

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and

The Hon'ble Sri Justice M.S.K.Jaiswal

Criminal Appeal No.1548 of 2010

Date: 16.11.2016

Between:

Punesh and 2 others

.. Appellant

and

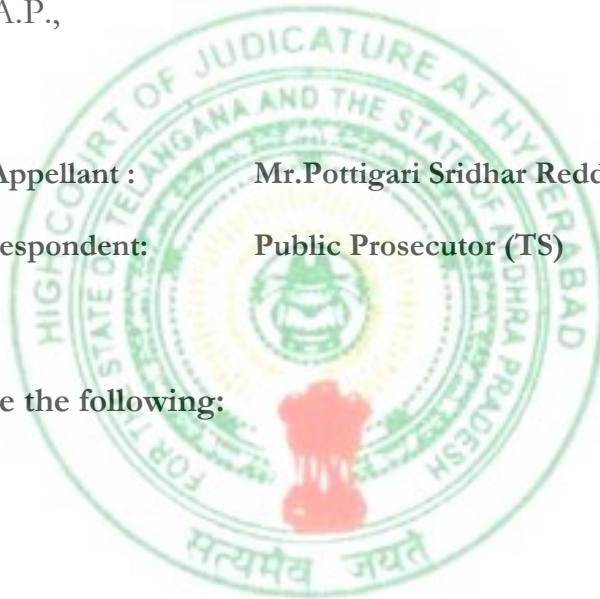
The State of A.P.,
rep. by its Public Prosecutor
High Court of A.P.,
Hyderabad

.. Respondent

Counsel for the Appellant : Mr.Pottigari Sridhar Reddy

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:



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

Accused Nos.1, 2 and 5 in Sessions Case No.606 of 2007 on the file of the IV Additional Sessions Judge, Ranga Reddy District at L.B.Nagar, filed this Criminal Appeal questioning their conviction for the offences under Sections 307 and 302 IPC and sentence to undergo Rigorous Imprisonment for 10 years and also to pay fine of Rs.500/- each, in default to suffer simple imprisonment for one month for the offence under Section 307 IPC, and to undergo Imprisonment for Life and to pay fine of Rs.1000/- each, in default, to suffer Simple Imprisonment for two months for the offence under Section 302 IPC with the direction that both the sentences shall run concurrently.

For convenience, the appellants shall be referred to as they are arrayed in the above mentioned Sessions Case.

The case against accused Nos.1, 2 and 5, as unfolded by the Prosecution, is briefly stated hereunder:

On 03-10-2005 at about 8.00 p.m., while LW.1- Yenugula Shankaraiah and his wife Yadamma (hereinafter referred as 'the deceased') were sitting in the Court Yard, accused Nos.1 and 2, who are their sons, and accused Nos.3 to 5, who are the son, daughter-in-law and wife respectively of LW.1's brother, came

there, abused them stating that they were doing black magic to Vanaja, Laxmamma and Susheela, attacked and beat them indiscriminately. Accused No.1 brought fire wood, lit fire, threw LW.1 and the deceased into the flames and caused burns with heated iron rods. Meanwhile, PW.1- G.Shankaraiah and PW.2- G.Laxmamma tried to interfere but they were resisted. The accused confined LW.1 and the deceased in their house and bolted from outside. On the next day *i.e.*, on 04-10-2005 at 8.00 a.m., when LW.1 knocked the door, it got opened and LW.1 and the deceased fell down in the court yard. LW.5- T.Pandu, who saw the same, enquired them and informed the same to PW.4- Sarpanch of the village. On a complaint given by LW.1, PW.8- Head Constable, Moinabad Police Station, registered Crime No.159 of 2005 against the accused for the offences under Sections 307, 342 and 147 IPC.

PW.9- Sub –Inspector of Police, Moinabad Police Station, recorded the statements of LW.1, PWs.1 to 4. LW.5 referred both LW.1 and the deceased to the Osmania General Hospital, Hyderabad (for short ‘the OGH’) for treatment and sent requisition to LW.12- IX Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, for recording the dying

declaration of the deceased, who recorded the same on 05-10-2005 at about 1.55 a.m.

Meanwhile, PW.9 conducted Panchanama of the scene and seized two small burnt sticks, ash, coal and iron rod under the cover of Ex.P.4- Seizure panchanama in the presence of PWs.6 and 7 and LWs.9 and 10- mediators. On 04-10-2005 at about 2.00 p.m., PW.9 apprehended the accused at Mothkupally Village, recorded their confessional statements in the presence of PW.6 and LW.9- mediators and arrested them. On 05-10-2005, PW.9 sent the accused to the Court of the VIII Metropolitan Magistrate, Rajendra Nagar for judicial remand and deposited the seized material in the said Court.

Five days thereafter, LW.1 and the deceased left the OGH without informing the authorities concerned, came to their house and attended to their daily work. As the injuries became unbearable, on 08-11-2005, LW.1 re-admitted the deceased in OGH, where she succumbed to the injuries on 11-11-2005. On receipt of the said information, PW.9 added Section 302 IPC in the crime registered against the accused and sent express memos to all the concerned. On receipt of the same, PW.10 took up the CD file from PW.9, visited OGH mortuary, secured the presence of LW.10 and PW.7- Panch witnesses and conducted inquest over

the dead body of the deceased and handed over the same for postmortem examination. PW.10 again recorded the statements of LW.1 and PW.5- sister of LW.1 and after completion of postmortem examination, PW.12- Assistant Professor, OGH, issued Ex.P.13- postmortem examination report, wherein she opined that the death of the deceased was due to 'burns'. Hence, PW.10 filed charge sheet against the accused for the offences under Sections 302, 307, 342 and 147 of IPC.

In support of its case, the Prosecution examined PWs.1 to 12 and marked Exs.P.1 to P.13. No evidence was let in on behalf of the defence. On consideration of both oral and documentary evidence, the lower Court has acquitted accused Nos.3 and 4 and convicted and sentenced accused Nos.1, 2 and 5 as indicated herein before.

Mr.Pottigari Sridhar Reddy, learned Counsel for accused Nos.1, 2 and 5, submitted that LW.1- husband of the deceased has died, PW.2, who is one of the alleged eye witnesses, turned hostile and the evidence of PW.5, who is the only other alleged eye witness, does not inspire confidence. He has further submitted that the very presence of PW.5 itself at the scene of offence was doubtful as LW.1 has not referred to her presence at

all in his Ex.P.6- statement and that her conduct of going inside her house after allegedly witnessing the incident itself is wholly unnatural. The learned Counsel further submitted that Ex.P.12-dying declaration is not proved due to the death of LW.12-Magistrate and that therefore, in the absence of any corroboration, it was wholly unsafe to convict accused Nos.1, 2 and 5 for the offence under Section 302 IPC. The learned Counsel, alternatively, submitted that as per the medical evidence, the deceased has suffered only 15% burn injuries, which indicates that accused Nos.1, 2 and 5 have not intended to cause her death, and that therefore, their conviction for the offence under Section 302 IPC cannot be sustained.

Opposing the above submissions, the learned Public Prosecutor for the State of Telangana sought to sustain the Judgment of the lower Court.

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

A perusal of the statement of the husband of the deceased, who was examined as LW.1 by the Police, shows that he did not refer to the presence of anyone, much less PW.5, while the alleged incident was taking place. He has deposed that only at about 8.00

a.m., on the following day, after pushing the doors open from inside, himself and the deceased fell down in the court yard and that LW.5- T.Pandu saw them and informed the same to PW.4- Sarpanch. LW.5 was not examined by the Prosecution. Even PW.4, in his evidence, stated that on being informed by LW.5 that the deceased was put on fire, he enquired LW.1 and as the deceased was not in a position to speak, he sent her to the hospital in an auto. He has further deposed that on his enquiries, the villagers have expressed their ignorance of the occurrence.

PW.1, in his evidence, stated that he has worked as a farm servant and that on the date of the incident, while returning to his house at 10.00 p.m., he had seen the fire in front of the house of the deceased; that he has not enquired as to the reason for the fire; and that on the next day, he came to know that the deceased was taken to the OGH where she died due to burn injuries. PW.1 was treated as a hostile witness. Nothing material could be elicited from his cross-examination.

The only other relevant evidence left to be considered is that of PW.5. She deposed that accused Nos.1 and 2 created fire in front of the house of the deceased and burnt her. She further added that they have caused burn injuries with heated iron rods

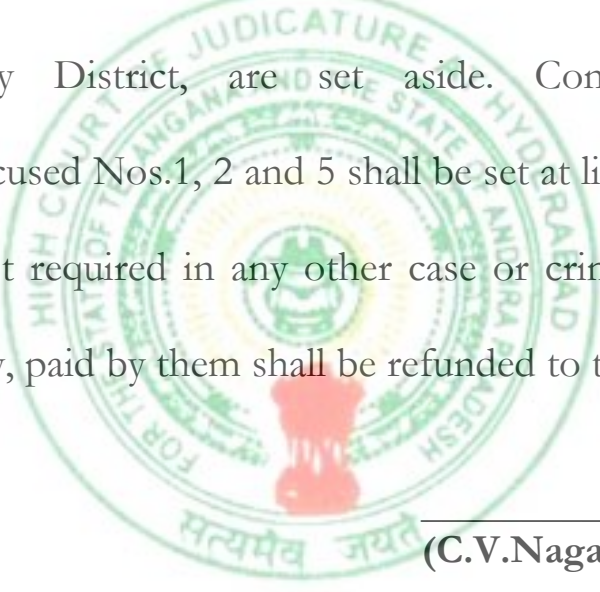
on the deceased and LW.1 and also made them sit on those rods. In her cross-examination, PW.5 stated that after witnessing accused Nos.1 and 2 causing burn injuries to the deceased and LW.1, she has gone inside her house at about 10.00 p.m. As rightly submitted by the learned Counsel for accused Nos.1, 2 and 5, the evidence of PW.5 does not inspire confidence as her conduct does not conform to the natural human conduct. Having witnessed the incident of the nature described by PW.5, no person would, in ordinary course, leave the deceased and her husband to their fate by going into her house not to return thereafter till the next day morning. PW.5 has not made any effort either to rescue the deceased and her husband or to inform the other villagers about the incident even after the accused have left the place. The oral evidence, as discussed above, in our opinion, does not help the prosecution in establishing its case.

We shall now consider Ex.P.12- Dying Declaration, which was recorded by LW.12- IX Additional Chief Metropolitan Magistrate, Nampally Criminal Courts. A perusal of the original dying declaration shows that proper identity of the Magistrate, who recorded the dying declaration, has not been mentioned. From the judgment of the lower Court, it appears that the Magistrate, who has recorded the dying declaration has died

before the trial has taken place as a result of which he was not examined. No doubt, recording of dying declaration being an official act, a presumption in law is available in favour of the factum of recording the same. The dying declaration being an exception to the principle of inadmissibility of hearsay evidence, the accused cannot be put to the disadvantage of non-examination of the person, who recorded the same. In our opinion, unless the accused were presented with an opportunity to put relevant questions to the Magistrate, it would be highly unjust to place reliance on the dying declaration recorded by him more so in the absence of proper oral evidence corroborating its contents. Indeed, at the bottom of Ex.P.12- dying declaration, it was specifically recorded by the Court that the same was being marked only for the limited purpose of proving the mental condition of the deceased and that the same is not marked as proof of its contents. Since Ex.P.12 was not marked as proof of its contents through PW.11- Doctor, in whose presence the same was stated to have been marked, its contents cannot be relied upon by the Court unless any other person connected with Ex.P.12 was examined. If we eschew the contents of Ex.P.12 from consideration, no other evidence to prove the guilt of accused Nos.1, 2 and 5 is available to justify their conviction. For

the afore-mentioned reasons, we are of the opinion that the prosecution has failed to prove the guilt of accused Nos.1, 2 and 5 beyond all reasonable doubt.

In the result, the Criminal Appeal is allowed. The conviction and sentences recorded against the appellants/accused Nos.1, 2 and 5 for the offences punishable under Sections 302 and 307 IPC in the Judgment, dated 28.10.2010, in Sessions Case No.606 of 2007, on the file of the IV Additional Sessions Judge, Ranga Reddy District, are set aside. Consequently, the appellants/accused Nos.1, 2 and 5 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.



(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Dt: 16th November, 2016
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