

THE HON' BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Appeal no.1142 of 2010

JUDGMENT: (per Hon'ble Sri Justice M. Seetharama Murti, J)

This appeal under Section 374(2) CrPC is directed against the judgment dated 09.06.2010 of the learned III Additional Sessions Judge, Kurnool at Nandyal of Kurnool District, in SC.no.161 of 2009 whereby the learned Additional Sessions Judge found the sole accused guilty of the offences punishable under Section 498-A and 302 of the Indian Penal Code ('IPC' for short) and sentenced him to suffer imprisonment for life and to pay a fine of Rs.1,000/- and in default thereof to undergo simple imprisonment for two months for the offence of Murder; and suffer imprisonment for a period of three years and to pay a fine of Rs.500/- and in default thereof to undergo simple imprisonment for one month for the offence punishable under Section 498-A of the IPC. However, the learned Additional Sessions Judge directed that both the said substantive sentences shall run concurrently.

2. We have heard the submissions of the learned counsel appearing for the appellant/accused and the learned Public Prosecutor appearing for the respondent/ State.

3. Based on the material available before the learned Additional Sessions Judge, the following charges were framed against the accused.

"Firstly: That you the accused who is the husband of the deceased Boya Bala Vengamma, used to subject her to cruelty suspecting her character and thereby committed an offence punishable under Section 498-A of the Indian Penal Code and within my cognizance.

Secondly: That you the accused on 14.12.2008 at about 3 p.m while the deceased Boya Bala Vengamma was attending to her work in the house at Gulamnabipeta village, you went there in intoxication and beat her with hands and legs saying NINNU CHAMPITEGANI NAKU MANASHANTI LEDU and poured kerosene on her body uttering the words NINNU CHAMPUTANU and set fire with a burning match stick and caused burn injuries which resulted in her death in the hospital and thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance."

4. At trial, the prosecution examined PWs1 to 15 and Exhibited P1 to P19 and also marked MOs.1 to 5. No evidence was adduced on the side of the accused.

5. The following case of the prosecution as unfolded by the evidence brought on record needs examination before it is acted upon to sustain the conviction recorded by the learned Additional Sessions Judge against the sole accused for the two offences with which he was charged.

PW1 is the mother of the deceased Bala Vengamma and A. Venganna, PW2, and A. Bijjappa, LW2. The accused, B. Chandra Sekhar, is the husband of the deceased. Their marriage was performed 14 years prior to the incident in the instant case. After their marriage, the deceased and the accused lived happily for about 6 or 7 years. Under lawful wedlock, the deceased gave birth to a female child and a male child. Thereafter, the accused was addicted to drinking and had started suspecting the character of the deceased and used to beat her and harass her now and then. Whenever the deceased used to complain about the ill treatment being meted out to her to her mother (PW1) and brother (PW2), they used to pacify and send her back to her husband's house, that is, the house of the accused. While so, on 14.12.2008 at about 03:00 PM., when the deceased was attending to her work in the house, the accused came to the house in a drunken state and quarrelled with the deceased on suspicion and beat her. Further, after uttering the words 'if the deceased dies he can live in peace' he had poured kerosene from a tin on her and set her afire with a matchstick. When her entire body was under flames, PW5 had tried to rescue her by covering her with a bed sheet having seen her engulfed in flames while she was coming out of the house. At about 04:00 PM on the same day, the neighbours of the accused informed about the incident to PWs1 and 2. Then, PW1, PW2 and LW2-A-Bijjappa had proceeded to the Hospital [Community Health Centre], Banaganapalli, and found the deceased with burn injuries in the said hospital. When questioned by them, she told

them that the accused poured kerosene and set her on fire and caused the burn injuries. On that day at about 05:00 PM., on the admission of the deceased with burn injuries into the said Community Health Centre, Banaganapalli, PW9, the Civil Assistant Surgeon, sent Medico Legal Case intimation under Exhibit P8 to the police. The said doctor had also sent a requisition under Exhibit P9 to the Judicial Magistrate of First Class, Banaganapalli, for recording the dying declaration of the deceased. PW14, the SI of police having received the medico legal case intimation from Banaganapalli Government Hospital at about 04.20 PM., proceeded to the said hospital and recorded the statement (Dying Declaration) of the deceased under Exhibit P14 and registered the crime and issued Exhibit P15 FIR. At about 05:40 PM., PW13, the Judicial Magistrate of First Class, Banaganapalli had recorded the dying declaration of the deceased under Exhibit P13. PW9, the said Doctor, made the required endorsement on that declaration Exhibit P13 recorded by PW13, the learned Magistrate. During the course of his investigation, PW14 examined the witnesses and conducted part of the further investigation. However, in the meanwhile, the deceased was shifted in an Ambulance to the Government Hospital, Kurnool as her condition was serious. Further, on 28.12.2008 at about 12.00 noon, the deceased succumbed to the burn injuries while receiving treatment. PW10, the Doctor of the said Government Hospital at Kurnool, sent the death intimation of the deceased under Exhibit P11 to the out post police of the Kurnool Hospital. PW11, the ASI of Police having received the said death intimation of the deceased informed the same to Banaganapalli Police. PW15, the CI of police, who received express FIR from PW14 on the death of the deceased, had proceeded to the Government Hospital, Kurnool and verified the investigation so far done by his predecessor and conducted further investigation. On a requisition from the police received on 29.12.2008, PW12 conducted autopsy on the dead body of the deceased and gave Exhibit P12-post mortem report opining that the cause of death is septicaemia and shock due to mixed degree of burns. On receipt of the request of the police on 23.12.2008,

PW9, the Doctor examined the burn injuries said to have been sustained by the accused and issued Exhibit P10-wound certificate related to the accused. The successor of PW14 completed the formalities and laid the charge sheet.

5.1 Be it noted that PWs3, 4 and 6, who were said to be the neighbours of the deceased and the accused, who are supposed to speak about the hearing of the cries of the deceased when she was engulfed in flames, did not support the case of the prosecution. PW5 who was said to have covered the deceased with a bed sheet having seen her engulfed in flames while she was coming out of the house also did not support the case of the prosecution. Further, PWs7 and 8 who were said to have been present at the time of inquest held over the dead body of the deceased and who were said to have acted as panch witnesses during the course of investigation also turned hostile to the case of the prosecution.

6. A plain appraisal of the evidence of the prosecution shows that there are no eyewitnesses to the incident and that the prosecution case rests on two dying declarations. Exhibit P14, the first statement/declaration of the deceased was recorded on 14.12.2008 at 04:30 PM., by PW14, the SI of Police, at Community Health Centre, Banaganapalli. In Exhibit P14 - declaration given to the police officer, the deceased had given a detailed account about her marriage with the accused and his addiction to drinks and ill-treatment meted out to her on suspicion and the incident on 14.12.2008 evening at 03:00 PM., in which her husband, in a drunken state, doused her in kerosene and set her on fire and her coming out of the house and PW5 covering her body with a bed sheet and putting off the flames and the neighbours including her junior aunt, sister and others shifting her in a van to Banganapalli hospital. However, the said SI of police, who recorded the said declaration, did not seek permission of the Doctor before recording the same; and, on this declaration he did not obtain the endorsement of the Doctor that at the time of recording of the statement the deceased was conscious and was in a fit state of mind to give

the statement. Therefore, no evidentiary value can be attached to this first dying declaration. Exhibit P13-dying declaration was recorded on 14.12.2008 at 05:30 PM., by PW13, the Judicial Magistrate of First Class, Banaganapalli. The same, on a perusal, would show that it is a very short/brief declaration and that in the said declaration, the deceased stated that her marriage with the accused was performed about 14 years back and that she is having two children and that from the time of marriage her husband is suspecting her and is insulting her and that her husband is working as a tractor driver and that on that day at about 03:00 PM., her husband came to the house in a drunken condition and insulted her and beat her with hands on suspicion and then poured kerosene and set her aflame and that her junior aunt, sister and other relatives witnessed the incident and that they had brought her to the hospital and that by that time her husband who was at the house did not come to the hospital. The said declaration would also show that the learned Magistrate had put preliminary questions to the deceased and had then recorded her declaration after having been satisfied about the level of her consciousness or perception and her state of mind and that the Doctor also made an endorsement at the foot of the said declaration that the patient/the deceased was conscious while giving the statement and was in a fit state of mind. If the contents of this declaration/Exhibit P13 are to be accepted, the said statement, in our considered view, would be sufficient to convict the accused as it is settled law that a conviction can be recorded basing on a dying declaration, provided it is credible. However, the learned counsel for the accused contended that the said dying declaration is unreliable and cannot be acted upon to sustain the conviction of the accused for the serious offences with which he was charged. Per contra the learned Public Prosecutor had supported the judgment of the Court below.

7. The contentions and rival contentions are now taken up for consideration:

Firstly, it is contended thus: 'Though the deceased had stated in her declaration that the incident was witnessed by her junior aunt and others, the prosecution did not examine any of the said direct witnesses and relatives, who had witnessed the incident. Therefore, the version of the deceased in the declaration is doubtful and is not credible. The non examination of such material eyewitnesses is fatal to the case of the prosecution. The deceased was admitted into Banaganapalli hospital at about 04:20 PM. The declaration, Exhibit P13, was recorded by the learned Magistrate on 14.12.2008 at 05:40 PM. Before that declaration was given, the deceased had an opportunity to talk to her relatives. In fact there is evidence on record which discloses that she had conversations with her mother and brothers and other relatives. Therefore, there is a possibility of tutoring. The evidence of the Doctor also would show that the relatives who were present with the deceased were sent away before the declaration was recorded. She was tutored to implicate the accused.' The learned Public Prosecutor had contended that in this case the prosecution case does not rest on the testimonies of any direct eye-witnesses and that the prosecution relies upon the dying declaration, which is credible. In a case where the prosecution evidence with regard to the occurrence rests only on the testimonies of the eyewitnesses and not on a dying declaration like in the present case, a contention that the non examination of the eye-witnesses or some of such crucial witnesses may be germane for consideration; however, in the instant case, the declaration of the deceased was recorded by a learned Magistrate on the receipt of a requisition from the hospital authorities. No-doubt, in this case, there is evidence on record that the deceased had an opportunity of talking to her close relatives from the time of the incident till the time the declaration was recorded by the learned Magistrate in the hospital. The offence had occurred at about 03:00 PM and the deceased was admitted into the hospital at 04:20 PM is borne out by the

record. The police officer-PW14, on the immediate receipt of the medico legal case intimation from the Hospital had been to the hospital and had recorded Exhibit P14, her earliest declaration, at 04:30 PM. While giving this earliest statement, the deceased had clearly spoken about the complicity of the accused, that is, her husband. Though that declaration was kept out of consideration as the police officer did not take permission of the hospital authorities and as the said declaration does not contain an endorsement of the Doctor about the competency of the declarant to give such a declaration, yet Exhibit P14 constitutes a material piece of evidence wherein the deceased had given the same narration which she had given later to the learned Magistrate under Exhibit P13. Be that as it may. In the said latter declaration a candid statement was made by the deceased in regard to the complicity of her own husband with whom she had led marital life for about 14 long years and had given birth to two children. There is no reason for the wife either to leave the real culprit or falsely implicate her husband having attempted to commit suicide. For the sole reason that there was an opportunity for the close relatives to interact with the deceased, her declaration under Exhibit P13 need not be discarded. Hence, we are not impressed with the above said contentions of the accused. On a careful scrutiny of the dying declaration we are of the view that the declaration is not the result of tutoring, prompting or imagination. We are, therefore, of the view that the contentions that the dying declaration under Exhibit P13 is doubtful and that it was a result of tutoring do not merit consideration.

The second contention of the learned counsel for the accused is that the deceased sustained only 45% burns and that the incident had occurred on 14.12.2008 and that the deceased had succumbed to the injuries on 28.12.2008 while undergoing treatment in the hospital and that in view of the low percentage of burns and also the time lag between the declaration and the death, it cannot be said that the declaration was given in anticipation of her death and that therefore, the statement given by her

cannot be termed as a dying declaration in the circumstances of the case. In-fact, the percentage of burns is noted as 65% in the intimation given by the hospital to the police under Exhibit P8. From the contents of Exhibit P9 intimation given by the Banganapalli Hospital to the learned Magistrate for recording the dying declaration of the deceased it is clear that the Doctor gave the said intimation as the deceased by that time had suffered severe burns. Further, perusal of the Exhibit P12-post mortem examination report would also show that the deceased had sustained burns on vital parts of her body namely, lower 1/3 of the face, lower mandible area, neck front and back area, front and back of the chest, upper 1/2 of right arm, upper 1/2 of the upper front of the abdomen, total back of the abdomen, both ears, upper 1/3 of anterior aspect of the right thigh. Thus, by the time she has given a dying declaration, she had suffered severe ante mortem burns is evident. Coming to the aspect that the deceased had survived for about two weeks after the declaration was given, it is to be noted that the cause of her death as per the undisputed medical evidence is 'septicaemia and shock due to mixed degree of burns'. Therefore, it is possible to accept that when the declaration was given, the deceased was at the threshold of a possible death due to severe burns and that she was apprehending her death. In *Najjam Faraghi @ Nijjam Faruqui v. State of West Bengal*¹ it was held that merely because a person died long after making the dying declaration, the statement does not become irrelevant. Section 32 (1) of the Indian Evidence Act deals with cases in which statement of the cause of death, by a person who is dead, becomes a relevant fact. To quote:

32. Cases in which statement of relevant fact by person who is dead or cannot be found, etc., is relevant.-Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which, under the circumstances of the case,

¹ (1998) 2 SCC 45

appears to the Court unreasonable, are themselves relevant facts in the following cases:

(1) when it relates to cause of death.--When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

A bare analysis of the provision, for the purpose of the case on hand, would show that a statement by a person made before her death to be relevant, the following ingredients are to be satisfied: (i) The statement is made by a person who is conscious and believes or apprehends that death is imminent; (ii) The statement must pertain to what the person believes to be the cause or circumstances of death; and, (iii) What is recorded must be the statement made by the person concerned, since it is an exception to the rule of hearsay evidence. As per the well settled law there is neither rule of law nor of prudence that a dying declaration cannot be acted upon without corroboration. Further, if the Court is satisfied that the dying declaration is true and voluntary it can base a conviction on it, without corroboration. In the case before us, it is fairly clear that the deceased was apprehending death on the date of her declaration, not merely because she lived for more than two weeks after the incident but because of the nature of the burn injuries, which she had suffered and which were referred to above. In *Babu Lal and Ors. v. State of Madhya Pradesh*² while dealing with the value of a dying declaration in evidence, the Supreme Court observed thus: 'A person who is facing imminent death, with even a shadow of continuing in this world practically non-existent, every motive of falsehood is obliterated. The mind gets altered by most powerful ethical reasons to speak only the truth. Great solemnity and sanctity is attached to the words of a dying person because a person on the verge of death

² AIR 2004 SC 846

is not likely to tell lies or to concoct a case so as to implicate an innocent person. The maxim is "a man will not meet his maker with a lie in his mouth" (Nemo moriturus praesumitur mentire). Mathew Arnold said, "Truth sits on the lips of a dying man". The situation in which a woman is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of her statement. In case of a person, who is facing imminent death, every motive of falsehood gets obliterated. Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. [Vide Surajdeo Oza and Ors. v. State of Bihar: (1979 CriLJ 1122)]. Considering the facts, the evidence on record and the legal position obtaining, we are not in agreement with the contention that the dying declaration of the deceased loses its probative value either on account of percentage of burns or the death after about 2 weeks or its shortness.

On a careful evaluation of the evidence on record we are satisfied that the dying declaration of the deceased made to the learned Magistrate is confidence bearing, truthful and credible.

Thirdly, it is contended that in the earliest declaration recorded by the police officer and in the prosecution version it is stated that the kerosene is poured from a tin whereas a bottle was recovered from the scene of offence and that this circumstance casts a shadow of doubt on the prosecution case. When the deceased herself gave a declaration that she was doused in kerosene by her husband, the variation during the course of investigation and evidence on the aspect as to whether the kerosene was poured from a tin or bottle, in our considered view, is not significant.

Fourthly, it is contended as follows: 'The accused did not sustain any burn injuries in the incident. The contents of Exhibit P10-wound certificate of the accused, which the investigating officer introduced during the course of investigation, would itself show that the burn injuries were caused to the accused on 23.12.2008, that is, on the date of his arrest. Therefore, the piece

of evidence, which the prosecution intended to rely upon, falsifies the version of the prosecution that the accused had sustained burn injuries in the incident proper.' It is also pointed out that there is no mention in the said wound certificate in regard to the age of the burn injuries. It is true that Exhibit P10-wound certificate of the accused does not support the case of the prosecution that he had sustained burn injuries during the incident in which the deceased sustained burn injuries. It clearly shows that the burn injuries were caused to the accused on 23.12.2008. Be that as it may, as rightly urged by the learned prosecutor, in every case of death caused by burning, the assailant may not sustain burn injuries while setting the victim ablaze. Therefore, the fact that the accused did not sustain any injuries in the incident is not going to advance the defence that the accused is innocent.

8. PWs1 and 2 consistently deposed about the harassment that was meted out to the deceased and about the deceased complaining to them about the harassment and ill-treatment that is being meted out to her and their pacifying and sending back the deceased to the house of the accused for leading a marital life. Therefore, there is also sufficient evidence to sustain the charge under Section 498-A of the IPC. Having thus considered all the contentions of the accused we are of the considered view that none of the contentions advanced are sufficient to dislodge the well established case of the prosecution.

9. Having regard to the reasons aforesaid, we are satisfied that the evidence brought on record is enough to safely hold that the prosecution sufficiently brought home the guilt of the accused beyond reasonable doubt for the offences with which the accused is charged and that there are no grounds calling for interference.

In the result, the Criminal Appeal is dismissed.

Since the accused is already in prison, it is needless to state that he shall be released only after serving the sentences as per law and as per the judgment of the Court below.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

03.08.2016
Vjl

