

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

CRIMINAL APPEAL NO.930 OF 2010

DATED:14-03-2016

Between:

Shaik Ahammad Basha ... Appellant

And

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

COUNSEL FOR THE APPELLANT: Smt. C. Vasundhara Reddy

COUNSEL FOR THE RESPONDENT: Public Prosecutor (AP)

THE COURT MADE THE FOLLOWING:

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

The sole accused in Sessions Case No.727 of 2009, on the file of the District and Sessions Judge, Guntur, filed this appeal aggrieved by his conviction for the offence under Section 302 of Indian Penal Code (IPC) and sentencing him to suffer imprisonment for life and to pay a fine of Rs.1,000/-.

2. The case of the prosecution in brief is that the deceased was the wife of the appellant. Their marriage has taken place about 11 years prior to the incident. About six years prior to the incident, the appellant and the deceased started living at Perecherla Village, in one of the portions of the house of P.W.1, who was no other than the sister of the deceased, as tenants. On 29.6.2009 at about 6.00 a.m., P.W.1 has noticed flames in the portion in which the appellant and the deceased were living, and on noticing that her sister (the deceased) was burning in the flames, she went and extinguished the flames and shifted the injured to the Government General Hospital, Guntur, in '108' Ambulance. On the same day at about 9.00 a.m., on receiving the requisition from the Government General Hospital, Guntur, P.W.4, V Additional Junior Civil Judge, Guntur, visited the hospital and recorded Ex.P.4 - dying declaration of the deceased around 9.20 a.m. in the casualty ward. Sometime later, on the same day, P.W.10, the Assistant Sub-Inspector of Police, Out-post, Guntur General Hospital, on receiving the admission intimation through Ex.P.6, also recorded Ex.P.7 statement of the victim, which was forwarded to Medikonduru Police Station. On 30.6.2009, P.W.8, the then Sub-Inspector of Police, Medikonduru Police Station, received Exs.P.6 and P.7, hospital admission intimation and statement of the deceased, and registered Crime No.111 of 2009 for the offence under Section 307 of IPC and

issued Ex.P.8 – First Information Report, and thereafter he visited the hospital, secured the presence of P.Ws.1 and 2, and recorded their statements. He also visited the scene of offence and prepared Ex.P.9 observation report in the presence of P.Ws.5 and 6.

On 02.7.2009 on receiving Ex.P.10 - death intimation from the hospital, P.W.8 altered the Section of Law from 307 IPC to Section 302 IPC and issued Ex.P.11 – altered FIR. P.W.9 - the Circle Inspector of Police, Sattenapalli, has taken over the subsequent investigation, held inquest over the dead body in the presence of P.W.6 and two others and prepared Ex.P.13 – inquest report. On 03.7.2009, P.W.7, the Assistant Professor, Department of Forensic Medicine in Government General Hospital, Guntur, conducted post-mortem examination over the dead body of the deceased and gave the opinion that the cause of the death was shock due to burns and issued Ex.P.5 – post-mortem certificate. On 04.7.2009 P.W.9 apprehended the appellant – accused in the presence of P.Ws.5 and 6 and sent him for remand. On receiving all the relevant documents and on completion of the investigation, P.W.9 filed the charge sheet.

3. In support of its case, the prosecution examined P.Ws.1 to 10 and marked Exs.P.1 to P.13, besides producing M.Os.1 to 8. No evidence was adduced on behalf of the defence.

4. On consideration of the oral and documentary evidence, the trial Court convicted the appellant and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.1,000/-, as mentioned above.

5. At the hearing, Smt. C. Vasundhara Reddy, learned counsel for the appellant, submitted that prosecution case is based on circumstantial evidence, in the absence of any eyewitness, and that it has failed to establish with credible evidence the guilt of the appellant beyond all reasonable doubt. She has further submitted that though the incident allegedly has taken place around 6.00 a.m., on 29.6.2009, and the deceased was admitted in the Government General Hospital,

Guntur, with burn injuries immediately thereafter, FIR was registered only on the following day, i.e., 30.6.2009 and that the prosecution failed to explain this delay. She further submitted that when there was a Police out-post attached to the Government General Hospital, tutoring by the Police could not be ruled out before Ex.P.4 - dying declaration was recorded by P.W.4 – Magistrate. That P.Ws.1 to 3 having turned hostile, the only basis on which the lower Court has convicted the appellant was Exs.P.4 and P.7, dying declarations and that the appellant's conviction cannot be sustained having regard to the inherent variations between the two dying declarations as to the manner in which the offence was allegedly committed. She has further argued that though the dying declarations were allegedly recorded on 29.6.2009 and the victim has died on 3.7.2009, i.e., four days later, the autopsy report shows that the ink mark was still available on the left thumb of the deceased suggesting that the impressions on the dying declarations would have been taken after the death of the victim.

6. Opposing the above submissions, Mr. Posani Venkateswarlu, learned Public Prosecutor, strongly defended the judgment of the trial Court.

7. Having regard to the respective submissions of the learned counsel for the parties, the point that arises for consideration is whether the prosecution succeeded in proving the guilt of the appellant beyond all reasonable doubt?

8. The fact that the deceased met with an unnatural death due to burns is not in dispute. The further fact that the death has taken place in the house of the appellant is also not in dispute. The only issue in controversy is whether the death was on account of suicide committed by the deceased herself or the same was a homicide at the hands of the appellant. As usually expected in the cases of this nature, P.W.1 – sister, P.W.2 - mother, and P.W.3 - sister-in-law of the deceased, turned hostile. However, the evidence which remained indelible despite passage of time is none other than the two dying declarations,

Ex.P.4, dt.29.6.2009 and Ex.P.7 of even date. Ex.P.4 was recorded by the Judicial Magistrate of First Class and the latter statement was recorded by P.W.10.

9. The sheet anchor of the argument of the learned counsel for the appellant is the alleged conflicting versions of the victim between Exs.P.4 and P.7. P.W.4, who recorded the dying declaration of the deceased, first put some questions to the deceased to be satisfied that she was conscious, coherent and in a fit state of mind to give statement. In Ex.P.4 the deceased has stated that on the fateful day when she was sitting in the house at the threshold, her husband came and picked up an altercation with her that he has got suspicion on her character, that previously also he has suspected her many times and that she felt that he was repeating his previous behaviour that time also. That her husband brought kerosene tin and poured the kerosene on her body and when she asked him as to why he did that, he took a match box, lit a stick and threw it on her body and that as the flames engulfed her body, her husband has fled away. That she ran away to her elder sister's house and the latter extinguished the flames and phoned to '108' Ambulance in which she was brought to the hospital. P.W.4, who recorded the dying declaration, certified that he has recorded the true and correct statement as stated by her, read over and explained to her in Telugu language and she admitted the same as true and correct, and he obtained left thumb impression of the declarant. As regards Ex.P.7, she has stated that the appellant used to abuse her as he likes and beat her, that for about a week prior to the incident he was suspecting her and beating her to disclose as to with whom she had relationship, that on the previous day also upto 12'o clock, he tortured her physically and mentally by abusing and beating her. That on 29.6.2009 at about 6.00 a.m. in the morning while she was sleeping in the house by placing her head on the threshold, on her husband pouring kerosene upon her, she woke up and while she was running away, he lit a match stick and threw it on her due to which

flames engulfed her entire body, and that while she was suffering from the burns, her husband fled away from that place.

10. A careful reading of the English translated copies of the two declarations reveal that while the substance of the statement of the deceased remained consistent, the only variation was regarding what she was doing at the time of occurrence. As noted above in her first statement she has stated that immediately prior to the incident an altercation took place between herself and the accused, while in the later statement she has stated that she was sleeping by resting her head on the threshold. We have carefully read the original dying declarations recorded in Telugu and we find that a serious mistake in translation has crept in, in Ex.P.4. In the translated version of Ex.P.4 it is stated that when the deceased was sitting in the house on the threshold, her husband came and picked up an altercation. However, in the original dying declaration the deceased clearly stated that in the morning when she was sleeping on the threshold, the incident has occurred. Even in Ex.P.7 she has come out with a similar version by stating that while in the morning she was sleeping by resting her head on the threshold, the incident has occurred. Therefore, we do not find any variation in the two dying declarations as argued by the learned counsel for the appellant, which is based on the incorrect translation of Ex.P.4 as noted hereinbefore. It is worth mentioning at this juncture that even before Ex.P.4 was recorded, the Medical Officer has sent Ex.P.6, intimation of injuries, to the Police as well as the Magistrate, wherein the cause of the injuries was shown as 'burns at 6.00 a.m., on 29.6.2009, at her house, pouring of kerosene by her husband'. Thus, though P.Ws.1 to 3 have turned hostile, Exs.P.4 and P.7 clearly prove that the death was caused by the appellant himself by pouring kerosene and lighting a match stick on the deceased.

11. As regards the thumb impression observed during the inquest, no suggestion was put to any of the witnesses by the defence suggesting that the thumb impression was taken after the death of the

deceased. Here one needs to remember that Ex.P.4 was recorded by a Judicial Magistrate, who has absolutely no reason to falsely implicate an innocent person.

12. As held by the Supreme Court in a catena of decisions, the dying declaration recorded by the Judicial Magistrate enjoys higher degree of probatory value and unless the evidence available on record is inconsistent with the version of the victim as reflected in his/her dying declaration, the Court shall not reject the dying declaration. In this regard, the law on dying declarations needs to be briefly noted.

In *Munnu Raja and another v. The State of Madhya Pradesh*^[1] the Supreme Court held that there is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

In *State of Uttar Pradesh v. Ram Sagar Yadav and others*^[2] and *Ramavati Devi v. State of Bihar*^[3], it was held that if the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. In *K. Ramachandra Reddy and another v. The Public Prosecutor*^[4], the Supreme Court held that the Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination and that the deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. In *Lingaiah v. State of A.P.*^[5] it was held that where there are serious contradictions between two dying declarations of the deceased and in the absence of clear evidence on record proving the guilt of the appellant, he is entitled to the benefit of doubt.

In *Laxman vs. State of Maharashtra*^[6] a Constitution Bench of the Supreme Court dealing with the probatory value to be attached to the dying declaration recorded by the Magistrate, held that Magistrate being a disinterested person and a responsible officer and there being

no circumstances or material to suspect that he had any animus against the accused or was in any way interested in fabricating a dying declaration, question of doubt on the declaration recorded by the Magistrate does not arise.

Keeping in view the above settled legal position, we need to examine the two dying declarations.

13. In this context, it is also relevant to refer to the only suggestion given to P.W.4 regarding Ex.P.4. It was suggested to him that by the time he has reached burns ward in the Government General Hospital, Police personnel and relations were present and that they were sent out before his entry in the hospital, and the same was denied by him. From this suggestion, the defence has only tried to prove that the deceased was tutored before P.W.4 has arrived at the hospital and recorded her statement. In the facts and circumstances of the case, we have no hesitation to hold that Ex.P.4 is reflecting the true and authentic version of the victim in the circumstances and the manner in which the offence has taken place.

14. As regards the submission pertaining to delay in lodging the FIR, no doubt the offence has taken place at around 6.00 a.m., on 29.6.2009 and it was registered in the morning on the following day. In this context, we need to consider the circumstances in which the family members of the deceased were placed. They belong to low strata, living in poverty (the accused was maintaining his family by making and selling chicken pakoda). The victim was admitted with 95% burns and the person who caused the burns was none other than her husband. Evidently, P.Ws.1 and 2, who were sister and mother respectively of the deceased, would have been anxious to save the deceased rather than getting the case registered. At any rate, on the facts of this case, the delay in registering the FIR has no effect on the credibility of the case of the prosecution for the simple reason that within three hours of the incident, P.W.4, the Magistrate, has recorded the statement of the victim and even P.W.8 has recorded her statement

1½ hours after Ex.P.4 was recorded by P.W.4. If at all, there was any lapse on the part of the Police in not immediately registering the FIR, as the victim has given a categorical statement in the two dying declarations, there is no scope for further embellishments or exaggerations in the FIR. Therefore, the delay in registration of the FIR has not affected to the credibility of the case of the prosecution.

15. In the light of the evidence available on record as discussed above, the trial Court has rightly held the appellant guilty of causing the murder of his wife and sentenced him to suffer imprisonment for life, besides imposing a fine of Rs.1,000/-. Hence, we do not find any reason to interfere with the judgment of the Court below and the appeal is accordingly dismissed.

16. On 14.3.2016 the result of the case was pronounced in the Court. However, before signing the judgment, we have decided to hear the learned Public Prosecutor on the aspect of award of compensation. Accordingly, the case was posted to 16.3.2016 on which the date the learned Public Prosecutor has clarified the position of law and undertaken to file a Memo relating to the present status of the children of the victim. Accordingly, a Memo was filed by the learned Public Prosecutor on 17.3.2016. Thereafter, we have made the following addition to the previously dictated judgment.

17. Ordinarily, with the above discussion and the conclusion arrived at by us we would have closed the case. However, our qualm of conscience is not permitting us to do so without considering the fate of the two children, one son and one daughter, who have literally become orphans. With the untimely death of their mother, and the life sentence being suffered by the father, the position in which they are placed is heartrending. Unfortunately, the accused, who nipped the future of his children in the bud, is none other than their own father.

18. Section 357-A CrPC was introduced by Act 5 of 2009 with the object of enabling the Court to direct the State to pay compensation to the victim where the compensation under Section 357 CrPC is not

adequate or where the case has ended in acquittal or discharge and the victim is required to be rehabilitated. In *Suresh v. State of Haryana*^[7], the Supreme Court has taken judicial notice of the fact that 25 out of the 29 States have notified the Victim Compensation Scheme, except the States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana, and these States were also directed to notify their schemes within one month from the date of receipt of a copy of the order.

19. In due compliance of the Supreme Court directive, the State of Andhra Pradesh has framed the scheme called 'The Andhra Pradesh Victim Compensation Scheme, 2015', and notified the same vide G.O. Ms. No.43 Home (Courts-B) Department, dt.15.04.2015. Clause 2(i) thereof has borrowed the definition of 'victim' from Section 2(wa) of the Code of Criminal Procedure, 1973 (CrPC), besides further expanding the definition, including within its scope, victim who is sexually exploited for commercial purposes, trafficking, sufferer of acid attack and also a dependent who is leading life on the income of the victim, and who require rehabilitation. Clause 3 provides for constitution of Victim Compensation Fund (VCF) by the Government, under a separate Head of Account and allotment of separate budget/grant for the purpose of the scheme every year, by a sum equivalent to the expenses of the previous year or the probable expenditure requested by the State Legal Services Authority. Clause 5 prescribed eligibility criteria for the grant of compensation. Clause 7 envisages the procedure for grant of compensation to the effect that whenever a recommendation is made by the court or on an application by any victim or his dependent under sub-section (2) of section 357-A of CrPC to the District Legal Services Authority, the said authority shall examine the case and verify the contents of the claim with regard to the loss or injury caused to the victim arising out of the reported criminal activity and it may call for any other relevant information necessary in order to determine the genuineness of the claims and that after

verifying the claim and on enquiry, shall award compensation within two months, in accordance with the provisions of the Scheme. Under this clause, the compensation awarded by the District Legal Services Authority shall not exceed the compensation prescribed under the schedule.

20. In the instant case, the deceased was the victim. However, as she is no more, her children have suffered irreparable loss and injury. Therefore, in our opinion, they are very much covered by the definition of 'victim' both under Section 2(wa) of CrPC as well as under clause 2(i) of the Scheme. As per the judgment in *Delhi Domestic Working Women's Forum v. Union of India*^[8], and the Scheme framed by the State Government, the victim is entitled to the financial compensation if the compensation is not fully available from the offender or from other sources. However, on the facts of the present case, the offender being no other than the father of the children, who is languishing in jail, it is neither practical nor feasible to order payment of any compensation by him. Under the scheme, the District Legal Services Authority shall fix the compensation on the recommendation of the Court. We feel that such a course is not only cumbersome, but also time consuming, as the offence has taken place more than six years back and both the children of the victim as well as the accused are stated to be clamouring for some financial help. The daughter, by name, Shaik Karishma, is 16 years of age and the son, by name, Shaik Shameer, is 14 years of age. In the memo dt.17.3.2016 filed on behalf of the respondent, it is stated that both these children are residing at Bapatla, Guntur District, under the guardianship of their paternal grand-father Shaik Vali Saheb, who is aged about 70 years and running a mutton shop at Bapatla. It is stated that recently he underwent bypass surgery and stopped maintaining the shop, that he has three sons and two daughters; his first son is staying at Narasaraopet and running a mutton shop; the second son is the accused, who is serving the life sentence, and the third son is working as a daily-wage employee,

having one child. It is further stated that Shaik Karisma has studied upto 6th standard at Bapatla and is presently prosecuting Urdu language courses, and Shaik Shameer is prosecuting 9th standard in Government school at Bapatla. The above facts would reveal that the paternal grand-father of the children of the accused and the victim is in the evening of his life and not being able to carry on his vocation due to old-age and the family does not appear to have any reliable source of income. In these facts and circumstances of the case, we feel that interests of justice would be best served if the maximum amount of Rs.3,00,000/- (Rupees three lakhs only) prescribed under the schedule for loss of life, is awarded.

21. Accordingly, the respondent is directed to pay a sum of Rs.3,00,000/- (Rupees three lakhs only), out of which Rs.2,00,000/- (Rupees two lakhs only) shall be kept in Fixed Deposit in the name of Shaik Karisma, and Rs.1,00,000/- (Rupees one lakh only) shall be kept in Fixed Deposit in the name of Shaik Shameer, in any Nationalized Bank in Bapatla, for a period of two years, and the receipts thereof shall be handed over to their grand-father Mr. Shaik Vali Saheb, within two months from the date of receipt of this order.

22. Subject to the above directions, the Criminal Appeal is dismissed.

C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

14-03-2016

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[\[1\]](#) (1976) 2 SCR 764

[\[2\]](#) AIR 1985 SC 416

[\[3\]](#) AIR 1983 SC 164

[\[4\]](#) AIR 1976 SC 1994

[\[5\]](#) 1994 CrILJ 1242

[\[6\]](#) (2002) 6 SCC 710

[\[7\]](#) (2015) 2 SCC 227

[\[8\]](#) (1995) 1 SCC 14