

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE A.V. SESA SAI

CRIMINAL APPEAL NO.1539 OF 2010

DATED:14-11-2016

Between:

Rahana Begum
and others

... Appellants

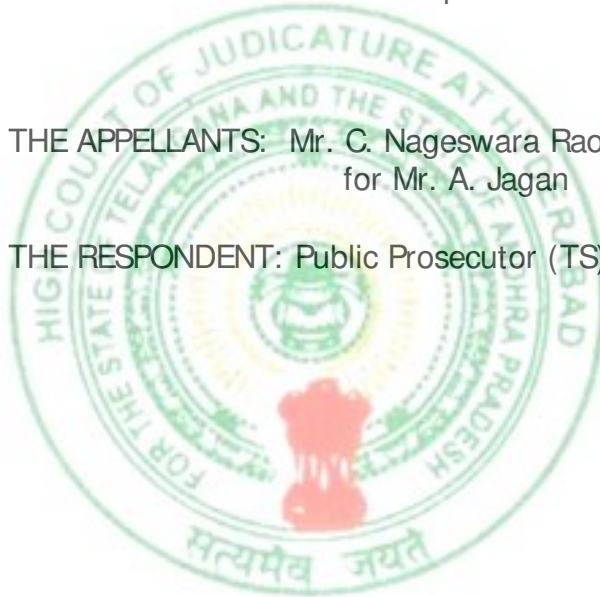
And

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

... Respondent

COUNSEL FOR THE APPELLANTS: Mr. C. Nageswara Rao, Senior Counsel
for Mr. A. Jagan

COUNSEL FOR THE RESPONDENT: Public Prosecutor (TS)



THE COURT MADE THE FOLLOWING:

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

The appellants, who are accused in Sessions Case No.326 of 2009 on the file of the Special Judge for Trial of Cases under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum- VIII Additional Judge at Nizamabad, filed this appeal, assailing their conviction under Section 302 read with Section 34 of IPC and sentencing them for imprisonment for life and also to pay fine of Rs.1,000/- each, in default to undergo simple imprisonment for three months each.

2. The case of the prosecution in brief is set out hereunder:

On the night of 8/9-2-2009 the Sub-Inspector of Police, Prohibition & Excise, Nizamabad Rural Police Station (P.W.11) received information that a woman (Mrs. Mumtaz Begum - deceased) with burns was admitted in the Government Hospital, Nizamabad, and he rushed to the hospital to record her statement at 2.00 hours. That after answering the preliminary questions regarding her name, husband's name, address, etc., the deceased has stated that her marriage was performed about eight years back with Shaik Mobin @ Bablu, that they were blessed with a daughter, by name, Muskan Begum, aged six years, and a son, by name Mujeeb, aged three years. That her elder sister, by name, Haseena Begum is also residing in the same village i.e., Nehrunagar, where she was residing, that the husband of her elder sister, by name, Hussain Khan developed illicit intimacy with a woman and that in this regard her elder sister and her husband were quarrelling. That in this connection, the deceased was abused by the husband of her elder sister – Mr. Hussain Khan; co-sister of her elder sister - Mrs. Rahana Begum and her daughters, namely, Shabana and Yasmeen, at her house and went away.

3. That on the night of 08.02.2009 at about 10.30 p.m., while the deceased was sleeping in her house along with her son, her husband went out of the house to answer the calls of nature and at the same time, Rahana Begum, Shabana and Yasmeen came to her house, poured kerosene on her body and lit fire with a match stick with an intention to kill her due to previous enmity and fled away from the scene. That soon thereafter, she came out of the house and raised hue and cry and in the meantime, her husband and neighbours came there, extinguished the flames and shifted her to the Government Head Quarters Hospital, Nizamabad. That basing on the above statement, P.W.11 has registered a case in Crime No.32 of 2009 under Section 307 read with Section 34 of IPC of Police Station, Nizamabad Rural, on 09.02.2009, sent the First Information Reports to all the concerned and took up the investigation. That during the course of the investigation, P.W.11 has examined the victim/complainant and recorded her detailed statement in Part II CD, that as her condition was serious, a requisition was given to the Additional Judicial First Class Magistrate, Nizamabad, to record the dying declaration of the deceased and that P.W.8 (Principal Junior Civil Judge, Nizamabad) came to the hospital and recorded the dying declaration of the deceased from 1.40 a.m. to 2.15 a.m. That P.W.11 visited the scene of offence, secured the presence of two mediators, i.e., P.Ws.6 and 7, and conducted panchanama of the scene of offence. That while the victim was undergoing treatment, she succumbed to the burn injuries on 12.02.2009 at 02.30 hours at Government Head Quarters Hospital, Nizamabad. That on receipt of the death intimation, P.W.11 has altered the section of law from Section 307 read with Section 34 IPC to Section 302 read with Section 34 IPC and sent the express reports to all the concerned. That

the Medical Officer, P.W.9, who conducted autopsy over the dead body of the deceased, has given his detailed post-mortem examination report stating that the cause of the death of the deceased was due to shock due to 95% deep burns. After completion of the investigation, charge sheet was filed against the appellants.

4. As the plea of the appellants was one of denial, they were tried. The prosecution has examined P.Ws.1 to 11 and got marked Exs.P.1 to P.17. On behalf of the accused, no evidence was let in. On consideration of the oral and documentary evidence, the trial Court has convicted the appellants and sentenced them as noted hereinbefore.

5. Mr. C. Nageswara Rao, learned Senior Counsel appearing for Mr. A. Jagan, learned counsel for the appellants, submitted that all the prosecution witnesses, except P.W.2, have turned hostile and that the Court below has based the conviction only on Ex.P.11, dying declaration, and Ex.P.1, the alleged statement of the deceased, based on which Ex.P.14 First Information Report was registered. That Exs.P.1 and P.11 suffer from serious inconsistencies and contradictions and that in the absence of any corroborative evidence, it is not safe to rely upon the alleged dying declaration for convicting the accused. He has further submitted that the prosecution has not brought home the motive in the absence of which the conviction of the appellants on the basis of the dying declaration cannot be sustained.

6. Mr. C. Pratap Reddy, learned Public Prosecutor for the State of Telangana, strongly opposed the above submissions and tried to support the judgment of the lower Court.

7. Having considered the respective submissions of the learned counsel for the parties, the issue that needs to be decided is whether the

prosecution has proved the guilt of the appellants beyond all reasonable doubt and whether the lower Court has rightly convicted the appellants.

8. The investigation was set in motion based on Ex.P.1, the alleged statement recorded by P.W.11. A perusal of this statement shows that the deceased has stated that she is a resident of Nehrunagar Village and her elder sister Haseena Begum is also residing in the same village, that her sister's husband - Mr. Hussain Khan kept another lady with him and as such there were disputes between the sister of the deceased and her sister's husband. That in connection therewith, the husband of the sister of the deceased, and co-sister of sister of the deceased and her daughters (Accused Nos.1 to 3) were quarrelling in front of the house of the deceased on 08.2.2009 and at about 3.30 p.m., the deceased has questioned them as to why they were quarrelling in front of her house following which there were mutual abuses between the deceased and the accused, who left the place at that time, that on that night at about 10.30 p.m., while the deceased was sleeping in her house along with her son, her husband went for attending calls of nature and that in the meantime, all the three accused came to her house poured kerosene on her and set her on fire with a match stick. All the three accused thereafter ran away and her husband and neighbours came to her rescue by extinguishing the fire and her husband has taken her in an auto to the Government Hospital, Nizamabad, for treatment, and got her admitted.

9. Except the husband of the deceased (P.W.2), all other material witnesses have turned hostile, as noted hereinbefore. As regards the alleged quarrel between the accused and the deceased, no witness was examined to support the case of the prosecution. Even P.W.2 in his

evidence stated that after he has returned home in the night, he was informed about the quarrel.

10. In a case based on circumstantial evidence, motive plays a significant role. The statement of the deceased allegedly recorded by P.W.11 did not receive support from any independent witness regarding the motive. Generally, petty quarrels between the persons would not lead to grave consequences of murders, unless something beyond such petty quarrels exists between the persons, and in the instant case it is difficult to believe that such a petty quarrel led to the killing of the deceased. Except in Ex.P.1, nowhere else the prosecution has brought out the alleged illicit relationship between the husband of the elder sister of the deceased and the woman. Even in Ex.P.11 dying declaration the deceased has not whispered about the alleged illicit relationship leading to the quarrel. We are therefore of the opinion that the prosecution failed to establish motive for the appellants to go to the extreme extent of doing away with the life of the deceased over a petty quarrel.

11. P.W.2, the only witness who has supported the case of the prosecution, has stated in his evidence that the deceased did not inform him as to how she has sustained the burn injuries. As regards the absence of P.W.2 at the time of occurrence, both in Ex.P.1 and also in the evidence of P.W.2, it was stated that at 10.00 or 10.30 p.m., at the time of occurrence, P.W.2 went out of the house for answering the calls of nature. However, in her dying declaration (Ex.P.11) the deceased has stated, in answer to question No.6, that she was alone in the house, her husband went to drive the auto and her children went to her mother's house. Thus, there is material inconsistency between the version of the deceased as recorded in Ex.P.1 and in the evidence of P.W.2 on one side

and that reflected in Ex.P.11, on the other side. In our opinion, this is highly material for the reason that if P.W.2 is absent at the time of occurrence on account of his running of auto, there was no possibility of his coming immediately after the incident and put off the fire. Though P.Ws.4 and 5 neighbours were examined on the side of the prosecution, they turned hostile. Therefore, no reliable evidence could be placed by the prosecution to prove its case regarding the exact manner in which the occurrence has taken place. When the very presence of P.W.2 immediately after the occurrence throws a serious doubt, in all probability he would not have taken the deceased to the hospital and the prosecution may not be coming out with true version in this regard.

12. There is yet another discrepancy between Ex.P.1 – statement and Ex.P.11 - dying declaration regarding the presence of son of the deceased. In Ex.P.1 it is stated that she is having a daughter by name Muskhan Begum, aged six years, and a son Mujeeb, aged three years, and that the incident has occurred at 10.30 p.m. while she was sleeping in her house along with her son. In Ex.P.11 she has however stated that her children went to her mother's house and that she was alone. This contradiction also raises a serious suspicion about the case of the prosecution as to the manner in which the occurrence has taken place.

13. Coming to the crucial evidence, namely, dying declaration, there is a serious contradiction as regards the time at which Ex.P.11 was recorded by P.W.8, the Magistrate. P.W.11, the Investigating Officer, in his evidence has deposed that on 09.02.2009 at about 2.00 a.m., he has received telephonic information from the Government Hospital, Nizamabad, that one burns case was admitted in the Hospital, that he went to the burns ward in the hospital, recorded the statement of the

injured, sent requisition to the Principal Junior Civil Judge, to record the dying declaration of the patient as she sustained severe burn injuries, and that he returned back to the Police Station, registered a case in Crime No.32 of 2009 under Section 307 read with Section 34 of IPC and issued Ex.P.14, FIR. In his cross-examination he has stated that he has recorded the statement of the deceased from 2.00 to 2.30 a.m. P.W.8, the Magistrate deposed that on 09.2.2009 at about 1.20 a.m., he has received requisition from the Duty Medical Officer of the Government Hospital, Nizamabad, to record the dying declaration of the deceased and accordingly he has commenced the proceedings of recording the dying declaration at 1.40 a.m. In his cross-examination he has stated that he has closed the proceedings at 2.15 a.m. The deposition of P.W.8 to the effect that he has received requisition from the Duty Medical Officer of the Government Hospital, runs contrary to Ex.P.10 issued by P.W.11. A perusal of this document shows that an intimation in writing was addressed by P.W.11 to P.W.8, which was received by the latter with the following endorsement.

"Received requisition through PC 1164 Town-I PS at 01.20 AM"

If we read the evidence of P.W.11 along with the evidence of P.W.8, we find apparent conflict between the two versions. The evidence of P.W.11 suggests that he reached the hospital at around 2.00 a.m. and after recording the statement of the deceased, he has sent requisition to the Principal Junior Civil Judge, to record the dying declaration. His evidence thus suggests that there was no possibility for the Principal Junior Civil Judge and the Doctor to reach the hospital and commence recording of the dying declaration at about 1.40 a.m., when P.W.11 himself has reached the hospital at 2.00 a.m. and sent intimation to P.W.8

after recording the statement of the deceased. Moreover, while P.W.11 has stated in his evidence that he has recorded the statement of the deceased from 2.00 a.m. to 2.30 a.m., P.W.8, as noted above, has deposed that he commenced the recording of proceedings there at 1.40 a.m. and completed by 2.15 a.m. Thus, there is a serious overlapping of the timings of recording Exs.P.1 and P.11. The prosecution miserably failed to explain this inconsistency.

14. Coming to the contents of Ex.P.1 it is mentioned at the bottom of the statement to the effect that the same was written by the Police in the presence of the deceased, read over and explained to her in Telugu. In Ex.P.11, the first question put to the deceased by P.W.8 was 'whether she knows Telugu?' to which the deceased has replied that 'she does not know Telugu'. P.W.8 has stated, after completion of recording of the statement of the deceased, that he has taken the help of the duty doctor Dr. Namdev Sheshrao while recording the declaration in Hindi and that he has recorded the declaration verbatim and read over its contents. Thus, there is a serious conflict between Exs.P.1 and P.11 as regards the language known to the deceased. If the version of P.W.8 is to be believed, the contents of Ex.P.1 based on which the prosecution was set in motion, must fall to ground as the deceased would not have understood the contents of Ex.P.1 as she could not understand Telugu. If we eschew Ex.P.1, the prosecution is left with only Ex.P.11, which, as noted above, contains several contradictions between the stands taken by the deceased under Exs.P.1 and P.11. When the very timing of recording of Ex.P.11 itself is in serious doubt, it is not safe to rely upon its contents.

15. To question No.15 put by P.W.8, the deceased has stated that she has forgotten the name of her sister-in-law. This also, as argued by Mr.

C. Nageswara Rao, learned Senior Counsel, raises a serious doubt as to the fit state of mind of the deceased. Added to this, the Doctor, who allegedly certified that the patient is conscious, coherent and in fit state of mind throughout the recording of the statement, and allegedly helped P.W.8 to record the dying declaration in Hindi, for the reasons best known to the prosecution, was not examined. His evidence would have lent strong support to the credibility of Ex.P.11. The dying declaration is an exception to the rule of inadmissibility of hearsay evidence. Unless its contents are free from reasonable doubts, apart from being coherent and consistent, it is not safe to rely upon the dying declaration in the absence of corroborative evidence (See *Rasheed Beg v. State of Madhya Pradesh*¹ and *Nallapati Sivaiah v. Sub-Divisional Officer, Guntur*²).

16. There is yet another serious contradiction between Exs.P.1 and P.11. In Ex.P.1 the deceased has stated that after the accused poured kerosene on her and set fire with a match stick, she came out of the house due to intolerable burns, upon which her husband and neighbours came to her and extinguished the flames. However, we find a completely different version in the evidence of P.W.2, who has stated as under:

“At 10 or 10.30 p.m. on the same day I went out of the house for answering nature calls. After going out of the house I heard some noise in my house and immediately I rushed to my house and saw the deceased lying with burn injuries. Except the deceased, no other person was present in the house. I poured water on the body of the deceased. I took the deceased in my auto rickshaw to the house of the parents of the deceased and from there she was shifted to Government Hospital, Nizamabad.”

¹ (1974) 4 SCC 264

² (2007) 15 SCC 465

This material contradiction also throws a serious suspicion on the whole case of the prosecution regarding the manner in which the occurrence has taken place.

15. In Ex.P.11 the deceased has made an omnibus allegation that all the three accused came, poured kerosene and lit the fire. This, in our opinion, is contrary to natural human conduct because there is no need for all the three persons either to pour kerosene or to light the fire. Thus, specific overt acts have not been attributed by the deceased to each of the accused and failure in this regard does not inspire confidence on the credibility of the version of the deceased spoken to in the dying declaration. Further, the prosecution has not produced any material objects in support of its case.

16. As noted hereinbefore, the prosecution failed to establish the motive and in the face of various inconsistencies and suspicious circumstances in which the dying declaration is shrouded, we are of the opinion that it is wholly unsafe to base the conviction of the appellants solely on the purported dying declaration of the deceased. The Court below, in our opinion, has committed illegality in mainly relying upon Ex.P.11 for basing conviction in the absence of any corroborative evidence.

17. For the aforementioned reasons, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused in the impugned judgment are set aside. Consequently, the appellants shall be set at liberty forthwith, if they are not required in any other case or crime and the fine amount, if any, paid by them shall be refunded to them.

As a sequel to disposal of the criminal appeal, CrI.A.M.P. No.2578 of 2012 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

A.V. SESA SAI, J

14-11-2016

bnr

Note: LR copies to be marked.

(B.O)

bnr

