

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL APPEAL No.1496 of 2010

18.10.2016

Between:

Bitti Krishna

..Appellant

And

State of Andhra Pradesh,
represented by its Public Prosecutor,
Hyderabad

..Respondent

Counsel for the appellant: Mr.Jogam Tejavath

Counsel for the respondents: Public Prosecutor (TS)

The Court made the following:



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

The sole accused in Sessions Case No.140 of 2010 on the file of learned I Additional District and Sessions Judge, Ranga Reddy District-cum-Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Hyderabad, filed this appeal feeling aggrieved by his conviction for the offence punishable under Section 302 I.P.C. and sentencing for life imprisonment, *vide* judgment, dated 12.08.2010. The learned Sessions Judge, however, acquitted the accused of the offence punishable under Section 498-A I.P.C. For convenience, the appellant is hereinafter referred to as the accused.

2. The case of the prosecution, briefly, is that the accused is the husband of the deceased. Their marriage was solemnised about 12 years prior to the incident. The couple had two daughters and one son, aged 10, 8 and 7 years respectively. The accused is a hawker residing in a rented house belonging to P.W.6. Since one year prior to the incident, the accused was addicted to alcohol heavily and abusing the children without taking any responsibility for their welfare and that of the family.

3. On 19.01.2010, at about 8.00 p.m., the accused picked up quarrel with the deceased, poured kerosene and set her on fire. P.W.1, who is the sister's son of the deceased, tried to come to her rescue by wrapping a blanket around her, extinguished the flames and shifted her to the Osmania General Hospital, Hyderabad, through 108 ambulance. The accused received partial burn injuries over his left hand and fingers. While undergoing treatment, the deceased died in the Hospital on 22.01.2010 around 15:45 hours. Before the deceased died, on 20.01.2010 at 14:00 hours, P.W.14 – Head Constable of P.S.

Rajendarnagar, recorded her statement – Ex.P-17 and submitted the same before the Inspector of Police – P.W.16, who based on the same, registered crime No.68 of 2010 for the offences punishable under Sections 307 and 498-A I.P.C. Upon requisition, P.W.8 – I Metropolitan Magistrate, Nampally, Hyderabad, recorded the dying declaration of the deceased – Ex.P-10. After the deceased succumbed to the burns at 15:45 hours on 22.01.2010, the provision of law was altered to Section 302 I.P.C. from Section 307 I.P.C., while retaining Section 498-A I.P.C. The dead body of the deceased was sent for post mortem examination. P.W.12 – the Assistant Professor, Osmania Medical College, conducted autopsy over the dead body of the deceased and issued Ex.P-15 - post mortem report.

4. During the investigation, P.W.16 examined the witnesses and recorded their statements, prepared Ex.P-11 - scene of offence panchanama, Ex.P-12 – rough sketch and also conducted inquest and prepared Ex.P-14 – inquest report. P.W.16 seized M.O.1 – 5 litre kerosene tin with little quantity of kerosene, M.O.2 – pieces of burnt saree of the deceased and M.O.3 – match box having match sticks, under Ex.P-18 - seizure panchanama.

5. The accused was apprehended at Mailardevpally and brought to the Police Station at 17.00 hours on 24.01.2010. He confessed to the commission of the offence by stating that as the deceased was frequently quarrelling with him, he doused kerosene and set her ablaze on 20.01.2010 at around 16:00 hours, due to which, she died. The accused was sent for judicial remand and as he also received burn injuries on his left hand and fingers, he was referred to the Relief Hospitals, Durga

Nagar, Rajendarnagar, for treatment and he was discharged on 24.01.2010. Ex.P-16 is the medical certificate relating to the accused.

6. After completion of the investigation, P.W.16 filed charge sheet. As the plea of the accused was one of denial, trial was held, during which, the prosecution examined P.Ws.1 to 16, marked Exs.P-1 to P-20 and produced Mos.1 to 3. After completion of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., during which, he has denied the incriminating evidence read over to him and informed that he has no evidence to adduce. On appreciation of the oral and documentary evidence, the Court below has acquitted the accused of the offence punishable under Section 498-A I.P.C., convicted him for the offence punishable under Section 302 I.P.C. and sentenced him to undergo imprisonment for life. Feeling aggrieved by his conviction and sentence, the sole accused filed this appeal.

7. Mr.J.Tejavath, learned counsel for the appellant/accused, has submitted that the whole prosecution case is based on circumstantial evidence. Though the prosecution has cited P.W.3 - daughter of the accused and the deceased, as the eyewitness, she has not supported the case of the prosecution and that in the absence of any corroboration to Exs.P-10 and P-17 - purported statements of the deceased, it is not safe to convict the accused for the offence punishable under Section 302 I.P.C. The learned counsel has alternatively submitted that even assuming that the prosecution has proved the guilt of the accused regarding commission of the offence, Ex.P-17 - earlier statement of the deceased recorded by the Head Constable, and Ex.P-10 - statement of the deceased recorded by the Magistrate, clearly show that the deceased tried to pour kerosene on

herself, that the accused was in inebriated condition and that the accused, being provoked by the action of the deceased, without realising the consequences, might have in grave and sudden provocation, poured kerosene on the deceased and lit fire. He has, accordingly, submitted that the act of the accused, at the most, amounts to culpable homicide not amounting to murder.

8. The Public Prosecutor (TS), while opposing the above submissions, has submitted that both Exs.P-10 and P-17 – the statements of the deceased recorded by the Magistrate and the Head Constable respectively, to a major extent would clearly prove that the accused poured kerosene on the deceased and lit fire, causing her death. He has further submitted that even if the accused was in a drunken condition, there is no evidence to show that he was not in normal senses as not to know the consequences of his burning his wife and that therefore, the offence may not be considered as one of culpable homicide not amounting to murder.

9. We have carefully considered the submissions of the learned counsel for both the parties and perused the record.

10. As regards the evidence on record, it is not in dispute that P.W.2 was cited as the eyewitness. However, she has not supported the case of the prosecution. Therefore, her evidence does not help the prosecution in establishing the guilt of the accused. However, P.W.14 – the Head Constable, recorded Ex.P-17 – statement of the deceased on 20.01.2010 at 14:00 hours, which is the earliest statement of the deceased. In this statement, the deceased, *inter alia*, stated that on 19.01.2010 at about 8.00 p.m., the accused quarrelled with her, poured kerosene and lit her

on fire. She further stated that P.W.1 - son of her elder sister, extinguished the flames with blanket and shifted her to Osmania General Hospital in 108 ambulance. A short time later i.e., at 3.40 p.m., P.W.8 - jurisdictional Magistrate recorded Ex.P-10. In this statement, the deceased stated that there used to quarrels taking place now and then between herself and the accused, that at 8.00 p.m. on the previous day, the accused came to the house in a fully drunken state and picked up quarrel with her and her children, that when she questioned her husband about his using abusive words against the children, he chastised the deceased and her children asking them to die by burning themselves, that in order to threaten her husband, the deceased tried to pour kerosene from the kerosene tin on herself and that her son snatched the kerosene tin from her and kept it aside. That meanwhile, the accused took the kerosene tin, poured kerosene on the deceased, lighted the match stick and threw it on her. That the deceased was engulfed in flames and when she was crying, the neighbours and also her nephew – P.W.1 came and put off the flames with the aid of blanket. To a question posed by the Magistrate, the deceased stated that the accused, in inebriated condition, committed the offence.

11. As per the settled legal position, dying declaration is treated as an exception to the hearsay evidence, for, it is believed that in contemplation of death, no person would like to meet his Maker with a lie on his lips. Therefore, ordinarily, the Courts do not insist on corroboration, unless the contents of the dying declaration do not appear natural and probable in the circumstances in which the occurrence took place or the victim was tutored. A comparison of the contents of Exs.P-17 and P-10 reveals that in both the statements, the deceased consistently stated that it is the

accused, who is responsible for causing the burn injuries to her, though in Ex.P-10, there is a slightly changed version as regards the events that have transpired prior to the accused pouring kerosene and setting the deceased ablaze. In our opinion, this improvement would not in any manner throw doubt on the veracity of the statements of the deceased as regards the participation of the accused in the commission of the offence. At best, the contents of Ex.P-10 may come to the aid of the accused in determining the real nature of the offence committed by him. On a close scrutiny of Exs.P-10 and P-17, we have least doubt that the accused caused burn injuries to the deceased, who succumbed to those injuries later in the Hospital. The evidence such as Ex.P-13 – medical certificate issued by P.W.13 also clearly proves the presence of the accused at the time of incident and he obviously tried to go to the rescue of the deceased after he caused burn injuries. This apart, the evidence of P.W.1, who is the sister's son of the deceased, shows that immediately after the incident, upon hearing the cries of the deceased, he and other neighbours went and wrapped a blanket around the deceased, put off the flames and took the deceased to the Hospital in an ambulance. P.W.3, who is the daughter of the deceased, though turned hostile, clearly stated in her cross examination that prior to the incident, a quarrel took place between the accused and the deceased. In the light of the above discussion, we are of the opinion that the Court below has rightly held that the accused caused the death of the deceased.

12. As regards the alternative submission of the learned counsel for the accused, as noted hereinbefore, there is a variation in the version of the deceased on the events that have transpired immediately prior to the incident. In Ex.P-10 recorded by P.W.8 – Magistrate, the deceased

categorically stated that the accused came in inebriated condition, started hurling abuses, upon which, she tried to pour kerosene on herself and that at that stage, when the tin was snatched by her son, the accused himself poured kerosene from the kerosene tin and lighted the match stick on her. This statement of the deceased would suggest that the accused had no intention of causing the death of the deceased. Evidently, being in inebriated condition, he got provoked by the sudden act of the deceased trying to pour kerosene on herself. The Court below has failed to note this critical aspect while holding the accused guilty of commission of murder punishable under Section 302 I.P.C. In our considered opinion, the accused obviously came under grave and sudden provocation caused on account of the quarrel that took place immediately preceding the incident and the unexpected act of the deceased trying to pour kerosene on herself. Evidently, the act of the accused was aided by his drunken condition.

13. In these facts and circumstances of the case, we are of the opinion that the accused can be said to have committed the offence of culpable homicide not amounting to murder and that therefore, he is liable to be convicted for the offence punishable under Section 304 Part-I I.P.C. instead of under Section 302 I.P.C.

14. In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant/accused in judgment, dated 12.08.2010, in Sessions Case No.140 of 2010, on the file of the learned I Additional District and Sessions Judge, Ranga Reddy District-cum-Metropolitan Sessions Judge, Cyberabad at L.B.Nagar, Hyderabad, for the offence punishable under Section 302 I.P.C. is converted to that of the offence

punishable under Section 304 Part-I I.P.C. and the sentence of life imprisonment imposed against him for the offence punishable under Section 302 I.P.C. is modified to that of rigorous imprisonment R.I. for a period of ten (10) years for the offence punishable under Section 304 Part-I I.P.C, while maintaining the sentence of fine imposed against him. The period of sentence already undergone by him is directed to be set off.

C.V.NAGARJUNA REDDY, J

24th October, 2016
GHN

M.S.K.JAI SWAL, J

