

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL APPEAL NO.891 OF 2010

DATED:28-03-2016

Between:

Akanapally Dhanraj ... Appellant

And

The State of A.P.
Rep. by Public Prosecutor
High Court,
At Hyderabad ... Respondent

COUNSEL FOR THE APPELLANT: Smt. B. Vijayanthi

COUNSEL FOR THE RESPONDENT: Public Prosecutor (TS)

THE COURT MADE THE FOLLOWING:

JUDGMENT: *(per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)*

This appeal is filed by the sole accused against the judgment dt.04.2.2010 in S.C. No.94 of 2009 on the file of the Additional Metropolitan Sessions Judge, Cyberabad, NTR Nagar, Hyderabad, whereby he was convicted for the offence under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default to suffer simple imprisonment for six months.

2. The prosecution case in brief is that on the evening of 13.4.2008, a message from Osmania General Hospital (OGH), Hyderabad, regarding admission of Smt. B. Shobha (deceased) with burn injuries, allegedly caused by the appellant, was received by P.W.9, the Inspector of Police, Saroornagar Police Station. On receipt of the said information, P.W.9 deputed P.W.10 to the OGH for causing enquiry and getting her dying declaration recorded. He accordingly visited the hospital, caused enquiries with the doctors, who examined the victim, and sent requisition to the Magistrate to record dying declaration. On such requisition, P.W.7 – the then V Metropolitan Magistrate, Hyderabad, visited the OGH and recorded Ex.P.6 - dying declaration of the victim [The signatures of the Doctor in the dying declaration are marked as Exs.P.6(A) and P.6(B)]. P.W.10 has recorded another statement of the victim, Ex.P.8. In both the statements the victim has stated that her marriage was performed with the appellant thirteen years ago, that they were blessed with one son and one daughter, that her husband suspected her character and used to quarrel with her and harass her mentally, that her husband used to demand her to make her sister's daughter satisfy his desire, and that when she refused to meet such demand, he used to beat her. At 8.00 a.m. on 13.4.2008 the appellant poured kerosene on her body and set her ablaze with an intention to kill her, that due to the burns she raised alarm and on

hearing the same, the neighbours rushed to the spot, put off the flames and shifted her to the hospital for the treatment. Based on the contents of the statement of the victim, P.W.9 registered the FIR and entrusted the investigation to P.W.8, who took up the investigation. At about 21.00 hours, he has received a message from the OGH that the victim died on 13.04.2008 at 20.00 hours while undergoing treatment, whereupon P.W.8 altered the section of law from Section 307 IPC to Section 302 IPC, and issued Express Alteration Memo to the Magistrate and all the concerned. Thereafter, P.W.9 took up the investigation during which he has examined P.Ws.1, 2, 6 and L.W.4, and recorded their statements. P.W.9 visited the scene of offence situated at H.No.23-76/2, Nethajinagar, Kothapet, Saroornagar, made observation of the scene, conducted the scene of offence panchanama in the presence of L.Ws.5 and 6, seized one kerosene plastic can from the spot, and drew the rough sketch in the presence of the mediators. He has summoned L.W.7 and got the scene of offence photographed. P.W.9 visited the mortuary of the OGH where he has held inquest over the dead body, in the presence of P.W.5 and L.W.9. Thereafter, P.W.3 conducted autopsy over the dead body and issued Ex.P.3 - post-mortem report in which he has opined that the cause of the death was due to burns. On 18.4.2008, P.W.9 arrested the appellant at Gaddiannaram, Dilsukhnagar, sent him to the Court which remanded to judicial custody. After completion of the investigation, P.W.9 filed the charge sheet. As the plea of the accused was one of denial, he was tried.

3. To prove its case, the prosecution examined P.Ws.1 to 11 and got marked Exs.P.1 to P.11. On behalf of the defence, Ex.D.1, Election Identity Card was produced.

4. On a careful appreciation of the oral and documentary evidence, the trial Court has convicted the appellant and sentenced him, as noted hereinbefore.

5. We have heard Smt. B. Vijayanthi, learned counsel for the

appellant, and Mr. C. Pratap Reddy, learned Public Prosecutor for the State of Telangana.

6. The material prosecution witnesses have turned hostile. Their evidence is, however, material on some aspects as discussed below.

P.W.1 is a neighbour of the appellant and the deceased. She has deposed that at about 8.00 a.m. one year back she has heard that flames were coming out from the house of the accused and the appellant, came out of her house and saw the deceased in flames on the road in front of her house. That somebody has telephoned to the ambulance and on its arrival, the injured was taken away to the hospital. She has further deposed that she used to hear quarrels from the house of the accused and the deceased during life time of the latter. P.W.2 in his evidence has stated that he has also witnessed, along with P.W.1 and some others, the deceased burning in flames on the road in front of her house. He has further deposed that the appellant was also present there at that time, he also sustained burn injuries to his hand and that the Police examined him and he has also stated the same before them. The evidence of these two witnesses would clearly reveal that the accused and the deceased used to quarrel frequently and on the fateful day when the deceased was in flames the appellant was very much present. In the backdrop of this evidence, we shall now consider the two statements of the deceased – one recorded by P.W.7 and the other recorded by P.W.10.

7. A perusal of Ex.P.6 recorded by P.W.7 clearly shows that he has put the relevant preliminary questions to ascertain the fitness of the victim to give statement. Thereupon, P.W.7 has put probing questions to the victim. To every question, the victim has given answers with clarity and precision. She has clearly stated that following a quarrel between herself and her husband, the latter has poured kerosene on her and lit the fire. She has further stated that except herself and her husband, no one else was present at that time and she has also given the reason for the quarrel as, her husband suspecting her character.

To the last question, she has replied that the appellant has demanded to bring the daughter of her elder sister to him to have sex with her and that when she asked him to decide whether he wanted her or her sister's daughter, then he has beaten her, poured kerosene on her and lit the fire. About 45 minutes after recording Ex.P.6, P.W.10 has recorded another statement of the deceased, marked as Ex.P.8. Though this statement is brief, the contents thereof clearly synchronized with that of Ex.P.6. She has stated the fact that her husband has poured kerosene and lit fire on her. Regarding the cause, as she has stated in Ex.P.6, she has also stated in Ex.P.8 that her husband was suspecting her chastity and also demanding that she must arrange her elder sister's daughter for him to have sex with her. In our opinion, the two dying declarations given by the deceased are very consistent and clear leaving no room for any suspicion that the same was result of tutoring or external influence by anyone. The dying declarations are fully corroborated by the evidence of P.Ws.1 and 2 and the medical evidence on record, namely, Ex.P.3 - post-mortem report and the deposition of P.W.3, who conducted post-mortem.

8. For the above-mentioned reasons, we do not find any reason to interfere with the judgment of the lower Court. The appeal is accordingly dismissed.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

28.03.2016

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