

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

CRIMINAL APPEAL NO.1160 OF 2010

DATED:27-04-2016

Between:

Shaik @ Siddi Babu

... Appellant

And

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

... Respondent

COUNSEL FOR THE APPELLANT: Dr. K. Satyanarayana Rao

COUNSEL FOR THE RESPONDENT: Public Prosecutor (TS)

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THE COURT MADE THE FOLLOWING:

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

The prosecution laid charge-sheet against the appellant, sole accused in Sessions Case No.371 of 2008 on the file of the II Additional Sessions Judge, Karimnagar, at Jagtial, which has convicted and sentenced him, by judgment dt.6.10.2009, to undergo imprisonment for life and pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for a period of one month, for the offence punishable under Section 302 IPC.

2. The case of the prosecution, in short, is that on 9.11.2007 at 18.00 hours., P.W.1 came to Jagtial Town Police Station and lodged a report in Telugu stating that he is a resident of Jendamachela, Jagtial, living as auto driver, that he has two brothers and one sister, that he and his second brother were living separately, and that his mother, his un-married sister and younger brother were living with their father. That his father is a lorry driver and he used to go on duty for days together, that fifteen days ago, when his father went out on his duty, one Siddi Babu (hereinafter referred to as 'the accused') came to his father's house, took his mother, sister and brother to the house of the accused located in Islampura locality and that he came to know that on the night of 8.11.2007, his mother has sustained burn injuries and was admitted in Government Area Hospital, Jagtial. That he went to the hospital where he found his mother on bed with burn injuries from face to stomach and when he enquired with his sister and younger brother, they informed him that on 5.11.2007 night at about 22.00 hours the accused forced their mother to marry him and he also brought pressure to live with him at his house and when his mother refused the proposal, the accused became angry and immediately picked up kerosene stove, sprinkled kerosene

on her body and set her ablaze. P.W.1 further stated that he saw the accused visiting his father's house.

On receipt of the report, P.W.11 registered Crime No.282 of 2007 for the offence under Section 307 IPC and took up the investigation. During the course of investigation, he examined P.W.1 and recorded his statement. He has immediately visited the Government Area Hospital, Jagtial, examined the deceased, recorded her statement and got the dying declaration of the deceased recorded through P.W.10 and requisitioned P.W.6 to provide treatment to the deceased. Subsequently, P.W.11 visited the scene of offence, examined P.Ws.2 to 4, L.W.2 (Reshma) and L.W.4 (Shaik Wajid), recorded their statements, secured the presence of P.W.8 and L.W.12 (Perumalla Sudhakar), observed the scene of offence, seized one empty kerosene stove and match box from the scene and incorporated the same in crime detail form. He has deposited the seized kerosene stove and match box in the Court on 7.12.2007. While the investigation was in progress, on 17.11.2007, at 10.00 hours., P.W.11 who was holding G.D. charge of the Police Station as Station House Officer, received the information about the presence of the accused and accordingly he apprehended the accused at his house in Islampura, Jagtial Town and interrogated him. During the interrogation, the accused voluntarily confessed the commission of the offence, the accused was brought to Jagtial Town Police Station at 10.30 hours and he was produced before the Court which has sent him to judicial custody. On 19.11.2007 at 12.45 hours P.W.13 received the death intimation letter from P.W.6 based on which P.W.13 issued express alteration Memo by altering the section of law from 307 IPC to Section 302 IPC and submitted the

copies to all the concerned. Since the immediate superior officers of P.W.13 were away from the Head Quarters, he visited the hospital, examined P.W.1, L.W.7 (Shaik Fathima), L.W.8 (Shaik Nazeema) and P.W.6 and recorded their statements. P.W.13 also got photographed the corpse of the deceased through P.W.5 and recorded his statement and secured the presence of L.W.13 (Md. Saheed), L.W.14 (Shaik Ahemed) and P.W.9 and in their presence he conducted inquest over the dead body of the deceased on 19.11.2007 from 14.00 hours to 16.00 hours and sent the dead body for autopsy. Subsequently, L.W.19 (A. Mahesh, Sub-Inspector of Police) approached P.W.6 - the Medical Officer, obtained post-mortem certificate and collected the case sheet of the deceased from P.W.6, who conducted the autopsy and opined that the cause of the death of the deceased was 'Septicemia Shock due to burns'. After completing the investigation, the Circle Inspector of Police, Jagtial, filed the charge sheet.

It was alleged in the charge sheet that the accused was the neighbour of the deceased. The husband of the deceased used to go away for days together on lorry, as driver. The accused developed illicit intimacy with the deceased and the same was known to all the family members of the deceased. The accused took a single room portion in the house of P.W.3. Fifteen days prior to the date of occurrence, on seeing the husband of the deceased being away from the house on duty, the accused went to the house of the deceased, took her along with L.W.2 and P.W.2 to his room and cohabited with her for fifteen days. On the night of 8.11.2007 the accused came home, quarreled with the deceased and insisted on her to take divorce from her husband, and marry him. As the deceased refused this proposal, saying that she will not leave her husband and

children, the accused then picked up kerosene stove, sprinkled kerosene on her face and set her ablaze in the presence of L.W.2 and P.W.2. On hearing the cries of the said witnesses, P.Ws.3 and 4, who are the co-tenant and owner of the house respectively and also the neighbours, came to the scene of offence, extinguished the flames and shifted the deceased to the Government Area Hospital, Jagtial, where she was admitted. P.W.10 recorded the dying declaration of the deceased on 09.11.2007 at about 3.25 p.m., in which she has stated that she was set ablaze by the accused when she spurned the marriage proposal. The deceased died with burn injuries on 19.11.2007 at 11.50 a.m.

3. The accused denied the commission of the offence and claimed to be tried. The prosecution has examined P.Ws.1 to 13 and marked Exs.P.1 to P.16. On behalf of the defence, Exs.D1 to D.4 were marked.

4. On appreciation of the oral and documentary evidence, the trial Court convicted the accused for the offence as noted above. Feeling aggrieved thereby, the accused filed this appeal.

5. We have heard Dr. K. Satyanarayana Rao, learned counsel for the appellant/accused, and Mr. C. Pratap Reddy, learned Public Prosecutor for the State of Telangana.

6. The case of the prosecution is rested mainly on the evidence of P.W.2 – an eye-witness, and Ex.P.11 – dying declaration. The prosecution pleaded the illicit intimacy between the accused and the deceased, and the latter turning down the former's proposal to marry him after abandoning her husband as the motive for the commission of offence. That the illicit intimacy between the accused and the deceased was admitted by the defence as evident from

the various suggestions given to P.W.2. It was put to P.W.2 in his cross-examination that since eight years prior to the incident, his mother (the deceased) was moving with the accused requesting to secure RTC porter licence to P.W.2 and perform the marriage of Reshma and that as he refused the said request, the deceased herself poured kerosene and lit the fire. A further suggestion was put to P.W.2 that the moment his father, i.e., the husband of the deceased, left home on lorry duty, the deceased used to go to the house of the accused along with P.W.2 and his sister and that everyone, including his sister and father, were all aware of the illicit intimacy between the accused and the deceased. In Section 313 CrPC examination, in answer to question No.15, the accused stated that the deceased used to visit his house and that she was requesting him to get porter licence to her son and perform the marriage of her daughter Reshma and that she used to come to him by saying that her husband and children neglected her. No further evidence is required to hold that the defence has admitted the illicit intimacy between herself and the accused. The fact that the incident occurred in the room taken on rent by the accused is also not in dispute as evident from the suggestion put to P.W.2 by the defence that the deceased was moving with the accused, and that as the latter has rejected the request of the deceased for securing RTC porter licence and perform marriage of Reshma, the deceased herself poured kerosene and lit fire. Further, P.W.4, who has let out the room to the accused, has deposed that between 10.00 and 11.00 p.m., public gathered in front of room of the accused and when he went there he found the deceased completely burnt. Ex.P.9 - scene of offence panchanama also proved this fact. It is thus clear that the deceased has sustained burn injuries in

the room in occupation of the accused. The only defence with which the accused came out with was that it was a case of suicide and not of homicide.

7. P.W.2, one of the sons of the deceased, and an eyewitness has categorically deposed that about two years prior to his giving evidence when his father was away, the accused visited their home and took along with him the deceased, himself and his sister, to the rented home of the accused and that the incident occurred on the following night. When it was suggested to the witness that he was not present when the alleged occurrence has taken place, he has denied the said suggestion.

8. The evidence of P.W.2 was completely corroborated by Ex.P.11 - dying declaration. A perusal of the dying declaration recorded by P.W.10 shows that the same is crisp and brief. After putting the preliminary questions such as, name of the injured, her husband's name, her activity and the time at which the incident occurred, P.W.10 has questioned the deceased as to how the incident occurred. She has stated that for the last six months the accused was coming regularly to her house and forcing her to marry him and as usual on 8.11.2007 in the evening he came to their house and asked her to marry and if not, he would kill her, and by so saying he poured kerosene on her and set her on fire with a match stick. That while she was burning in fire, the neighbours came and shifted her to the Area Hospital, Jagtial, in '108 Ambulance'. On a close examination of the contents of the dying declaration, we find that the same is cogent and natural, without any embellishments. Therefore, we do not find any reason to disbelieve the declaration made by the deceased and recorded by P.W.10, more so when the same is amply corroborated by the evidence of P.W.2.

9. Learned counsel for the appellant has referred to the evidence of P.W.11 – Head Constable and argued that he has admitted in his evidence that he was informed by the deceased that at the time of the incident, her daughter Reshma was present and her son was not present and that he came there after she was set on fire. No doubt, this part of the evidence creates some doubt as to the presence of P.W.2 at the scene of offence. However, from the latter part of the evidence of P.W.11 it is evident that whenever he wanted to refer the witnesses examined in the case, he referred them by their status, as witnesses. In the immediately following paragraph, which is referred to above, P.W.11 has referred ‘Mujju’, examined as P.W.2. It is not in dispute that P.W.1 and another son were not present when the offence has taken place. Therefore, P.W.11 has evidently referred to one of the sons, who was not examined as a witness as not being present at the time of occurrence. It is the case of the prosecution that only one out of the three sons was present at the scene of offence. Therefore, the statement of P.W.11 cannot be understood as he was referring to P.W.2 when he referred to the alleged statement of the deceased that her son was not present.

10. In the light of the above discussion, we are of the opinion that the prosecution was able to prove that the accused was responsible for causing burns to the deceased.

11. The further question that needs to be considered is whether the accused is liable to be convicted for the offence under Section 302 IPC ?

The evidence on record clinchingly establishes a long term relationship between the accused and the deceased. Evidently the accused has developed passion towards the deceased and was pestering the latter to marry him. There

is nothing on record to show that the accused was harassing the deceased. On the contrary, whenever her husband was away, the deceased as well as her unmarried children used to go along with the accused. Thus, it is clear that the accused and the deceased were cohabiting without any disputes and the only reason for the differences between them was the insistence by the accused on the deceased to marry him. From Ex.P.11, it is evident that the immediate reason for the accused to pour kerosene and set the deceased ablaze was, her rejection of the proposal of the accused to marry him. This fact clearly suggests that the accused got perturbed by the conduct of the deceased in rejecting his offer to marry him and on the spur of the moment, he has caused burns to the deceased.

As evident from the evidence of P.W.2, just before the occurrence of the incident there was a quarrel between the deceased and the accused. That apart, it is also evident from the record that the deceased sustained 40 - 50% burns, that the incident took place on 08.11.2007 and that the deceased succumbed to the burn injuries on 19.11.2007. It is also in the evidence of P.W.12 - Duty Doctor, who treated the deceased, that for better treatment he has advised that the injured may be taken to the Osmania General Hospital, but she refused to go there. All these facts would clearly suggest that the accused had no intention of causing death of the deceased. Therefore, we are of the opinion that this is a fit case where the accused can be convicted for the offence under Section 304 Part-II IPC.

12. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant for the offence punishable under Section 302 IPC are modified to that for the offence under Section 304 Part-II

IPC. Accordingly, the appellant is sentenced to undergo rigorous imprisonment for a period of seven years, 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

27-04-2016

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