**BAIL SLIP :** The Petitioner/ Accused was directed to be released on bail by the order of the High Court dated 02-03-2010 in Crl.R.C.M.P.No.601 of 2010 in Crl.R.C.No. 410 of 2010.

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD**

TUESDAY ,THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SMT JUSTICE JUVVADI SRIDEVI**

**CRIMINAL REVISION CASE NO: 410 OF 2010**

Criminal Revision Case under Section 397 R/W Section 401 of Cr.P.C. aggrieved by the Judgment dated. 24-02-2010 made in Crl.A.No.11 of 2008 on the file of the Court of the II Additional District and Sessions Court (FTC), Adilabad confirming the sentence dated 31-01-2008 passed in S.C.No.35 of 2007 on the file of the Court of the Assistant Sessions Judge, Adilabad.

**Between:**

Bongarala Subhash, S/o. Dharmanna @ Dharmaji, Age: 33, Autor Driver, R/o. Degam Village of Bazarhathnoor Mandal, Adialabad District.

**...PETITIONER/APPELLANT/ACCUSED**

**AND**

The State of A.P., through S.I. of Police, Adilabad Rural P.S., Adilabad District, Rep. by Public Prosecutor, High Court of A.P., Hyderabad.

**...RESPONDENT/ RESPONDENT/COMPLAINANT**

**CRLRCMP. NO: 601 OF 2010**

Petition under Section 397(1) of Cr.P.C praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order of conviction passed by the Hon'ble Assistant Sessions Judge, Adilabad in S.C. No. 35 of 2007, dated 31-01-2008 and confirmed by the Hon'ble II Additional District and Sessions Court (FTC), at Adilabad in Crl.A.No. 11 of 2008, dated 24-02-2010 and be pleased to enlarge the Petitioner/Accused on bail on such terms and conditions as this Hon'ble Court may deem fit and proper in the interest of justice.

**Counsel for the Petitioner : Sri S. SURENDER REDDY**

**Counsel for the Respondent : ASSISTANT PUBLIC PROSECUTOR**

**The Court made the following: ORDER**

**THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI**

**CRIMINAL REVISION CASE No.410 OF 2010**

**ORDER:**

This Criminal Revision Case, under Sections 397 and 401 of Cr.P.C., is filed by the petitioner/accused, challenging the judgment, 24.02.2010, passed in Criminal Appeal No.11 of 2008 by the II Additional Sessions Court (FTC), Adilabad, whereby, the judgment, dated 31.01.2008, passed in S.C.No.35 of 2007 by the Assistant Sessions Judge, Adilabad, convicting the petitioner/accused for the offence under Section 306 of IPC and sentencing him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for two months, was confirmed.

**2.** I have heard the submissions of Sri S.Surender Reddy, learned counsel for the petitioner/accused, learned Assistant Public Prosecutor appearing for the respondent/State and perused the record.

**3.** The facts of the case, in brief, are that on 01.04.2005, PW-1 /complainant-L.Vasanth Rao lodged a complaint with Adilabad Rural Police Station stating that his daughter by name Panchapula studied up to 12$^{th}$ class. Since the time of her studies, she fell in

love with the petitioner/accused. PW.1 approached the petitioner/ accused and his parents and asked the petitioner/accused to marry his daughter, but however, they refused. Then he approached the police, who called them and gave counseling. Subsequently, the petitioner/accused agreed to marry his daughter and date of marriage was fixed. However, one day before the marriage, the petitioner/accused swallowed sleeping tablets and was admitted in the hospital. After discharge from hospital, the daughter of PW.1 along with the Mahila Members and Ambedkar Sangham people went to the house of the petitioner/accused and asked him about the marriage, but the petitioner/accused abused his daughter and refused to marry her. On 01.04.2005, the daughter of PW.1 poured kerosene and set herself ablaze and while she was raising hues and cries, the wife of PW.1 woke up, extinguished the flames and got her admitted in the District Head Quarters Hospital, Adilabad, where she succumbed to the burn injuries in the afternoon hours, while undergoing treatment.

**4.** On receipt of the report lodged by PW.1, the police registered a case in Crime No.22 of 2005 against the petitioner/accused for the offence under Section 306 of IPC and after completion of investigation, laid charge sheet before the learned Judicial Magistrate of First Class, Adilabad. The learned

Magistrate took cognizance against the petitioner/accused for the offence under Section 306 of IPC and committed the same to the Sessions Division, Adilabad, since the offence under Section 306 of IPC is exclusively triable by the Court of Session. On committal, the Principal Sessions Court made over the case to the Assistant Sessions Judge, Adilabad, for disposal.

**5.** Before the trial Court, to substantiate its case, the prosecution got examined PWs.1 to 11 and got marked Ex.P1 to P8. PW.1-L.Vasanth Rao is the complainant and father of the deceased. PW.2-L.Gangubai is the mother of the deceased. PW.3-G.Nadipi Devanna is the mediator to the talks between petitioner/accused and his family and PW.1 and his daughter. PW.4-L.Raja Reddy is the witness for inquest panchanama. PW.5-S.Chinnaiah is a witness for scene of offence panchanama. PW.6-Dr.Tippe Swamy is the doctor who conducted autopsy over the dead body of the deceased. PW.7-D.Sathish Kumar is SI of Police, who arrested the petitioner/accused and sent him to the Court for judicial remand. PW.8-R.Chinnaiah is a Head Constable, who registered the subject Crime No.22 of 2005, conducted inquest over the dead body of the deceased, conducted scene of offence panchanama, drawn rough sketch, recorded the statements of PW.1, PW.2 and one L.Ganapathi and handed over the CD file to

the SI of Police. PW.9-T.Moses is SI of Police, who verified the investigation done by PW.7 and laid charge-sheet before the trial Court. PW.10-T.V.S.S.Prakash is the Magistrate who recorded the dying declaration of the deceased. PW.11-Anasuya is a member of Mahila Samajam, who went to the house of the petitioner/accused and his parents along with Pedali Radha and others. Ex.P1 is the complaint. Ex.P2 is the Inquest Panchanama. Ex.P3 is the Scene of Offence panchanama. Ex.P4 is the Post Mortem Examination Report. Ex.P5 is the FIR. Ex.P6 is the sketch map. Ex.P7 is the requisition given to PW.10. Ex.P8 is the Dying Declaration of the deceased.

**6.** When the petitioner/accused was confronted with the incriminating evidence appearing against him and was examined under Section 313 Cr.P.C., he denied the same and reported no evidence initially. Subsequently, a petition was filed for adducing defence evidence and accordingly, DW.1-Asala Posani and DW.2 Durva Laxman were examined on behalf of the petitioner/accused and no documents were marked.

**7.** The trial Court, after adverting to the submissions made by both the sides and the evidence placed on record, convicted the petitioner/accused of the offence under Section 306 of IPC and

sentenced him as stated *supra*. Aggrieved by the same, the petitioner/accused preferred the subject Criminal Appeal No.11 of 2008 before the Court below and the Court below, after re-appreciating the entire evidence on record, confirmed the judgment of the trial Court. Aggrieved by the same, the petitioner/accused preferred this Criminal Revision.

**8.** The learned counsel for the petitioner/accused would submit that both the Courts below erred in convicting the petitioner/accused of the offence under Section 306 of IPC. The essential ingredients of Section 306 of IPC are not made out against the petitioner/accused. There are several material omissions and contradictions in the evidence of prosecution witnesses and hence, the Court below ought to have extended benefit of doubt in favour of the petitioner/accused. There is no abetment of suicide by the petitioner/accused, as alleged. The petitioner/accused is falsely implicated in the subject case. The deceased was in the hospital with 90% burn injuries and as such, recording of her dying declaration without mentioning the state of mind of the deceased casts a doubt with regard to the genuineness of the dying declaration. The prosecution failed to prove the guilt of the petitioner/accused beyond all reasonable doubt and

ultimately prayed to allow the Criminal Revision Case as prayed for.

**9.** On the other hand, learned Assistant Public Prosecutor supported the impugned judgment and contended that the Court below appreciated the evidence on record in proper perspective and rightly arrived at a conclusion that the petitioner/accused is guilty of the offence under Section 306 of IPC. The petitioner/accused, having loved and promised the deceased to marry her, subsequently refused to marry her due to which, the deceased, vexed with her life, poured kerosene and set herself ablaze. All the necessary ingredients of Section 306 of IPC are made out against the petitioner/accused. There is dying declaration of the deceased recorded by a Magistrate, wherein, she stated that the petitioner/accused promised to marry her and later refused to marry her and hence the deceased, having disgusted with her life, poured kerosene and set herself ablaze. It is settled law that if the dying declaration is true and voluntary, it can form the sole basis for conviction without corroboration. The oral testimony of the prosecution witnesses coupled with the documentary evidence adduced on behalf of the prosecution amply proves the guilt of the petitioner/accused. The prosecution proved the guilt of the petitioner/accused beyond all reasonable doubt.

There is nothing to interfere with the impugned judgment and ultimately prayed to dismiss the Criminal Revision Case.

**10.** In view of the above rival contentions, the point that arises for determination in this Criminal Revision Case is as follows:

> **"Whether the impugned order, dated 24.02.2010, passed in Criminal Appeal No.11 of 2008 by the II Additional Sessions Court (FTC), Adilabad, is liable to be set aside?"**

**POINT:-**

The petitioner/accused was convicted for the offence under Section 306 of IPC. The date of commission of the alleged offence was on 01.04.2005. There is evidence of PW.1/complainant who deposed that when he approached the parents of the petitioner/accused, they refused to perform the marriage of the petitioner/accused with the deceased stating that he can do whatever he likes. When the deceased went to the house of the petitioner/accused along with the members of Mahila Sangham, the parents of the petitioner/accused, his sister and the petitioner/accused abused her and tried to beat her. The evidence of PW.1 remained unshaken in his cross-examination. PW.2 also deposed in her evidence that since the petitioner/accused refused to marry the deceased, the deceased got disgusted with her life

and committed suicide. Nothing was elicited in the cross-examination of PW.2 to discredit her testimony. There is evidence of PW.3 to the effect that the deceased died due to non-performing of her marriage with the petitioner/accused. Except suggesting that he never went to the house of the petitioner/accused, which he denied, nothing was elicited in his cross-examination. There is evidence of PWs.4 and 5 who deposed that the police conducted inquest panchamana and scene of offence panchanama in their presence. Both of them categorically deposed in their evidence that they were informed by the parents of the deceased that their daughter had love affair with the petitioner/accused and on failure of love, the deceased poured kerosene and set herself ablaze. There is medical evidence of PW.6-doctor who deposed that the deceased died due to burn injuries. Ex.P6-PME Report corroborates the evidence of PW.6-doctor. Further, the evidence of investigating officers, i.e., PWs.7, 8 and 9 support the case of prosecution. All of them stood well in their cross-examination. There is also evidence of PW.11, an independent witness, who deposed that when she along with one Pedali Radha and others went to the house of the petitioner/accused to convince him to marry the deceased, the petitioner/accused abused the deceased in filthy language and stated to the deceased that she can do

whatever she likes. She denied a suggestion in her cross-examination that she was deposing false at the instance of police and that she was tutored by the police. Apart from the same, there is evidence of PW.10-Magistrate who recorded the dying declaration of the deceased. He stated in his evidence that the deceased stated to him that the petitioner/accused loved the deceased and promised to marry her, but subsequently he refused to marry the deceased and the deceased, vexed with her life, poured kerosene and set herself ablaze. It is settled law that dying declaration can form the sole basis of conviction, if it is free from any kind of doubt and it has been recorded in the manner as provided under the law. If the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it even without corroboration. PW.10-Magistrate deposed in his evidence that he took all precautions and enquiries with the duty doctor regarding the mental condition of the deceased and that the victim was conscious and in a fit mental condition to make dying declaration. The dying declaration clearly narrates the history of incident and the reason for suicide. Therefore, it cannot be said that the dying declaration is untrustworthy. Since the dying declaration is recorded by a Magistrate following due procedure, it cannot be said that it is inadmissible in law. A person on the verge

of death is not likely to tell lie or concoct a false story or falsely implicate somebody. It is said that truth sits on the lips of a dying man. The surety of immediate death is the best guarantee of truthfulness of a statement made by a dying person. The doctrine of dying declaration is indicated in legal maxim *"nemo moriturus praesumitur mentire"* which means that a man will not meet his Maker with a lie in his mouth. The Court must consider the substratum of the prosecution version and then search for the nugget of truth with due regard to probability, if any, suggested by defence. Efforts should be made to find out the truth by separating the chaff from the grain. In the instant case, the dying declaration of the deceased appears to be voluntary and free from suspicion and can be acted upon. Further, there is no reason for PW.10-Magistrate to depose falsely against the petitioner/accused. DWs.1 and 2 were examined on behalf of the petitioner/accused who stated in their evidence that PW.11 and another person never came to the village of the petitioner/accused in connection with conduct of panchayat with regard to marriage of the petitioner/accused. The evidence of DWs.1 and 2 is no way helpful to the petitioner/accused in view of the dying declaration of the deceased, which is unsuspicious and voluntary.

The Court below, after carefully evaluating the evidence on record, rightly held that the oral testimony of PWs.1 to 11 coupled with the documentary evidence under Exs.P1 to P8 clearly established that the petitioner/accused loved the deceased and promised to marry her and subsequently, refused to marry her and the deceased, vexed with her life, poured kerosene and set herself ablaze. All the requirements for establishing the offences under Section 306 of IPC have been made out against the petitioner/accused. Both the Courts below recorded concurrent findings with regard to the guilt of the petitioner/accused for the offence under Section 306 of IPC and there are no grounds, much less valid grounds, to set aside those concurrent findings. Hence, no interference is warranted insofar as conviction of the petitioner/accused for the offence under Section 306 of IPC is concerned.

As far as the quantum of sentence imposed against the petitioner/accused is concerned, he was sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/-. The offence took place as long back as in the year 2005. The petitioner/accused attended the trial Court as well as the lower appellate Court in connection with this case. Further, the petitioner/accused was on bail throughout the case before the

trial Court as well as the lower appellate Court. Further, this Court, vide order, dated 02.03.2010, passed in Crl.R.C.M.P.No.601 of 2010, granted suspension of sentence against petitioner/accused and ordered his release on bail. It is brought to the notice of this Court that in all, the petitioner/accused was in judicial custody for about 48 days in connection with this case.

Determining the adequacy of sentence to be awarded in a given case is not an easy task, so also evolving a uniform sentencing policy. That is because the quantum of sentence that may be awarded depends upon a variety of factors including mitigating circumstances peculiar to a given case. The Courts generally exercise considerable amount of discretion in the matter of determining the quantum of sentence. In doing so, the Courts would be influenced in varying degrees by the reformative, deterrent and punitive aspects of punishment, delay in the conclusion of the trial and legal proceedings, the age of the accused, his/her physical/health condition, the nature of the offence, the weapon used and in the cases of illegal gratification the amount of bribe, loss of job and family obligations of accused are also some of the considerations that weigh heavily with the Courts while determining the sentence to be awarded. The Courts have not attempted to exhaustively enumerate the considerations

that go into determination of the quantum of sentence nor have the Courts attempted to lay down the weight that each one of these considerations carry. That is because any such exercise is neither easy nor advisable, given the myriad situations in which the question may fall for determination. Broadly speaking, the Courts have recognized the factors mentioned earlier as being relevant to the question of determining the sentence. There is plethora of judgments of the Hon'ble Supreme Court on this subject.

**In B.G. Goswami v. Delhi Administration**[1], the Hon'ble Supreme Court, while reducing the punishment to the period already undergone by the accused therein, laid down the general principles that are to be borne in mind by the Courts while determining the quantum of punishment. It was observed as follows:-

> "The sentence of imprisonment can be for a lesser period but in that event the Court has to assign special reasons which must be recorded in writing. In considering the special reasons the judicial discretion of the Court is as wide as the demand of the cause of substantial justice. Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part, but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential

[1] (1974) 3 SCC 85

offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the agony and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs. 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same."

Further, in the recent decision of the Hon'ble Apex Court in **V.K. Verma v. CBI**[2], it was held as follows:-

"In imposing a punishment, the concern of the court is with the nature of the act viewed as a crime or breach of the law. The maximum sentence or fine provided in law is an indicator on the gravity of the act. Having regard to the nature and mode of commission of an offence by a person and the mitigating factors, if any, the court has to take a decision as to whether the charge established falls short of the maximum gravity indicated in the statute, and if so, to what extent.

The long delay before the courts in taking a final decision with regard to the guilt or otherwise of the accused is one of the mitigating factors for the superior courts to take into consideration while taking a decision on the quantum of sentence.

...The accused has already undergone physical incarceration for three months and mental incarceration for about thirty years. Whether at this age and stage, it would not be economically wasteful, and a liability to the State to keep the Appellant in prison, is the question we have to address. Having given thoughtful consideration to all the aspects of the matter, we are of the view that the facts mentioned above would certainly be special reasons for reducing the substantive sentence but enhancing the fine, while maintaining the conviction."

[2] (2014) 3 SCC 485

While determining the quantum of sentence, the Court is expected to strike balance between too harsh and too lenient view. Balancing has to be done between the rights of the accused and the needs of society at large. It would also be a daunting challenge to preserve the trust of citizens when using the authority of the Courts to convict an accused. In the instant case, the incident pertains to the year 2005, i.e., more than 17 years ago. The petitioner/accused has already undergone physical incarceration for about 48 days and mental trauma for about 17 years. Keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof *qua* the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony which he undergoes on account of protracted trial. Under these circumstances, directing the petitioner/accused to serve the remaining period of sentence imposed upon him would be unfair. Article 21 of the Constitution would bring within its sweep, not only expeditious trial but disposal of appeals and revisions. Having given thoughtful consideration to all the aspects of the matter, this Court is of the considered opinion that the facts mentioned above would certainly be special reasons for reducing the substantive sentence, while maintaining the conviction. Considering the

totality of the circumstances, this Court deems it appropriate that if the sentence of imprisonment is modified to the period already undergone by the petitioner/accused, the same would meet the ends of justice.

Accordingly, while maintaining the conviction recorded against the petitioner/accused, the sentence of imprisonment imposed against him by the trial Court and confirmed by the lower appellate Court, is reduced to the period of imprisonment already undergone by him. The fine amount of Rs.1,000/- imposed is maintained, along with default sentence.

With the above reduction/modification of sentence of imprisonment, this Criminal Revision Case is dismissed, being devoid of merit.

Miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

**Sd/- I. NAGA LAKSHMI**
**DEPUTY REGISTRAR**

**//TRUE COPY//**

**SECTION OFFICER**

**To,**

1. The II Additional District and Sessions Court (FTC), Adilabad.
2. The Assistant Sessions Judge, Adilabad.
3. One CC to Sri S. SURENDER REDDY, Advocate [OPUC]
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
5. Two CD Copies.

Njb

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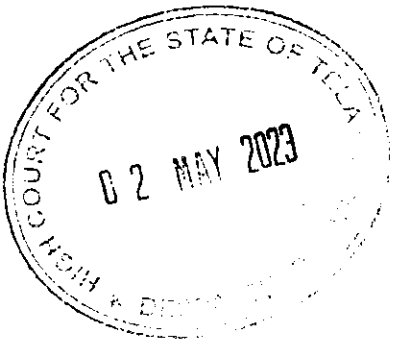
**HIGH COURT**

**DATED:31/01/2023**




**ORDER**

**CRLRC.No.410 of 2010**

**DISMISSING THE CRIMINAL REVISION CASE.**

(8)Copies

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15/3/23