

***THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

AND

THE HON'BLE MRS. JUSTICE ANIS

+ CRIMINAL APPEAL No. 782 OF 2010

% Dated: 08.10.2015

BETWEEN

Guguloth Narsu @ Bhaskar

S/o Jamma

Aged 25 years, R/o Maloth Thanda

H/o Yellaigudem

Chennaraopeta Mandal

Warangal District ... Appellant/accused

And

State of A.P.,

Rep. by Public Prosecutor,

High Court, Hyderabad.

... Respondent

! Counsel for the Petitioner : Sri P. Prabhakar Reddy

^Counsel for the Respondents : Public Prosecutor, State of Telangana

<Gist:

>Head Note:

? Citations:

1. (2013) 7 Supreme Court Cases 162

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

CRIMINAL APPEAL No.782 of 2010

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ORDER: (per Hon'ble Sri Justice Nooty Ramamohana Rao)

The sole accused in S.C.No.384 of 2009 on the file of the VI Additional Sessions Judge, Warangal at Mahabubabad who has been convicted for the offence under Section 302 IPC and sentenced to undergo life imprisonment, is the appellant in this appeal.

The deceased was the wife of the appellant. At about 16.00 hours on 10.06.2008, it is alleged that the accused poured kerosene over his wife and set fire to her, because of her cries the neighbours came and tried to put off the flames by pouring water on her. Upon receiving the necessary information in that regard, P.W.1, the father of the deceased, P.W.2, the mother and their son went to the house of the deceased and removed her to the Government Hospital at Narsampet by calling for an ambulance and the deceased was later on shifted to Mahatma Gandhi Memorial hospital (M.G.M. Hospital) at Warangal, the General Hospital. While undergoing treatment at the MGM hospital, Warangal, the deceased succumbed to the injuries. Hence, the accused/appellant has been charged for causing homicidal death of his wife. He was also additionally charged for the offence under Section 498-A IPC

also.

On behalf of the prosecution P.Ws.1 to 17 were examined and Exs.P.1 to P.15 were got marked. Plastic Bottle is marked M.O.1 and half burnt saree pieces of the victim are marked as M.O.2.

P.W.1, the father of the deceased, has deposed that he performed the marriage of his daughter, the deceased with the accused, who is none other than the son of the sister of P.W.1, three years prior to her death. However, the accused is stated to be suspecting the fidelity of the deceased and consequently used to beat her. In those set of circumstances, the community elders conducted a panchayat and advised the accused to look after the deceased properly. They also advised both of them to lead happy married life. On the day of the incident, when the Upa-Surpanch of the village, where the deceased was living informed P.W.1 about the incident, P.W.1 rushed to the house of the deceased. P.W.1 has categorically deposed that on enquiry, his daughter told him that the accused gagged her mouth with a cloth and tied her to the wooden beam, poured kerosene and then lit fire to her. It is P.W.1, who shifted the deceased to the hospital calling for 108 ambulance and on the next day of the incident, the deceased succumbed to the injuries. Though, P.W.1 was cross-examined extensively, no suggestion was even left with regard to the information said to have been passed by the deceased to P.W.1. A great deal of the cross-examination centered around that the marriage of the deceased with the accused was performed contrary to her wishes and due to dislike of the deceased towards the accused, she was staying away from the matrimonial home, which, in our opinion, has no bearing whatsoever on the issue at hand. The only suggestion, which has some bearing upon the controversy left with P.W.1 is that the deceased was unconscious after receiving burn injuries and that suggestion was denied by P.W.1.

P.W.2, the mother of the deceased, virtually repeated what P.W.1 has stated in his evidence. P.W.2 also reiterated that on enquiry, her daughter, the deceased told that she was gagged with a cloth and then tied to a beam and then kerosene was poured and was set fire to by the accused.

P.W.3 has stated that he was the one who informed about the incident to P.W.1. But however, he has resiled from his earlier statement and hence he was declared as hostile by the prosecution. But however, the fact remains that it is P.W.3, who

informed P.W.1 over telephone about the incident of burning of the deceased.

P.W.4, who is the cousin of the deceased, stated that he came to know about the incident after an hour's time and that he went to the house of the deceased and shifted her to the hospital

in 108 ambulance. In so far as the rest of the statement is concerned, since he resiled from his earlier statement, he was declared hostile.

P.W.5 has made a statement that she does not know how the deceased has received burn injuries. She was declared to have turned hostile by the prosecution. But however, P.W.5 made the following statement, which has some significance.

“The accused and deceased were staying in their house.....”

P.W.6 has deposed that after the incident all the Thanda people gathered near the house of the deceased and that is how she also went there and saw the deceased in flames. With regard to the rest of the particulars, since this witness has resiled from the earlier statement, she was declared as hostile by the prosecution.

P.W.7 was discredited as he turned hostile though he signed the scene of offence panchanama and the seizure panchanama. Same is the case with P.W.8. Hence, no significance need be attached to the statements earlier made by these two witnesses.

P.W.9 is the photographer. P.W.10 is one of the panchayatdars, who conducted panchayat for purpose of resolving the disputes between the accused and the deceased. P.W.10 has stated that the panchayat was held and at that time the deceased told the panchayatdars that the accused is beating her with a suspicion.

P.W.11 is the other panchayatdar, whose statement is identical to that of P.W.10.

P.W.12 is a witness to the inquest panchanama, Ex.P.9.

P.W.13 is a Village Revenue Officer, whose services have been summoned for witnessing the confession made by the accused. He was also a witness for Ex.P.10, recovery panchanama.

P.W.14 was the Tahsildar of Chennaraopet, who received the requisition from the police for conducting inquest panchanama over the dead body of the deceased.

P.W.15 was the V Additional Judicial First Class Magistrate, Warangal, who has recorded the dying declaration, Ex.P.12, made by the deceased on 10.06.2008 around at 10.00 p.m. It is stated by him that he received a requisition from the out-post police of the M.G.M Hospital at about 09.30 p.m. for recording the dying declaration of the deceased and accordingly he went to the hospital at about 09.50 p.m. and identified the victim with the help of the Duty Doctor and the case sheet. He has stated that he requested the Duty Doctor to testify the capacity of the victim to make the statement and after the Doctor examined and certified that the victim is fit to make the statement, he entered the said information furnished by the Doctor before recording the dying declaration that the patient is conscious and coherent and after satisfying himself of her mental status after putting certain preliminary general questions, he recorded the statement. The victim has categorically stated that her husband beat her and poured kerosene and set fire to her around at 04.00 p.m., then neighbours came and poured water on her and that her mother and brother brought her to the hospital and that her husband beat her without any reason. P.W.15 has been subjected to cross-examination, with which we will deal with it a little later on.

P.W.16 is the Associate Professor in Kakatiya Medical College, Warangal, who conducted the postmortem examination over the dead body of the deceased between 0.300 p.m. to 04.00 p.m. on 12.06.2008. He found antemortem burns all over the body about 100%. He found partial singeing of scalp, hair present. Skin peeled off at places. Soot particles present in the trachea and bronchi. Redness and hyperaemia present at the edges of the burns. The age of burns is about 48 hours to 72 hours prior to the death. Ex.P.13 was the postmortem examination report issued by him. In Ex.P.13, postmortem examination report the cause of death was indicated as due to burns.

P.W.17 was the investigating officer, who carried out the investigation.

Sri P.Prabhakar Reddy, learned counsel for the appellant, would contend that when the incident took place on 10.06.2008, the complaint, Ex.P.1 came to be lodged belatedly on 12.06.2008 at about 08.00 a.m., based thereon Ex.P.2, F.I.R. was registered belatedly on 12.06.2008 and the delay in this process has led to improvements by way of implicating the appellant/accused. Learned counsel for the appellant would strenuously contend that there was a police out-post attached to the

General Hospital at Warangal and since the complainant failed to approach the said police station and lodge his complaint either on 10.06.2008 or on 11.06.2008, the delay in lodging Ex.P.1, complaint should be treated as fatal to the case of the prosecution. In support of his plea, learned counsel for the appellant has pointedly drawn our attention to the statement made by the investigating officer, P.W.17 in his cross-examination, wherein he stated that he did not receive any intimation from M.G.M. Hospital, Out-post police on 10.06.2008 and subsequently also about this case. However, this contention need not detain us for too long a period. The reason being the police out-post at M.G.M. Hospital have received a requisition from Dr. Syam Prasad, Chief Medical Officer/Duty Medical Officer, M.G.M. Hospital on 10.06.2008 about the case on hand and hence the police have recorded the same as Medico Legal Case (MLC) No.229215. Based upon the requisition of the Duty Medical Officer for recording the Dying Declaration, the police out-post have issued the requisition to the learned V Additional Judicial First Class Magistrate at Warangal, marked as Ex.P.11. In that requisition, it was clearly brought out that a patient with 95% burn injuries by name G.Bharathi, R/o Ellaigudem, Chenna Rao Pet Mandal, was admitted in the M.G.M. Hospital, Warangal on 10.06.2008 at 07.15 p.m. and that the Medical Officer has given a requisition for recording the Dying Declaration of the above person and hence the requisition has been forwarded to the learned Magistrate through Police Constable D.Ram Murthy, PC.2111. This requisition memo was delivered at 09.30 p.m. to the learned Magistrate. This Ex.P.11 requisition memo accompanied the requisition of the Duty Medical Officer and in that the Duty Medical Officer has, at Column No.6 bearing title "alleged cause", noted as under:

"Burns (Kerosene)"

At Column No.9, it was also recorded that the patient has suffered 95% burns and against Column No.8, which reads as under:

"Whether dying declaration is necessary, date XXXX."

The Duty Medical Officer has written as "Yes" 10.06.2008/07.15 p.m.

Thus, it is very clear that the necessary intimation with regard to the Medico Legal Case of the burns victim has been delivered by the hospital to the Police out-post

attached to M.G.M. Hospital, Warangal at 07.15 p.m. on 10.06.2008 itself and the said police in turn delivered Ex.P.11, requisition memo to the learned V Additional Judicial First Class Magistrate, Warangal at 09.30 p.m. That is how the learned V Additional Judicial First Class Magistrate, Warangal arrived at the hospital at about 09.50 p.m. and started recording the dying declaration from 10.00 p.m. onwards. Therefore, the complaint of P.W.1, which was lodged with the Chennaraopet Police Station on 12.06.2008 at 08.00 a.m. was a post event due to the death of the victim in the hospital due to the burn injuries. The F.I.R. is thus registered by Chennaraopet Police Station on 12.06.2008 at 08.00 a.m. If the police out-post at M.G.M. Hospital, Warangal have failed to deliver the necessary intimation to the Chennaraopet Police Station, either on 10.06.2008 or 11.06.2008, no fault can be attributed to either that police out-post or to P.W.1 or for that matter would it be fatal to the case of the prosecution. Chennaraopet Police Station has jurisdiction over the place where the Thanda, where the deceased was subjected to burn injuries is situated and that is the reason why the complaint about her death was lodged with Chennaraopet Police Station. From Ex.P.11 as well as Ex.P.12, the dying declaration recorded by the Magistrate, P.W.15, it emerges that the police are aware of the burn injuries sustained by the victim and her condition required her statement to be recorded by the Magistrate and hence we cannot assume that there was any delay in P.W.1 either lodging the complaint, Ex.P.1 with the Chennaraopet Police Station on 12.06.2008 or the same being registered as F.I.R., Ex.P.2 at 08.00 a.m. on 12.06.2008. It is obvious that P.W.1 was preoccupied on 10.06.2008 and 11.06.2008 in getting his victim daughter getting medical attention and treatment, only after she was declared dead, there was an imminent necessity for him to lodge the complaint, Ex.P.1, arose.

Hence, we do not find any infirmity in the police at Chennaraopet not being intimated of the burn injuries on 10.06.2008 or on 11.06.2008 and we also opined that not so reporting on those 2 dates about the incident is no way fatal to the case of the prosecution. More importantly, the delay was explained at the very outset in the F.I.R. itself. Therefore, the contention of the learned counsel for the appellant cannot be accepted in this regard.

Finding that the dying declaration, Ex.P.12 has nailed the accused to the hilt, learned counsel for the appellant concentrated a great deal of his criticism towards the manner in which the dying declaration came to be recorded.

Learned counsel for the appellant would strenuously contend that the Magistrate has taken along with him, while visiting the M.G.M. Hospital, a prepared/ready made proforma for recording the dying declaration. According to the learned counsel for the appellant, this approach adopted by P.W.15, learned Magistrate vitiates the entire exercise of recording the dying declaration particularly in as much as the statement about the condition of the patient as to whether she is in fit condition to make a statement or not, was also got type written before hand by the learned Magistrate, thus making a mockery of the whole exercise. Therefore, it was strenuously contended by the learned counsel for the appellant that Ex.P.12, dying declaration, shall be discredited completely and the evidence of P.W.15 should not be taken into serious consideration at all.

We are of the opinion that the criticism mounted on the manner in which the dying declaration came to be recorded is not so much material for us to take our attention off from the contents of the dying declaration. P.W.15, learned Magistrate has stated that he has received Ex.P.11, requisition for recording the dying declaration from the out-post police of the M.G.M. Hospital at 09.30 p.m. Ex.P.11 was accompanied by the requisition furnished by the Duty Medical Officer at about 07.15 p.m. on the same day. In that requisition made by the Duty Medical Officer, it was recorded that the patient has suffered 95% burn injuries. Therefore, the Magistrate knew that he had to record the statement of a burns victim. Hence, with a view to save the precious time and minimize the agony, he has prepared the proforma and carried it with him. He has followed the procedure prescribed under Rule 33 of the Criminal Rules of Practice and Circular Orders, 1990 framed by the High Court in exercise of the powers conferred by Article 227 of the Constitution of India and Section 477 of the Code of Criminal Procedure, 1973. Rule 33 (2) of these rules clearly brought out that the Magistrate shall disclose his identity and shall also ask the declarant whether he/she is mentally capable of making a declaration, for which purpose he shall also put simple questions to elicit answers from the declarant with a view to knowing his/her state of mind and should record the questions and answers, signs and gestures together with his own conclusion in the matter. Thus, the Magistrate, P.W.15 is thoroughly aware of the procedure of recording the dying declaration and about his duty is to be performed in that respect. Hence, he has taken a proforma of already prepared questions, which are formal in nature, with him. Therefore, we cannot accept the criticism of the learned counsel for the appellant that the action of

P.W.15 in carrying a printed proforma for recording dying declaration with him has, in any manner, vitiated the act of recording the dying declaration.

Further, sub-rule 3 of Rule 33 of the Criminal Rules of Practice obligated the Magistrate to take down the declaration in the “words” of the declarant as far as possible and that is exactly what the learned Magistrate has done in this case. He has recorded the dying declaration in Telugu language in the “words” spoken to by the victim. Therefore, the criticism mounted with regard to the manner and method in which the dying declaration was recorded by the learned Magistrate cannot be sustained.

However, there is one other criticism which Sri P.Prabhakar Reddy, has mounted. That is, the victim belongs to Lambada community and the statement recorded by P.W.15 is in Telugu Language. There is no statement that followed that the contents of the dying declaration have been translated into ‘Lambada language’ and that was understood by the victim as true and correct. Learned counsel for the appellant has also placed reliance upon the judgment rendered by the Supreme Court in “***Kashi Vishwanath v. State of Karnataka***” in this regard.

If the victim is not familiar with the Telugu language at all, material in support of such a plea ought to have been brought forth during the examination of any of the witnesses. It was never even suggested that the victim does not speak or understand Telugu language at all and that she is only familiar with the Lambada tribal language alone.

In the absence of any material available on record, we cannot conclude that the victim does not know Telugu language at all. Further, when the learned Magistrate has deposed that after disclosing his identity, he started recording her statement, during his cross-examination there was not even a suggestion left that as to whether he has ascertained that she understands Telugu language at all or not. Entire concentration during the cross-examination is riveted around the proforma, which the learned Magistrate carried with him.

Therefore, we cannot infer that the victim does not know Telugu language at all. It is a different thing that she might be equally conversant with Lambada Language. This apart as per Rule 33 (3) of Criminal Rules of Practice, the Magistrate was required to record the statement in the language spoken to by the victim. Therefore, if the victim has made her declaration in Telugu language, recording of that statement by the

Magistrate in Telugu language is not wrongful.

The Supreme Court in Kashi Vishwanath's case (referred supra) was dealing with a contrary situation. The learned Magistrate recorded the declaration in Kannada language, whereas the victim was a Telugu speaking woman. There is no material brought on record to demonstrate that she either understands or speaks Kannada language. When once the declaration was recorded in a different language than the one spoken to by the declarant, there should have been firstly, faithful recording and then a faithful translation thereof. In that context, the judgment in Kashi Vishwanath's case (referred supra) came to be rendered.

In that view of the matter, we find the principle enunciated in Kashi Vishwanath's case (referred supra) is not attracted to the facts and circumstances of the present case.

The dying declaration is a forceful statement made by a conscious victim. It would in all normal circumstances be as nearer to truth as is possible. When a person is aware that his end is not too far away, he tends to be more truthful. All the more so, if the time factor in between the event or cause of death and the recording is too insignificant, its trustworthiness gains credibility for, there would be no scope virtually for any improvements to be made. In the instant case, the victim was set on fire at 04.00 p.m. in the village. Thereafterwards, it is her parents who rushed to her home, rescued her, got an ambulance secured, shifted her to nearby Government hospital and from there shifted her for better medical care to M.G.M. Hospital at Warangal and she got admitted in that hospital by 07.00 p.m. Therefore, in between 04.00 to 07.00 p.m, there is hardly any scope for anybody to tutor the victim rather than paying utmost attention for securing her as immediately as is possible appropriate medical attention. Afterwards, she is in the burns ward of the General Hospital. Duty Doctor issued requisition for recording the Dying Declaration by about 07.15 p.m. and the Magistrate was present by her bed side by 10.00 p.m. Thus, again between 07.15 to 10.00 p.m. there is no way someone can gain access only with a view to tutor her mind to unnecessarily implicate her husband.

This apart the victim was althrough conscious. She has specifically stated that her husband has set her on fire without there being any reason. Normally, a married

woman would never think of implicating her husband in any crime unnecessarily. Therefore, there is nothing that takes away from the dying declaration made by the victim. The Court has not committed any error in placing reliance upon the same for handing down the conviction and sentence to the appellant herein. We have also not found any mitigating factors or circumstances for downplaying the role of the accused. In fact, it has been brought on record that the accused and the victim were living together in that house. It is such a natural event that the husband can only be expected to be living with a woman at the matrimonial home. Therefore, looked at it from any perspective, we are convinced that it is the accused/appellant herein, but none else could have possibly caused the incident of setting the victim on fire.

For all the aforesaid reasons, we do not find any merit warranting our interference with the conviction and sentence handed down to the appellant. Therefore, the appeal fails.

Accordingly, the criminal appeal is dismissed. No order as to costs.

The miscellaneous applications, if any shall also stand closed.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

08.10.2015

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Note: LR copy