

In the High Court of Judicature at
Hyderabad
for the State of Telangana and the State
of Andhra Pradesh
Criminal Appeal No.932 of 2010

Between:

Mohamed Jahangeer

... Appellant/accused

and

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

...Respondent

—

Date of Judgment Pronounced: 29-03-2016

Submitted for Approval:

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

and

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

1. Whether Reporters of Local
newspapers _____ Yes/No
may be allowed to see the judgments ?

—
2. Whether the copies of judgment may
be _____ Yes/No
marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordships wish
to _____ Yes/No
see the fair copy of the Judgment ?

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

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

and

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

Company Appeal No.932 of 2010

% Date: 29.03.2016

Between:

-
Mohammed Jahangeer

...Appellant

And

-
The State of Andhra Pradesh
rep. by its Public Prosecutor
High Court of Judicature at Hyderabad

...Respondent

-
! Counsel for the Appellant :
Mrs.A.Gayathri Reddy

^ Counsel for the respondent: Public
Prosecutor

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> HEAD NOTE:

? Cases cited:

(2015) 7 Supreme Court Cases 641
1997 (1) ALD (CrL) 620 AP
1920 The Law Reorts - AC 479
(2000) 10 SCC 324 = 2000 SCC (CrL) 86

The Hon'ble Sri Justice C.V.Nagarjuna

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

Criminal Appeal No.932 of 2010

Date: 29.03.2016

Between:

Mohammed Jahangeer

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Appellant/accused

and

The State of Andhra Pradesh
rep. by its Public Prosecutor
High Court of Judicature at Hyderabad

.. Respondent

Counsel for the Appellant :
Mrs.A.Gayathri Reddy

Counsel for the respondent:
Public Prosecutor

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The Court made the following:

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

The prosecution laid charge

sheet against the appellant/accused for the offence under Section 302 IPC. After a full-fledged trial, the learned III Additional Metropolitan Sessions Judge, Hyderabad, convicted and sentenced the appellant to undergo life imprisonment and also to pay fine of Rs.5,000/- by his judgment, dated 11-06-2010, in SC.No.268 of 2009. Assailing the same, the accused/appellant has filed this Criminal Appeal.

The case of the prosecution in brief is that Mrs.Fareeda Begum (hereinafter referred as 'the deceased') was the wife of the appellant; that they had three minor children; that they were residing in Vombay Colony, Pochamma Basthi, Humayun Nagar, Hyderabad; that the appellant was running a shop relating to orchestra (band); that the deceased was his second wife; that his first wife- Mrs.Mumtaz Sultana resides at MD Lines, Tolichowki, Hyderabad, along with her four children; that the appellant married the

deceased 10 years prior to the incident; that he was addicted to liquor; and that he used to come to the house of the deceased in a fully intoxicated condition, quarrel with her and beat and torture her for not giving money to buy liquor.

On the night of 02-01-2008, the appellant came to the house of the deceased in a drunken state and started quarrelling with her. The neighbours interfered and for a while, the deceased went to her mother's house situated nearby their house, but the appellant followed her and brought her back to his house and closed the doors. In a fully intoxicated condition, the appellant poured petrol over the deceased in the presence of his two minor daughters and set her ablaze in the bathroom of the house. Unable to bear the pain due to burn injuries, the deceased came running out of her house and rushed to her mother's house. Immediately, her mother and elder sister alerted the Humayunnagar Police,

who shifted her to the Osmania General Hospital (OGH) for treatment.

PW.1- elder sister of the deceased went to the Humayunnagar Police Station and gave a report, which was registered as Crime No.5 of 2008 under Section 307 IPC by PW.9- Sub-Inspector of Police. PW.9 sent requisition to PW.8- V Metropolitan Magistrate at Hyderabad for recording the dying declaration of the injured. PW.8 visited the OGH and recorded the dying declaration of the injured. Thereafter, PW.10- Sub Inspector of Police, who took charge from PW.9 on 03.01.2008, recorded a detailed statement of PW.1 and also that of the deceased in which she corroborated the statement of PW.1. PW.10 has also visited the scene of offence, which consists of only two rooms and was situated in a weaker section colony. PW.10 has seized the partially burnt petrol can and burnt saree pieces of the deceased from the bathroom in the presence of LW.11-

P.Satyanarayana and PW.5 and also prepared Ex.P.2- Panchanama. PW.10 has examined and recorded the statements of PWs.2, 3, 4, 5 and LWs.7 to 9. On 04-01-2008, at 08-15 hours a telephonic message was received from the OGH that the injured has succumbed to injuries on 03-01-2008 at 23-45 hours. Based on the said information, PW.10 took up the further investigation and altered the Section of Law from 307 to 302 IPC and sent express reports to all the concerned. PW.11- Inspector of Police, who took up investigation from PW.10 on 04-01-2008, visited the OGH, conducted inquest over the dead body of the deceased and prepared Ex.P.3- Panchanama report in the presence of PW.6 and LW.14- Mrs.Hashmath Begum. PW.11 has also examined LW.10- elder brother of the deceased. The dead body of the deceased was handed over to PW.7 for Postmortem examination. Accordingly, PW.7 has conducted Postmortem examination and issued Ex.P.4- Postmortem report. PW.7

opined that the death has occurred due to burns. PW.11 has sent the material objects seized at the scene of offence to the Forensic Science Laboratory for analysis. LW.17 analysed the material objects and sent Ex.P.10- report.

On 05-01-2008, PW.11 arrested the appellant and produced him before the Jurisdictional Magistrate, who remanded him to judicial custody. After completion of the investigation, PW.11 laid the chargesheet. The plea of the appellant was one of denial.

In support of its case, the Prosecution examined PWs.1 to 11 and marked Exs.P.1 to P.10. On behalf of the defence, no evidence was let in.

On appreciation of the oral and documentary evidence, the Court below has found the appellant guilty of the offence under Section 302 IPC and sentenced him as noted herein above.

At the hearing, Smt.A.Gayathri Reddy, learned Counsel for the appellant, submitted that the case is based wholly on circumstantial evidence and that the prosecution could not prove the guilt of the accused beyond all reasonable doubts. She further submitted that the evidence on record discloses that the first wife of the appellant visited the house of the deceased and that a quarrel ensued between them, which would have obviously led the deceased to commit suicide. Alternatively, the learned Counsel submitted that even if the appellant was responsible for the death of the deceased, as the evidence on record clearly discloses that he was in a drunken condition, he would not have had either the intention or the knowledge to kill his wife and that therefore, at best, he may be liable for conviction for the offence under Section 304 Part I IPC.

Opposing the above submissions, Mr.C.Pratap Reddy, learned

Public Prosecutor for the State of Telangana, submitted that Ex.P.6- Dying declaration was fully corroborated by PW.3, who is no other than the daughter of the appellant and the deceased, and that mere drunken condition of the appellant cannot save him from criminal liability for murdering his wife. In support of his submission, the learned Public Prosecutor has placed reliance on the judgment of the Supreme Court in **Santosh vs. State of Maharashtra**^[1].

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

While the witnesses other than PW.3 are circumstantial witnesses, PW.3 is a direct witness to the occurrence. She is the daughter of the appellant and the deceased and was aged about seven years at the time of occurrence. She was

categorical in her deposition to the effect that on the fateful night when her mother went into toilet, the appellant poured petrol with the can and lit fire; that her mother went to the house of PW.2; and that at that time, she has got up. In the cross-examination, while admitting the suggestion put to her that the hands of her father were also burnt, she has added that her father's hands were burnt because he was pushing his mother into the toilet when she was coming out. She has further deposed that her father also came to the house of PW.2 along with his mother.

PW.1- the sister of the deceased deposed that she was a resident of Humabad, Karnataka State; that fifteen days prior to the incident, she came to her mother's house, which was situated near the house of the appellant and the deceased; that on 03.01.2008, around 3.30 a.m., her deceased sister knocked the door with burn injuries and stated that she had a

quarrel with her husband in the night and the latter has poured petrol and set her on fire due to which she has sustained burn injuries; and that when PW.1 telephoned to the Police Station, the Police came and took the deceased to the hospital. Nothing worth mentioning was elicited from PW.1 in the cross-examination to discredit her testimony.

PW.2- mother of the deceased fully corroborated the evidence of PW.1. PW.1 was a witness to the inquest and her statement was also recorded, which was consistent with her version as reflected in Ex.P.1 as well as her evidence given as PW.1.

The most important evidence in the case is Ex.P.6- Dying Declaration. It was recorded by PW.8- V Metropolitan Magistrate, Hyderabad, after being satisfied that the patient was in a conscious, coherent and fit state of mind for making statement based on certain

questions put to her. The deceased has briefly replied to every question put to her. She has stated that they were married for ten years; that the appellant is employed in an orchestra group; and that he used to quarrel whenever he was drunk. She has also narrated the events leading to the incident and her admission in the hospital. She has stated that during the night before the incident, there was a big quarrel over issues such as the welfare of children and the drunkenness of the appellant; that the appellant was fully drunk; and that at around 2.00 a.m., when she went to the toilet, the appellant came from behind, poured petrol on her and lit fire. She has further stated that when their children were screaming on witnessing the incident, the neighbours came and admitted her in the hospital.

On a careful reading of the dying declaration, we are convinced that the statement of the deceased was natural;

that there were no signs of tutoring by any one; and that there were no embellishments. Learned Counsel for the appellant has tried to point out certain discrepancies between the evidence of PWs.1 and 2 and the contents of Ex.P.6-dying declaration. She merely pointed out that while in the dying declaration, the deceased has stated that immediately after the incident, the neighbours came and took her to hospital, as per the evidence of PWs.1 to 3, the deceased has rushed to the house of PW.2- her mother and on PW.1 informing the Police, the latter has taken her to hospital. In our opinion, this discrepancy is not very material and it does not in any manner affect the case of the prosecution. The deceased, who has received serious burn injuries, would have been in such a shock that she could not even have remembered the events immediately following the most unexpected incident of her receiving the burns. It is not as if there was any direct contradiction in

this regard between the contents of the dying declaration and the evidence of PWs.1 to 3. While the deceased has stated in her statement that neighbours have shifted her to the hospital, PWs.1 to 3 have deposed that the deceased has rushed to the house of PW.2 from where she was taken to the hospital. In our opinion, this variation is too insignificant to disbelieve the case of the Prosecution.

The learned Counsel for the appellant submitted that PW.3 being a child and was sleeping, would not have witnessed the incident. From the evidence on record including the statement made by the deceased in her dying declaration, it is clear that a big quarrel preceded the incident. PW.3 has deposed that after the quarrel, she was sleeping. However, she woke up on hearing the screams of her mother. From this evidence, it appears that though she might not have been awake when the appellant was lighting fire,

immediately on hearing the cries of her mother, she woke up and she could understand what was going on in her presence. Indeed, she has explained in the cross-examination that her father has sustained burns to his hands as he was pushing her mother when she was trying to come out of the toilet. PW.3 appears to be a natural witness and we have no reason to doubt her testimony.

As regards the submission of the learned Counsel that due to intoxication, the appellant would not have been aware of what he was doing and that therefore, neither intention nor knowledge could be attributed to him. She has placed reliance on a division Bench judgment of this Court in **Mirza Ghani Baig vs. State of A.P.**^[2]. In that case, considering Section 86 IPC, the Division Bench observed that the accused has to lead evidence independently for bringing out the fact in the cross-examination that he was in such a drunken

state that he could not form any intention of committing the alleged offence. The Division Bench referred to the judgment of the Privy Council in **Director of Public Prosecutions v. Beard**^[3] wherein it was held that except in cases where insanity is pleaded, where a specific intent is an essential element in the offence, the evidence of the state of drunkenness rendering the accused incapable of forming such an intent should be taken into consideration in order to determine whether the accused had in fact formed the intent necessary to constitute the particular crime; that if he was so drunk that he was incapable of forming the intent required, he could not be convicted of a crime, which was committed only if the intent was proved and that this does not mean that the drunkenness in itself is an excuse for the crime but that the state of drunkenness may be incompatible with the actual crime charged and may, therefore, negative the commission of that crime; that in a charge

of murder based upon intention to kill or to do grievous bodily harm, if unlawful homicide with malice aforethought is not established, he could not be convicted of murder.

In **Santhosh** (supra), a three-Judge Bench of the Supreme Court, while referring to its earlier judgment in **Kalu Ram vs. State of Rajasthan**^[4], reiterated the principle that the element of inebriation, when it is present in a case, may be taken into consideration as it considerably alters the power of thinking. It was further held that where the intention to kill is present, the act amounts to murder and where such intention is not present, the act amounts to culpable homicide not amounting to murder and that in order to determine whether the offender had the intention or not, each case must be decided on its own facts and circumstances.

The ratio that could be culled out

from the foregoing judgments is that mere drunkenness cannot be pleaded as a ground for acquittal of the charge of murder. It is only in cases, where the drunkenness was such that the offender was incapable of forming an intention and having a knowledge that his act was likely to cause death, that drunkenness may be taken as a defence and depending upon the facts and circumstances of each case, the Court will have to take a decision.

In the instant case, the statement given by the deceased in her dying declaration reveals that the appellant was in a fully drunken stage on the night when the incident took place. She also stated that the appellant used to frequently come home in a fully drunken state and quarrel with her and beat her. However, she made one significant statement in her dying declaration, viz., that the appellant behaves friendly when he is not drunk and he quarrels and harasses her only when he is

drunk. From this statement of the deceased, it could be deciphered that the appellant, who appears to be a good natured person in normal course, loses his control if he is drunk and evidently, he may not be conscious of what he would be doing when he is drunk. The fact that he was fully drunk on the fateful night stood proved by the statement of the deceased made in her dying declaration. Though the appellant may not have had the intention of causing the death of the deceased, he would have had at least the knowledge of causing the bodily injuries which are likely to cause her death. In these facts and circumstances of the case, we are of the opinion that this is a fit case where the appellant is liable to be convicted for the offence punishable under Section 304 Part I I.P.C.

In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant/accused in judgment, dated 11.06.2010, in Sessions Case No.268 of

2009, on the file of the learned III Additional Metropolitan Sessions Judge, Hyderabad, for the offence punishable under Section 302 I.P.C. is converted to that of the offence punishable under Section 304 Part-I I.P.C. and the sentence of life imprisonment imposed against him for the offence punishable under Section 302 I.P.C. is modified to that of imprisonment for a period of ten (10) years for the offence punishable under Section 304 Part-I I.P.C, while maintaining the sentence of fine imposed against him. The period of sentence already undergone by him is directed to be set off.

(C.V.Nagarjuna Reddy, J)

(M.S.K.Jaiswal, J)

Date: 29.03.2016

**Note:
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- [\[1\]](#) (2015) 7 Supreme Court Cases 641
- [\[2\]](#) **1997 (1) ALD (CrL.) 620 AP**
- [\[3\]](#) **1920 The Law Reports - AC 479**
- [\[4\]](#) (2000)10 SCC 324 = 2000 SCC (Cri) 86