

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

CRIMINAL APPEAL NO.885 OF 2010

DATED:23-03-2016

Between:

Elaprolu Ramesh
and another ... Appellants

And

The State of A.P.
Rep. by Public Prosecutor ... Respondent

COUNSEL FOR THE APPELLANTS: Mr. K. Suresh Reddy

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

THE COURT MADE THE FOLLOWING:

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

This appeal is directed against judgment dt.11.6.2010 in

S.C. No.401 of 2007, on the file of the Sessions Judge, Krishna, Machilipatnam, whereby, the appellants herein were convicted for the offences under Section 302 read with Section 34 IPC and sentenced to suffer imprisonment for life.

2. The parties are referred to as they are arrayed in the Court below.

The case of the prosecution is that accused No.1 is son of accused No.2 and they are residents of Krishnaraopalem. The deceased was the wife of accused No.1 and their marriage was performed about ten years prior to the date of the incident. P.Ws.1 and 2 are neighbours and P.W.3 was the younger sister of the deceased. The father of the deceased promised to give Rs.15,000/- towards dowry to the accused and at the time of the marriage, he has paid Rs.13,000/- to them. About seven years prior to the incident, the accused demanded the deceased to bring the balance amount of dowry which was met by her father. Accused No.1 and the deceased were living separately from accused No.2 and her husband in the same premises. About six months prior to the incident, the deceased developed some gynaec problem and therefore she was not keeping good health. While so, on 06.8.2007 at about 7.00 a.m., the deceased was unable to sweep the premises due to her ill-health. Accused No.1 picked up a quarrel with her, beat her with a stick, brought kerosene and poured on her, whereas accused No.2 lit the match-stick and set the deceased on fire. Unable to bear with the burns the deceased came out of the house and on hearing her cries, P.Ws.1 and 2 came there and put off the flames and shifted her to the Community Health Centre, Sattupalli. At about 09.00 a.m., P.W.5, the Civil Assistant Surgeon, sent Ex.P.6 intimation to the Police. P.W.6, the Sub-Inspector of Police, Sattupalli, received the intimation at about 09.30 a.m., and forwarded Ex.P.6 to the Chatrai Police Station, on point of jurisdiction. Ex.P.6 was received by the Chatrai Police Station at 9.50 a.m. On the same day, P.W.6 also gave requisition to P.W.7, the Tahsildar, for recording the statement of the victim. P.W.7 went

to the Hospital and recorded Ex.P.11, the statement of the victim, at about 7.00 p.m. A short time later, P.W.6 went to the hospital and recorded Ex.P.10, the statement of the victim in the presence of P.W.5, the Medical Officer, at about 7.30 p.m. P.W.6 forwarded Ex.P.10 along with Ex.P.6 to the Chatrai Police Station.

On the next day, i.e., at about 9.00 a.m. P.W.8, the Sub-Inspector of Police, Chatrai Police Station, received Exs.P.6 and P.10 and registered Crime No.58 of 2007 for the offences under Sections 498-A and 307 IPC and sent Ex.P.12, original FIR, to the Court. Immediately he went to the scene of offence and recorded the statements of P.Ws.1 and 2. Thereafter, he visited the hospital and recorded the statements of P.W.3 and others. On 09.8.2007, P.W.8 arrested the accused and produced them in the Court. On 10.8.2007, at about 10.00 a.m., P.W.8 visited the scene of offence. He prepared Ex.P.4, observation report, in the presence of P.W.4 and another, and he also prepared a rough sketch of the scene of offence, Ex.P.13. While undergoing treatment, the injured succumbed to the injuries on 20.8.2007. At about 11.00 a.m. on that day P.W. 8 received Ex.P.14 death intimation from the hospital. Thereupon, he has altered the FIR to Section 302 IPC. P.W.9, the Inspector of Police, took up the further investigation. He visited the hospital and held inquest over the dead body, in the presence of P.W.4 and another and prepared Ex.P.5, inquest report. He has sent the dead body for conducting post-mortem examination. P.W.5 conducted autopsy over the dead body between 2.30 p.m. and 5.00 p.m. and opined that the cause of the death was due to cardio respiratory failure due to septic shock caused by 90% superficial burns all over the body. He issued Ex.P.9 - post-mortem certificate. After completion of the investigation, P.W.9 filed the charge sheet.

3. The accused denied their guilt and preferred to be tried. On behalf of the prosecution, P.Ws.1 to 9 were examined and Exs.P.1 to P.15 were marked. M.O.1, white colour kerosene tin, was produced. On behalf of the defence, D.W.1, the mother of

the deceased, was examined, but no documentary evidence was produced.

4. On appreciation of the oral and documentary evidence, the lower Court has convicted the accused and sentenced them as stated hereinbefore.

5. We have heard Mr. K. Suresh Reddy, learned counsel for the appellants/accused, and Mr. Posani Venkateswarlu, learned Public Prosecutor for the State of Andhra Pradesh.

6. At the outset, it needs to be noted that the crucial witnesses, namely. P.Ws.1 to 3 have turned hostile. The main evidence based on which the accused were convicted, is the oral evidence of P.Ws.8 and 9 – Investigating Officers, the medical evidence and the two purported dying declarations – Exs.P.10 and P.11. Before discussing this evidence, we would like to first deal with the motive aspect.

7. In the charge sheet it was alleged that at the time of marriage, the father of the deceased (LW.3) gave Rs.13,000/- as dowry and three years after the marriage the accused asked the deceased to bring the remaining balance of Rs.2,000/- and he gave that money to the accused and since then there was no trouble. From the very charge sheet itself, it is evident that there was no dispute between the deceased and her parents on the one side and the accused on the other side with regard to the dowry. It is however alleged in the charge sheet that the accused suspected the fidelity of the deceased and they started harassing her on one pretext or the other and whenever the deceased questioned the accused for the reason behind their behavior, accused No.1 resorted to beating her with whatever weapon available at hand by gagging her mouth at the active instigation of accused No.2. This part of the charge has not been substantiated by the prosecution witnesses. Only in the purported dying declarations, a statement was made by the deceased that for the last six months the accused have been harassing her by suspecting her character. Unless the credibility of these dying declarations is accepted, it is not possible to

accept the plea of the prosecution that there was sufficient motive for the accused to go to the extent of killing the deceased. Therefore, it is necessary for us to examine the credibility of the two dying declarations.

8. Before referring to the contents of the two dying declarations, it needs to be observed that the injured survived for two weeks after she suffered burns. The Judicial Magistrate of First Class was not intimated about the incident and no requisition was made to him to record the dying declaration. P.W.6, the then Sub-Inspector of Police, Sattupalli Police Station, has stated that he has not given intimation to the Judicial Magistrate of First Class by sending a requisition for recording the statement as he was informed that the Magistrate was undergoing training for six months. This explanation is wholly unconvincing for the reason that even if the regular Judicial Magistrate of First Class was under training, another Magistrate would have been kept in charge of the Court. No doubt, as observed by the lower Court, there is no requirement in law that dying declaration must be recorded only by a Judicial Magistrate. However, the fact remains that the dying declarations recorded by Judicial Officers enjoy higher credibility than those recorded by the non-judicial authorities. The admission of P.W.6 that he has not even made an attempt to send the requisition for recording dying declaration to the in-charge Magistrate shows that the investigating agency was not serious in conducting the investigation in proper manner. With these facts in mind, we shall now examine the two dying declarations. Before doing that, it would be relevant to refer to Ex.P.6 - hospital intimation sent to the Police. It was recorded therein by the Doctor concerned that the patient allegedly suffered burns due to fall on kerosene bottle accidentally at 7.00 a.m. on 6.8.2007.

9. Now coming to Ex.P.11, the so called first dying declaration, the same was shown to have been recorded at 7.00

p.m. on 06.8.2007 by P.W.7. After putting the preliminary questions to the injured, P.W.7 has asked her as to what happened. Then she started narrating a long history dating back to her marriage about ten years ago, her previous relationship with her husband, the understanding between her parents and in-laws regarding the agreed dowry of Rs.15,000/-, payment of dowry of Rs.13,000/- initially by her father, her harassment by the accused and her sister-in-law for non-payment of the balance of Rs.2,000/-, payment of the balance amount of Rs.2,000/- by her parents to the accused seven years back, her ill-health for the last six months, neglect by the accused in even taking her to the hospital and the alleged event on 6.8.2007 resulting in her injuries. As regards the occurrence, she has stated that on 6.8.2007 at about 7.00 a.m. while the deceased has got up and was cleaning in front of the house, the accused suspected her character and beat her with a stick and they poured kerosene on her body and lit the match box and as a consequence thereof, she has suffered burns. When she informed the same to the villagers, she was admitted in Sattupalli Government Hospital by taking her in '108 van'. She has further stated that the accused have instructed her to state that she has poured kerosene and lit the fire by herself, threatening that her children will become orphans, and therefore she accordingly stated so. If we closely examine this document, it raises many questions. It is highly doubtful that a person who has suffered 90% burns, will narrate the entire story dating back to ten years beginning with her wedding, in a minute detail.

10. *Mannulal Sahu and another v. State of Madhya Pradesh*^[1], involve identical facts as regards the aspects of recording of dying declaration. Three dying declarations were recorded in the said case. While in the first two dying declarations recorded by an Executive Magistrate and a Doctor respectively, the victim stated that she suffered injuries by accidental fire, in the third dying declaration recorded by a Tahsildar, the victim alleged

that the accused poured kerosene and set her on fire. While dealing with the credibility of the third dying declaration, the Supreme Court held as under:

“This dying declaration (Ext.P-4) has been recorded by the Tahsildar which runs into more than two pages and wherein the entire history from the date of marriage till the date of occurrence has been given in great detail and it was stated that the accused persons poured kerosene oil on the victim and set her on fire. It is not possible to believe such a dying declaration where there is so much narration of facts with meticulous details of everything by a dying person. The said dying declaration said to have been recorded by the Tahsildar is highly doubtful and in our view is an afterthought especially in view of the fact that according to the earlier two dying declarations it was a case of accidental fire and no case for torture was at all made out.”

As noted hereinbefore, in the present case also the dying declaration is unduly lengthy, replete with minute details similar to the dying declaration discussed by the Supreme Court in *Mannulal Sahu* (supra).

11. This apart, it is clearly evident at page 2 of the statement that there is a variation in spacing between the lines. While the ten lines from the top have even spacing between them, the last six lines were written with less space between them, when compared to the spacing left between the lines in the upper portion. This gives rise to a serious suspicion that the statement has been written after obtaining the signature of the deceased. In his evidence, P.W.7 has stated that he has recorded Ex.P.11. However, it is endorsed on Ex.P.11 as “Recorded before me, (signed), Tahsildar, Sattupalli.”. Thus, it is clear that the statement of P.W.7 that he himself has recorded the dying declaration does not appear to be correct. Moreover, there is a perceptible difference in ink between the contents of the document and the above quoted endorsement with the signature of P.W.7. This would further strengthen the suspicion that Ex.P.11 would have been prepared by someone else after obtaining the signature of the deceased. Further more, in his evidence P.W.7 deposed that he has received requisition on 6.8.2007 at 7.00 p.m., from the State House Officer, Sattupalli Police Station. For the reasons best known to the prosecution,

they failed to file the said requisition. In our opinion, non-filing of the requisition would raise any amount of suspicion about the genuineness of Ex.P.11. P.W.9 in his evidence has candidly admitted that in his investigation he did not come across the statement of the deceased recorded by P.W.7. All these circumstances would vitiate the credibility of Ex.P.11 rendering it wholly unsafe to be relied upon.

12. Coming to Ex.P.10, the same was stated to have been recorded by P.W.6. The said statement also contains a detailed narration of the whole background by the deceased. If P.W.7 has recorded the statement (Ex.P.11) earlier than P.W.6, we do not see any reason why the latter has felt the necessity of recording one more declaration, i.e., Ex.P.10. The way in which the whole graphic description of the events spanning over ten years, as in Ex.P.11, running to 1½ pages, makes this document also susceptible for serious suspicion. Moreover, the whole document is in the narrative form, but not in question and answer form. Before recording the declaration, P.W.6 has not even put the preliminary questions which are necessary to ascertain the fit condition of the injured for making the statement.

13. In addition to the above lacunae, there are serious inconsistencies between Exs.P.6, P.11 and P.10 on the aspect of cause of injuries and also the manner in which the injuries were suffered by the injured. As noted above, in Ex.P.6 it was recorded by the Doctor that the patient allegedly suffered burns due to fall on kerosene bottle accidentally. In Ex.P.11 she has stated that her husband as well as her mother-in-law have beaten and poured kerosene on her and lit the match stick. In Ex.P.10 she has stated that both the accused have poured kerosene and her mother-in-law has lit the match stick. The statements contained in Exs.P.10 and P.11 appear to be unduly lengthy and unbelievably narrative not capable of being made by a person who has suffered 90% burn injuries. In our opinion, both these documents appear to have been brought into

existence after obtaining the signatures of the deceased on blank papers.

14. For the above mentioned reasons, we are not prepared to believe Exs.P.10 and P.11 in order to form the basis for the conviction of the accused. Apart from the above, D.W.1, who is no other than the mother of the deceased, has not supported the prosecution case and on the contrary when she was examined as D.W.1, she has categorically stated that her husband was behind the deceased making allegations against the accused and that unable to bear her stomach pain, the deceased has committed suicide. This version of D.W.1 lends credibility to the case of the defence that the accused are innocent and the deceased has committed suicide.

15. For all the above reasons, the appeal is allowed. The conviction and sentence recorded against the accused are set aside and the accused are acquitted of all the charges. Consequently, the accused shall be set at liberty forthwith, if they are not required in any other case or crime.

C.V. NAGARJUNA REDDY,

J

M.S.K. JAISWAL, J

23-03-2016

Note: L.R. copies to be marked.
(B.O)

bnr

[\[1\]](#) (2005) 10SCC 259