PW-12 recorded her statement in the presence of PW-7. It is further seen that after recording the statement, her left thumb impression was taken on the statement, the doctor PW-7 also subscribed his signature. It is true that in the crossexamination it was elicited that the tongue of the deceased was swollen and protruded and lips were burnt. Though this suggestion has been admitted by PW-7, the fact remains at the time of recording her statement PW-7 was satisfied that Renuka was in a fit condition and in a fit state of mind to make a statement. There is no reason to disbelieve the version of PW-7 who made initial treatment and he was very well present during the entire period of recording the statement (Ex. P-9). We hold that the evidence of PW-7 coupled with PW-12 are acceptable and support the case of the prosecution. B C D E

8. Now, let us discuss the other eye-witnesses, first and foremost is PW-3. According to him, he is residing in a house adjacent to the deceased Renuka. He explained that he knew the family members of the appellants and the deceased. He also explained that sister-in-law of the deceased A-4 desired to give her elder daughter in marriage to A-1 and because of that Renuka was being assaulted by the appellants. He deposed that on 10.12.2005 at 12.00 o'clock he heard a crying sound from the house of the appellants. He along with others went to the house of the appellants and they found A-1, A-3 and A-5 holding Renuka. A-2 had a match-box in his hand and A- F G H

A 4 was holding kerosene can. Though he requested not to cause any harm to Renuka, according to him, the accused person were holding Renuka and sister-in-law (A-4) poured kerosene. He further asserted that after setting fire by pouring kerosene accused A-1 to A-4 ran away from the scene of occurrence. B Though, he also implicated A-3 and A-5 in the commission of offence but in the absence of further corroboration, the High Court has rightly acquitted them. However, there is no reason to disbelieve the evidence of PW-3 insofar as A-1, A-2 and A-4 appellants herein that they were responsible for the cause of C the death of Renuka.

9. The next witness is Govindappa PW-4, who witnessed the incident and partly supported the case of the prosecution. He explained how the deceased was humiliated and harassed by the appellants. According to him, this was narrated to him D by Renuka during her lifetime and on several occasions she had gone to her native place due to ill-treatment meted out to her at the hands of the appellants. He also explained that on 10.12.2005 at about 12.00 o'clock, when he was in his house, he heard cries from the house of the appellants. He rushed to E their house and saw in the first floor Renuka was in ablaze. As rightly observed by the High Court, though, PW-4 did not support the entire case of prosecution and he had been treated as hostile witness, his evidence to the extent A-2 and A-4 participating in the commission of offence is proved. To this F extent, the High Court has rightly accepted his testimony.

10. The next eye-witness examined by the prosecution is one - Prakash PW-6. He explained how Renuka was humiliated and harassed by the appellants and on the relevant date and time and after hearing the cries he went to the first floor and G found A-1, A-2 and A-5 were holding Renuka, A-4 was holding kerosene can and A-2 was holding a matchstick. He further deposed that the accused informed him that it is their family matter and none should interfere. At that time, A-4 poured kerosene on the body of Renuka and A-2 lighted match stick H

and lit fire to Renuka and immediately all the accused ran away from the scene of occurrence. As observed by the High Court, the evidence of PW-6 shows that A-4 poured kerosene and A-2 lit fire. The above statement of PW-6 finds support from the dying declaration Ex. P-7. His assertion that A-1 was holding Renuka also finds corroboration from the dying declaration Ex. P-9. In other words, the evidence of PW-6 clearly proves the participation of A-1, A-2 and A-4 in the commission of offence.

11. Krishnappa, father of the deceased was examined as PW-9. He explained how his daughter was harassed and humiliated by the appellants. He also explained the desire of A-4 sister-in-law of the deceased to give her elder daughter to A-1. His evidence gets support from the dying declaration Ex. P-9 and to this extent the same is acceptable and rightly relied on by the High Court.

12. An elderly person from the same village had been examined as PW-10 and he also narrated how the deceased Renuka was humiliated and harassed at the instance of the appellants.

13. Other important witness is H.N. Nagaraj, PW-12, Taluka Executive Magistrate. He deposed before the Court that he had recorded the dying declaration of Renuka and the same was recorded after ascertaining her condition from PW-7 Dr. Uma Kant. After noting that Renuka was in a fit state of mind from Dr. Uma Kant PW-7 and she was in a position to make the statement, in the presence of PW-7 he recorded her statement on 10.12.2005 at 4.45 p.m. He denied the suggestion that Renuka was not in a position to make a statement.

14. About dying declaration Ex. P-9, we have already adverted to the evidence of Dr. Uma Kant (PW-7), Government District Hospital Bagalkot. He explained that on 10.12.2005 at 2.20 p.m. injured Renuka w/o Govindappa Macha was brought with history of burns on the same day at 1.00 p.m. and she was

A admitted in the hospital and treatment was given to her. When Taluka Executive Magistrate (PW-12) came to the hospital at about 4.45 p.m., he enquired about the mental conditionof the patient and whether she is capable of giving statement for which PW-7 informed that the patient is in a fit state of mind to give B statement. Accordingly, the statement was recorded in his presence and then Renuka put her left thumb impression on the said statement and both the Doctor and the Magistrate also signed on the said statement. It is true that on the same night at 9.00 p.m. the injured expired due to burn injuries and post-C mortem was conducted. On examination of body, he found superficial (epidermal burn) all over the body. Hyperaemic skin, singeing of hair present, burn 100% few small blisters are seen over the face containing serous ferrous fluids, skin is red and hyperaemic, singeing of hair present on head, duramater is D leathery, brain is shrunken and yellow. All the internal organs were congested, coal particles are seen in nose, mouth, trachea and oseophagus. Found smell of kerosene oil on her body. He is of the opinion that death is due to shock as a result of 100% burn, time since death is within 4 to 24 hours. Accordingly, he issued the post-mortem report as per Ex. P-5, E which bears his signature. PW-7 has also denied the suggestion that the deceased-Renuka was in the semicoma till the death.

15. Though, it was argued that PW-12 Tahsildar has not F obtained the certificate from the Medical Officer regarding condition of the deceased, that itself is not sufficient to discard the dying declaration (Ex. P-9). What is essential required is that the person who recorded the dying declaration must be satisfied that the deceased was in a fit state of mind. The G certification by the doctor is essentially a rule of caution and, therefore, the voluntary and truthful nature of the declaration can be established otherwise. The evidence of doctor (Pw-7) clearly shows that the deceased was in a sound state of mind while giving the statement before the Tahsildar (PW-12). In such H circumstances, we are of the view that such a dying declaration

has got due weight in the evidence. Further, as stated earlier, the doctor has explained that though the deceased Renuka sustained 100% burn injuries, she was in a position to talk. In such circumstances, her statement cannot be rejected on the ground that she sustained severe burn injuries. Normally, the person on the verge of death will not implicate somebody falsely. Even if we accept some contradiction in Ex. P-7 complaint, in the light of Ex. P-9 dying declaration coupled with the evidence of eye-witnesses, there is ample evidence on record to hold that the appellants ill-treated the deceased Renuka and subjected her to cruelty by giving both mental and physical torture and in furtherance of their common intention only to commit the murder of the deceased, poured kerosene and set fire on her who ultimately succumbed to the injuries on the same day in the District Hospital, Bagalkot. In our view, dying declaration (Ex. P-9) fully corroborates the evidence of Doctor and Tahsildar who recorded it.

16. The analysis of the prosecution witnesses, particularly, PW-3, PW-4, PW-10 elderly person of the village and PW-12 Taluk Executive Magistrate who recorded the dying declaration of Renuka clearly proves the involvement of appellants in the commission of offence as charged and they were rightly awarded sentence of life imprisonment. Though, it was pointed out that there were certain discrepancies, according to us, they all are minimal and it had not affected the case of the prosecution. As discussed earlier, in view of the oral evidence of PW-3, PW-4, PW-6, PW-7, PW-9, PW-10, PW-12 coupled with dying declaration Ex. P-9, we hold that the prosecution has fully established its case against the appellants and we are in entire agreement with the conclusion arrived by the High Court.

17. In the light of the above discussion, we do not find any merit in the appeal, consequently, the same is dismissed.

D.G. Appeal dismissed.