

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND SIXTEEN

(26.04.2016)

PRESENT

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

CRIMINAL APPEAL No.1113 of 2010

Between:

Mummidi Srinivasu

..... APPELLANT/ACCUSED

AND

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

.....RESPONDENT

Counsel for the Appellant : **Smt.A.GAYATHRI REDDY**

Counsel for the Respondent : **Sri POSANI VENKATESWARLU,
PUBLIC PROSECUTOR (AP)**

The Court made the following:

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

CRIMINAL APPEAL No.1113 of 2010

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

The appellant was charged for the offences under sections 498-A and 302 IPC and made to stand trial for those offences in S.C.No.224 of 2008, on the file of the VII Additional Sessions Judge, Kakinada, and by judgment dated 31.07.2010, he was found not guilty and acquitted for the offence under Section 498-A IPC, and found guilty for the offence under Section 302 IPC. The appellant was eventually convicted for allegedly killing his wife and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- (Rupees five hundred only), in default, to suffer simple imprisonment for two months.

2. For convenience, the appellant is referred to as "the accused".

3. The case of the prosecution in brief is that the accused is resident of Allamvari Lane, Samalkot. He married Mummididi Srilakshmi (deceased) and at the time of marriage, PWs 1 & 2, the parents of the deceased, gave as dowry Rs.70,000/- cash and 50 sovereigns of gold to the accused. The accused got addicted to bad vices, like drinking etc., and spent away the dowry amount. During the wedlock, as the deceased gave birth to a female child, the accused beat her on her head with a stick, for which, PWs 1 and 2 placed the matter before elders as well as the police. The elders, PWs 5 and 6, advised the accused not to harass the deceased and settled the matter. However, the accused did not change his attitude and was harassing the deceased to bring more money from her parents. On demand, PWs 1 and 2 adjusted Rs.10,000/- and Rs.8,000/- on two occasions and the accused spent away those amounts also and continued his harassment to the deceased with further demand, which the deceased refused to accept. While so, on 22.11.2007 at about 10 a.m. bearing in mind that the deceased did not heed his demand, the accused beat the deceased, poured kerosene on her and set fire. On receiving

information, PWs 1 and 2 rushed to the scene of offence and shifted the deceased to the Government Hospital, Kakinada. PW 12, who is the incharge of out post police station at Government General Hospital, Kakinada, recorded the statement of the deceased – Ex.P.9 and informed the same to Samalkot Police Station, basing on which, PW 13 registered Cr.No.244/2007 under Sections 498-A and 307 IPC. PW 13 visited the Government Hospital and recorded the statement of the victim – Ex.P.10, visited the scene of offence and recorded the statements of witnesses, prepared Ex.P11 rough sketch, got drafted Ex.P2 scene of offence observation report and got photographed the same and seized the material objects. On 22.11.2007 at 00.40 hours PW 9, the Judicial Magistrate concerned, on requisition – Ex.P.4, visited the Government Hospital and recorded the statement of the victim as dying declaration which is Ex.P5. On 26.11.2007 at 12.35 a.m the victim died while undergoing treatment. On receipt of information, the Sub-Inspector of Police altered the section of law to Sections 498-A and 302 IPC. PW 14 took up the further investigation, conducted inquest over the dead body and thereafter, subjected the same to postmortem examination, that on 28.11.2007 he arrested the accused in the presence of LW 10 and PW 8 under cover of mediators report. The medical officer, who conducted the postmortem examination over the dead body of the deceased opined that the deceased died due to ante mortem infected burns of about 70%. After completion of the investigation, the charge sheet was filed.

4. As the accused pleaded not guilty and insisted on conducting trial, the prosecution examined PWs 1 to 16, marked Exs.P1 to P15 and produced M.Os.1 to 6. On behalf of defence, no evidence was let in. On appreciation of the oral and documentary evidence, the lower court disposed of the sessions case in the manner, as stated above.

5. Learned Counsel appearing for the appellant submits that even in the absence of cogent and satisfactory evidence, the learned

Sessions Judge has found the accused guilty of having caused the death of his wife and convicted him, which is not sustainable. Learned Counsel further submitted that even though in the dying declarations recorded by the Investigating Officer as well as the Judicial Magistrate of First Class, the deceased pointed towards the accused as the person who set fire to her, the medical intimations sent by the hospital authorities to the Magistrate as well as to the outpost police at Government General Hospital, Kakinada, clearly show that she herself poured kerosene and set fire. Only after being tutored by her people, it is contended that the deceased in her statement before the police and the Magistrate, inculpated the accused. It is the further contention that the evidence of the kith and kin of the deceased cannot be made the basis for holding the accused guilty of the charge inasmuch as they are not the eyewitnesses to the incident. Learned Counsel submitted that the Court below failed to appreciate the evidence on record in proper perspective and has erroneously convicted the accused.

6. Learned Public Prosecutor on the other hand submitted that consistently the deceased has stated before the police as well as the jurisdictional Magistrate that it is the accused who has poured kerosene on her and set fire. That there is voluminous evidence to show that ever since the marriage, the accused was subjecting the deceased to harassment demanding additional amounts and was spending away his income towards consumption of alcohol. That there is also evidence to the effect that even at the time of the incident, the accused was very much present in the house and after having set fire to his wife has inflicted a simple injury with the scissors on his chest and both the deceased and the accused were taken to the hospital by PWs.1 and 2 and were treated. While the deceased underwent treatment till 26.11.2007, when she ultimately succumbed to the burn injuries, the accused absconded from the hospital within few hours after being taken to the hospital and subsequently on the

next day resurfaced at the hospital. That the cumulative effect of both these circumstances, which are borne out from the oral and documentary evidence on record, it is contended by the learned Public Prosecutor, is that they are sufficient for holding the accused guilty of the charge and therefore the Judgment of the trial Court cannot be said to suffer from any infirmity warranting interference by this Court.

7. We have carefully considered the respective submissions of the learned counsel for the parties and perused the material on record.

8. The point for consideration is whether the prosecution proved its case against the appellant/accused beyond reasonable doubt so as to sustain the conviction and sentence recorded against him, or whether the same need to be set aside, modified or varied?

9. The accused was the husband of the deceased and they married in the year 2005. Two years thereafter, the deceased died. The case of the prosecution is that on 21.11.2007 at about 10.00 p.m., the accused after having quarrelled with the deceased over money, set fire to her by pouring kerosene and also inflicted a simple injury on himself. Immediately the deceased and the accused were taken to the hospital and the authorities have sent intimations to the Judicial Magistrate of First Class and also the Outpost police. Exs.P.4 and P.8 are the medical intimations. In pursuance thereto, PW.9 – the jurisdictional Magistrate recorded the dying declaration of the deceased at about 0040 hours on 22.11.2007 and about 02.00 a.m., on 22.11.2007, PW.12 – the Head Constable recorded the dying declaration. These two statements of the deceased were marked as Exs.P.5 and P.9. The deceased, while undergoing treatment, died on 26.11.2007 at about 12.35 a.m. The Medical Officer – PW.10 who conducted the post-mortem examination opined that the cause of death of the deceased was *septic toxic condition due to antemortem 1st degree (wilsons) inflicted burns of about 70%*. Ex.P.6 is the post-mortem certificate issued by the Medical Officer.

10. No doubt, there is no direct evidence in support of the allegation that it is the accused who set fire to the deceased after pouring kerosene on her. But there is evidence to show that within minutes after the deceased was set on fire, several people gathered there and the deceased informed them that it is the accused who caused the burn injuries. Even the parents of the deceased viz., PWs.1 and 2 reached the spot within minutes and found the accused sitting on a cot with bleeding injury while the deceased was burning. The witnesses who spoke about these aspects are PWs.1 to 6.

11. PWs.1 and 2 are the father and mother of the deceased. It is in their evidence that the deceased was married to the accused in the year 2005 and immediately thereafter he started subjecting the deceased to harassment demanding money. It is also in their evidence that on two occasions they gave some amounts i.e., Rs.10,000/- on one occasion and Rs.8,000/- on the other, but the harassment of the accused continued unabated. It is also in their evidence that on one occasion, when the accused beat the deceased severely, a complaint was made to the II-Town Police, who called them and counselled and directed that the accused and deceased start living at Samalkot near the house of the parents of the deceased. Accordingly, a portion in the house of PW.3 was taken on rent by the accused just about six months prior to the incident. PWs.1 and 2 further deposed that the accused used to quarrel with the deceased whenever the deceased was asking the accused to pay the weekly subscription of Rs.250/- to the local chit fund agent from whom the chit amount of Rs.7,000/- was taken by the accused. Even on the date of the incident, it is alleged that when the deceased asked the accused to pay the said subscription, the accused started quarrelling with her, poured kerosene and set fire to her. The parents of the deceased further deposed that immediately they shifted the accused and the deceased to the Government General Hospital, Kakinada, and the

statements of the victim were recorded after sending them out.

12. Even though, PWs.1 and 2 were elaborately cross-examined, nothing concrete was elicited from them for disbelieving their specific allegations which they made in their evidence. What is all that was suggested to them is that at the relevant time, the accused was not in the house and the deceased sustained injuries due to accidental burns.

13. PW.3 is the landlady in whose portion the couple were living as tenants where the incident took place. She deposed that during their stay, she found the accused coming home in a drunken state and beat the deceased whenever she was demanding money for maintaining the family. She further deposed that on 21.11.2007 at about 11.00 p.m., when she was in her portion of the same house in the first floor, she was informed that the deceased was burning and immediately she went there and noticed the deceased burning and the accused present there with a bleeding injury on the left side of the chest. She further deposed that the quarrel between the couple used to be in the matter of non-payment of the subscription amount to the chit fund agent. It was suggested to PW.3 that the deceased sustained injuries due to bursting of the kerosene stove. Nothing further helpful to the accused was elicited from PW.3 for suspecting the truthfulness or the veracity of her evidence.

14. PW.4 is a resident of the house opposite to the house of the accused and the deceased. She deposed that on the date of the incident, while she was sleeping, she heard galata, hearing which she woke up and saw towards the portion of the accused and came to know that the deceased sustained burn injuries. She further deposed that she also came to know that the deceased and accused were taken in an ambulance to the hospital.

15. PW.5 is another neighbouring resident and he also deposed that the deceased was being harassed by the accused for money for

which a complaint was also made to Il-Town Police, who settled the dispute on one occasion. He further deposed that on the date of the incident, at about 10.00 p.m., he heard the galata from the house of the accused, rushed there and found the deceased in flames, and that the accused was also present there with an injury on left side of the chest. He also deposed that the accused and the deceased were shifted to the Government Hospital, Kakinada, in an ambulance.

16. PW.6 is another neighbouring resident and he deposed that on the date of the incident when he was passing from the house of the accused, he has seen flames coming from the portion of the accused with loud cries, that he rushed there and found the deceased with burn injuries and the accused with injury on the left side of the chest.

17. PWs.3, 4, 5 and 6 are the independent and neighbouring residents. It is consistently spoken to by them that at the time of the incident, they have seen the deceased in the flames and at the same time also seen the accused with a simple injury on the left side of the chest having been caused with some object. They also spoke about the fact that both the accused and the deceased were taken to the hospital which fact is also corroborated by PW.16 – the Medical Officer, who treated the accused. The fact that is established from their testimony is that the deceased was being subjected to harassment by the accused in the matter of money and they used to frequently quarrel and that on the date of the incident when both of them were in the house, the deceased sustained burn injuries. As already stated, the stand that is taken by the accused is that he was not in the house at the relevant time and that the deceased sustained burn injuries due to bursting of the kerosene stove. The further defence of the accused is that on the date of the incident, he was not at all present in the house having gone out for labour work and only on the next day i.e., on 22.11.2007 he came to the hospital on coming to know about the deceased sustaining burn injuries. This inconsistent defence of the

accused is falsified by the evidence on record. While the Court does not expect any defence to be taken by the accused, but once a specific stand is taken and if it is proved to be false in the face of the evidence on record, an adverse inference can be drawn against the accused that he is the person who has not come out clean insofar as the incident is concerned. The defence of the accused that he was not in the house but came to the hospital on 22.11.2007 on coming to know about his wife sustaining burn injuries is falsified by the evidence of the Doctor – PW.16 and the Wound Certificate-Ex.P.14 which clearly show that simultaneously with the deceased, the accused was also brought to the hospital with injuries, but within two hours thereafter, the accused absconded from there and came back to the hospital on the next day. It may be stated that there is no dispute that the deceased being the wife, sustained burn injuries in the house which was in the exclusive occupation of the accused and the deceased and the time of the incident was also after 10.00 p.m., in the night. The above evidence on record is sufficient for holding that it is the accused who has committed the crime as alleged.

18. In addition to the above, there is another clinching evidence on record which nails the accused viz., the two dying declarations, one recorded by the Police Officer and another by the jurisdictional Magistrate. As already stated, immediately after the deceased was brought to the hospital, the authorities sent Exs.P.4 and P.8 – the medical intimations to the Magistrate and the Police Officer. PW.9 – the jurisdictional Magistrate immediately proceeded to the hospital and recorded the dying declaration of the deceased at 0040 hours. Ex.P.5 is the said dying declaration. PW.9 – the Magistrate deposed that he recorded the dying declaration by taking all precautions and having been fully satisfied that the patient was in a position to give the statement. Similarly, PW.12 – the Head Constable also recorded the statement of the victim at about 02.15 a.m., on 22.11.2007, which is

Ex.P.9. On both these statements, there is endorsement by the medical authorities that the patient is in a fit condition to give the statement. Ex.P.5 is the earlier statement of the deceased recorded by the jurisdictional Magistrate, which if recorded properly and in accordance with the requirements, is by itself sufficient for determining the guilt or otherwise of the accused. In Ex.P.5, the victim has narrated all the sequence of events minutely. She stated in her statement that the accused used to drink and beat her forcing her to sign on some papers. She also spoke about a previous incident when she was tied down to a cot. She also speaks about all her ornaments being sold away by the accused. It is further in her statement that the accused used to ask her to bring money from her parents. With regard to the incident proper, the victim in her statement before the Magistrate stated that when she asked him as to why he is doing like that, at about 10.00 p.m., her husband poured kerosene on her and set fire, due to which she sustained the burn injuries.

19. Similarly, in the statement recorded nearly two hours thereafter by PW.12 – the Head Constable, the victim gave identical statement. She also spoke about the past conduct of the accused and the matter having been taken to the police for compromise. Insofar as the incident is concerned, she stated that at about 10.00 p.m., when she asked the accused to pay the money, the husband raised galata, abused and beat her, poured kerosene and set her on fire.

20. From both the statements Exs.P5 and P9, it is manifest that the victim in unambiguous terms has stated that it is the accused who caused burn injuries to her. These two documents are fully corroborated by the other evidence on record which is already discussed above.

21. Having carefully perused the oral and documentary evidence on record, we find that the Court below has rightly concluded that it is the accused who caused the burn injuries to the deceased and

thereafter caused a simple injury on his own self and all this was due to a quarrel which took place between them when the deceased questioned the accused as to why the payments due to others are not being made, and that the prosecution proved its case against the accused beyond all reasonable doubt. The finding to that effect recorded by the trial Court cannot be said to be based on any improper appreciation of the evidence on record. In view of the above, the conviction of the accused and the sentence imposed on him cannot be said to be erroneous and they do not warrant any interference. There are no merits in the appeal and the same is liable to be dismissed.

22. In the result, the criminal appeal is dismissed.

C.V.NAGARJUNA REDDY,J

M.S.K.JAISWAL,J

Date: 26.04.2016

Dsr/smr