

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

CRIMINAL APPEAL NO.1438 OF 2010

J U D G E M E N T
(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 05.02.2010 in Sessions Case No.216 of 2009 on the file of the learned Sessions Judge, Mahabubnagar, whereby the appellant/sole accused was convicted under Section 302 IPC for murdering his wife, Puli Eswaramma, on 10.03.2008 at about 24.00 hours, by pouring kerosene over her and setting her on fire. He was accordingly sentenced to life imprisonment and to pay a fine of Rs.500/- or suffer simple imprisonment for six months, in default.

Malde Ramanjamma (P.W.1), the sister of the deceased, submitted Ex.P1 report to the Sub-Inspector of Police, Balanagar Police Station (P.W.13), on 14.03.2008 at about 9:00 AM, wherein she stated that she was the youngest of three daughters and that her eldest sister, Eswaramma, the deceased, was married to the accused about 20 years prior thereto. She stated that about three months earlier, her sister, Eswaramma, had a hysterectomy and that the doctor had advised her not to have intercourse with her husband. She further stated that on 10.03.2008 at about midnight, while P.W.1 was sleeping in her house, Rajitha (P.W.6), aged 13 years, the daughter of her sister, Eswaramma, came and told her that her father had set fire to her mother. P.W.1 said that she immediately went to the house of her deceased sister and found her ablaze and put out the fire by throwing water upon her. P.W.1 stated that she asked her sister as to what had happened and she told P.W.1 that

the accused had come home drunk and insisted upon having intercourse and when she refused, as the doctor had advised against it, he got angry and said that if she would not sleep with him, she could die and dragged her into the kitchen and set her on fire after pouring kerosene over her. P.W.1 stated that she immediately called Krishnaiah (P.W.4), the son-in-law of her deceased sister, and after he came they took her in the auto of Thirupathi (P.W.7), but when they reached Rajapur, they found a 108 ambulance and took her in it to Shadnagar Government Hospital, where they were advised to go to Osmania General Hospital. However, while undergoing treatment at Osmania General Hospital, her sister, Eswaramma, died on 13.03.2008 at 9:30 PM. P.W.1 therefore requested that action be taken against the accused in accordance with law.

Thereupon, P.W.13 registered a case in Crime No.47 of 2008 under Section 302 IPC. Ex.P8 is the FIR. P.W.13 examined and recorded the statement of P.W.1 and handed over the investigation to the Inspector of Police, Shadnagar Circle (P.W.15). P.W.15 visited Osmania General Hospital, Hyderabad, at about 10:30 AM on 14.03.2008. There, he examined and recorded the statements of Malde Neelamma (L.W.2), the other sister of the deceased, Puli Lakshamma (P.W.2), mother of the deceased, Malde Hussenaiah (P.W.3), brother-in-law of the deceased, Sunnapu Krishnaiah (P.W.4), son-in-law of the deceased, and Puli Jaipal (P.W.5), son of the deceased. He conducted an inquest over the body of the deceased in the presence of panchas, Vadla Alivelu (L.W.11) and Gopari Pentaiah (P.W.8). He then sent the body of the deceased for post-mortem examination. On 15.03.2008, P.W.15 visited the scene of the offence at Kuthnepally Village, being the house of the deceased. There, he

examined Puli Rajitha (P.W.6), Chakali Anasuyamma (L.W.8) and Ragapally Manemma (L.W.9), neighbours of the deceased, and R. Thirupathi (P.W.7), the auto driver, and recorded their statements. In the presence of Karne Venkataiah (P.W.9) and Budugajangam Masaiah (L.W.14), P.W.15 inspected the scene of the offence and prepared a rough sketch. Ex.P3 is the Crime Detail Form and rough sketch. On 15.03.2008 at about 4:00 PM, the accused was taken into custody by P.W.15 and after interrogation in the presence of R.Ramulu (P.W.10) and Ajamoni Narsimhulu (L.W.16), the confessional statement of the accused was recorded and a plastic kerosene tin (M.O.1) was recovered under recovery panchanama (Ex.P4). The accused was thereupon arrested and sent for remand. P.Srinivas Reddy, Inspector of Police, Shadnagar Circle (P.W.14), took up investigation of the case on 11.04.2008, after assuming office, and having verified the investigation done by his predecessor-in-office (P.W.15), he collected the post-mortem report (Ex.P7) and laid the charge sheet against the accused.

The Sessions Court framed a single charge to the effect that, on or about 10.03.2008 at about 24.00 hours, at Kuthnepally Village, the accused had committed the murder of his wife, Eswaramma, by pouring kerosene over her and setting her on fire, thereby committing an offence punishable under Section 302 IPC.

The accused denied the charge and claimed to be tried.

At trial, the prosecution examined P.W.s.1 to 15 and marked Exs.P1 to P8. The recovered plastic kerosene tin was marked as M.O.1. No oral evidence was adduced by the defence but Exs.D1 to D3, being portions of the statements of P.W.2 and P.W.7 recorded under Section 161 CrPC, were marked.

The oral evidence adduced before the Sessions Court may now be examined.

Malde Ramanjamma (P.W.1), youngest sister of the deceased, stated that on 10.03.2008 at about midnight, the daughter of the deceased, by name Rajitha (P.W.6), came to her house and informed her that her father had set fire to her mother. P.W.1 said that she immediately went to the house of her sister and found her in flames. She poured water and put off the flames. She said that she enquired with her sister as to what had happened and she told her that after removal of her uterus, the doctor had advised her not to have sexual intercourse but her husband, the accused, pressurized her to sleep with him and when she refused, he told her that he had no use for her if she did not sleep with him and set her on fire after pouring kerosene over her. P.W.1 further stated that the son of the deceased, who was studying intermediate and used to sleep in her house, came there upon hearing her cries and then, the neighbours came. P.W.1 stated that she telephoned the son-in-law of the accused, Krishnaiah (P.W.4), and he also came there. She further stated that they telephoned for an ambulance but as it would take considerable time, they took the deceased in an auto, but when they were passing through Rajapur, the ambulance reached there and by shifting the deceased into the ambulance, they went to the hospital at Shadnagar but the doctor there asked them to take the deceased to Osmania General Hospital as she had sustained serious burns. P.W.1 said that they then took the deceased to Osmania General Hospital but while undergoing treatment there, the deceased died on 13.03.2008 at 9:30 PM. P.W.1 stated that after the death of the deceased, she returned to Balanagar and gave a report at Balanagar Police Station.

She confirmed that Ex.P1 was the report given by her and that it contained her signature. She further stated that her brother-in-law, Hussenaiah (P.W.3) scribed Ex.P1. In her cross-examination, P.W.1 admitted that she had not informed the police that she saw the accused at the door of the house when she reached there.

Puli Lakshamma (P.W.2), mother of the deceased, stated that her deceased daughter had undergone surgery for removal of her uterus about three months prior to her death and that she had been advised to stay away from her husband for about six months. P.W.2 stated that on the fateful day at about midnight, she heard cries coming from the house of the deceased and upon going there, she found P.W.1, the accused and a number of other people present there. She stated that she found the deceased with burns. P.W.2 said that she enquired with the deceased about the burns and she told her that as she had not slept with him, the accused poured kerosene over her and set fire to her. P.W.2 stated that P.W.1 and her other daughter, Neelamma (L.W.2), telephoned to Krishnaiah (P.W.4), the son-in-law of the deceased. She stated that P.W.4 came there and while they were taking the deceased in an auto at Rajapur, an ambulance reached there and they took the deceased in the said ambulance to Shadnagar hospital, but were asked to take the deceased to Osmania General Hospital. P.W.2 said that the deceased was in the said hospital for about three days and while undergoing treatment, she died at about 9:30 PM. In her cross-examination, P.W.2 denied the suggestion that the saree of the deceased accidentally caught fire while she was cooking food and thereby, she sustained burns.

Malde Hussenaiah (P.W.3), brother-in-law of the deceased, being the husband of Neelamma (L.W.2), stated that on the date of the incident, he was sleeping in his house but upon hearing cries, he rushed to the house of the deceased and found her with burns. He further stated that when he enquired with the deceased about the burns, she told him that when she refused to sleep with the accused owing to the operation and the advice of the doctor, the accused said that he did not need such a wife and took her into the kitchen room, poured kerosene on her and set fire to her. He stated that his wife and P.W.1 made a telephone call to the son-in-law of the deceased and they also tried for an ambulance to take the deceased to the hospital. However, as there was delay in the arrival of the ambulance, he said that they took the deceased in an auto but when the auto reached Rajapur, the ambulance came there. He said that they took the deceased in the said ambulance to Shadnagar hospital but were advised to take the deceased to Osmania General Hospital. He confirmed that upon admission of the deceased in Osmania General Hospital, she died after undergoing treatment for about three days. In his cross-examination, P.W.3 stated that the auto in which they took the deceased was a big-sized auto and about ten persons had gone in the auto with the deceased to the hospital. He further stated that he saw the accused at the house when he went there after hearing the cries and that the accused was present till his son-in-law, Krishnaiah (P.W.4), was informed. P.W.3 said that the accused went away when his son-in-law was coming on a motor cycle, but when they were taking the deceased to the hospital, they saw him coming from the side and the villagers pushed him into the auto asking him to go with the deceased.

The son-in-law of the deceased, Sunnapu Krishnaiah (P.W.4), stated that at about midnight on the fateful day, P.W.1 and Neelamma (L.W.2) informed him about the accused pouring kerosene over his mother-in-law and setting fire to her. He said that he came to the village on a motor cycle and after reaching there at about 12:30 AM, when he enquired with the deceased, she told him that as the accused wanted her to sleep with him and as she was having pain, she refused and the accused saying that her existence was of no good, poured kerosene and set fire to her. P.W.4 said that he telephoned to 108 but was informed that there would be some delay in reaching the village and therefore, they took the deceased in an auto. However, when they reached Rajapur, the 108 ambulance came there and thereupon; they took the deceased in the ambulance to Shadnagar hospital but were advised to take the deceased to Osmania General Hospital. P.W.4 stated that after about three days, the deceased succumbed to her injuries while undergoing treatment.

Puli Jayapal (P.W.5), son of the accused and the deceased, stated that about a year prior to his deposition, his younger sister, Rajitha (P.W.6), came to the house of P.W.1 where he was sleeping and when P.W.1 woke up, she informed them about the incident. P.W.5 further stated that owing to frequent quarrels with his father, the accused, he used to stay in the house of P.W.1 and that he was present with P.W.1 when P.W.6 informed her about the incident. P.W.5 further stated that P.W.1 went before him to the house of his mother and he followed her thereafter. P.W.5 stated that P.W.1 poured water on his mother to put off the flames and when P.W.1 enquired with her as to what had happened, she stated that the accused had set fire to her. P.W.5 also confirmed what was stated by

the other witnesses as to how the deceased was taken to the hospital and how she succumbed to her injuries while taking treatment there.

Puli Rajitha (P.W.6), the daughter of the accused and deceased, stated that her father murdered her mother about a year prior to her deposition in Court. As to the events of the fateful day, she stated that they had waited for the arrival of the accused up to 10:00 PM but as he had not come, her mother, younger sister and she had their meals and slept. At about midnight, her mother called her and when she went to the kitchen, she found her mother in flames. P.W.6 stated that she enquired with her mother and she told her that her father had poured kerosene on her and set her on fire. P.W.6 stated that she then rushed to the house of P.W.1 and informed her of what had happened and thereupon, P.W.1 and P.W.5 came and poured water on her mother and put out the fire. P.W.6 further stated that P.W.1 and others took her mother to the hospital in an auto and that she was informed on 13.03.2008 that her mother had expired. In her cross-examination, P.W.6 confirmed that her father was in the house on that day; that he was there in the morning before she left the house for coolie work and he was there at 6:00 PM when she returned.

Thirupathi (P.W.7), the auto driver, confirmed that he was called to take the deceased in his auto as there would be some delay for the ambulance to come to the village. He further stated that when he reached Rajapur, the 108 ambulance came there and the deceased was shifted into the ambulance.

Dr.Najafi Begum (P.W.12) stated that she was a Resident Medical Officer at Osmania General Hospital, Hyderabad, and that she conducted autopsy over the body of the deceased on 14.03.2008.

She stated that the deceased had suffered approximately 70% burns and that the cause of death was owing to the burns and the complications arising therefrom.

Apart from the aforestated consistent and clearly inculpatory evidence, a crucial factor which requires to be taken into consideration is that the dying declaration (Ex.P6) of the deceased, Eswaramma, was recorded by the learned XII Additional Chief Metropolitan Magistrate, Hyderabad (P.W.11). P.W.11 stated before the Sessions Court that on 11.03.2008, he had gone to Osmania General Hospital, Hyderabad, to record the dying declaration of one Manjula on the requisition of the police. While he was at the hospital, he received a requisition from the duty medical officer to record the dying declaration of the deceased, Eswaramma. Ex.P5 is the said requisition. Thereupon, P.W.11 proceeded to the bed of the deceased in the acute burns care ward. P.W.11 identified the deceased with the help of the duty doctor who also certified that she was conscious, coherent and in a fit state of mind to give a statement. P.W.11 then disclosed his identity to the deceased and put simple questions to her to know her state of mind. After satisfying himself that she was coherent and fit to give a statement, he recorded her dying declaration in question and answer format. P.W.11 stated that the deceased informed him that she had undergone a uterus operation about six months previously and had started attending labour work after two months. She further stated that on the previous day, she had gone to attend labour work and when she was sleeping during the night, her husband came home in a drunken state, woke her up and did not allow her to sleep till about midnight. P.W.11 stated that she further informed him that her

husband dragged her out of the house but after some time, he allowed her to return and thereafter poured kerosene on her person and set her on fire, whereby she received injuries. P.W.11 stated that the deceased informed him that her daughter, Rajitha, saw the incident. P.W.11 stated that after recording the statement of the deceased, he explained the same to her in Telugu and she admitted it. He confirmed that at the time of recording of the statement, except for the duty doctor and himself, no one was present. After obtaining certification from the duty doctor after the conclusion of recording of the statement that the deceased was conscious and coherent throughout, P.W.11 stated that he obtained the right thumb impression of the deceased. In his cross-examination, P.W.11 denied the suggestion that he did not know Telugu properly and that he had not recorded the dying declaration accurately.

Perusal of Ex.P6 reflects that P.W.11 duly followed the prescribed procedure under Rule 33 of the Criminal Rules of Practice and Circular Orders, 1990. He meticulously obtained certification of the duty doctor as to the fitness of the deceased to give a statement both before and after the recording of the statement. Ex.P6 further reflects that he disclosed his identity to the deceased and put questions to her to satisfy himself as to her fitness to give a dying declaration. One of the questions posed by P.W.11 to the deceased was as under:

‘Q. Any of your children saw when your husband set fire to you?

Ans: My one daughter Rajitha aged 12 years saw.’

P.W.11 recorded in Ex.P6 that the statement was given by the deceased in Telugu and though he understood Telugu well, he could

not write Telugu properly and therefore, he translated the statement into English and recorded it.

In the light of the aforestated evidence, oral and documentary, Sri S.Surender Reddy, learned counsel for the appellant/accused, would contend that the discrepancies in the evidence and the dying declaration render the conviction of his client unsustainable in law. The learned counsel would further contend that the delay in registration of the crime is also fatal.

This Court is however not impressed. The incident took place at about midnight on 10.03.2008 but the registration of the FIR was only after the death of the deceased on 13.03.2008. More precisely, Ex.P1 was given to the police only at 9:00 AM on 14.03.2008. This delay is however not shown to be prejudicial to the accused in any manner. Given the close relationship between the accused and the deceased and the fact that they had four children, one of whom was already married, it is understandable that the family would not have wanted to involve the police while the deceased was still alive and there was a possibility of her recovery. The factum of Ex.P1 report being submitted by P.W.1, the sister of the deceased, only after her death, therefore does not have any adverse impact in terms of scope for manipulation or planning so as to foist a false case against the accused. The evidence against the accused cannot be discounted. His own son and daughter spoke of their mother having informed them that it was he who had set her on fire after pouring kerosene upon her. This fact was also confirmed by the sister and the mother of the deceased. Further confirmation is the dying declaration which was recorded by the P.W.11 on 11.03.2008 itself, at about 10:30 PM. The feeble suggestion that the deceased's saree may have caught fire

while she was cooking needs mention only to be dismissed outright. P.W.6 clearly stated that having waited for the accused who did not turn up, the family had their meals and retired. It is therefore wholly illogical to suggest that the deceased would have started cooking at midnight on the fateful day.

Sri S.Surender Reddy, learned counsel, would point out that the deceased did not state before P.W.11 about the accused pressurizing her to have sexual intercourse with him and that it was because of her refusal, he set her on fire. No doubt, in the Ex.P6 dying declaration, the deceased did not disclose the reason as to why the accused poured kerosene over her and set her on fire. This missing detail is of no real significance as the deceased, a woman, perhaps would not have been comfortable about disclosing such intimate details to a strange man and at that, a Judicial Officer. She however stated in no uncertain terms that it was the accused who was the perpetrator of the ghastly act.

The other discrepancy which is sought to be pressed into service by Sri S.Surender Reddy, learned counsel, is as to Rajitha (P.W.6), the daughter of the accused and the deceased, having seen the incident. Ex.P6 dying declaration states to this effect but P.W.6 does not say so. However, the inescapable fact remains that the deceased spoke in Telugu to P.W.11, who thereafter translated and recorded it in English. In this course, there are bound to be some alterations. Hence, it is the gist of the dying declaration which assumes significance and the factum of Rajitha (P.W.6) being the first upon the scene and seeing the deceased in flames also cannot be disputed. The statement of the deceased in Ex.P.6 dying declaration in this regard would therefore have to be viewed in that context and

the minor discrepancy in terms of P.W.6 being indicated in Ex.P6 as an eyewitness to the actual incident is not sufficient in itself to eschew the dying declaration from consideration. That apart, even if the dying declaration is left out of consideration, the evidence put forth by the family members of the deceased is more than sufficient in itself to hold that it was the accused that poured kerosene over the deceased and set her on fire.

Lastly, Sri S.Surender Reddy, learned counsel, would contend in the alternative that even if the accused is believed to have committed the act of pouring kerosene over the deceased and setting her on fire, the Sessions Court was not correct in convicting him under Section 302 IPC. Learned counsel would contend that the case on hand was a fit one to apply the 4th exception to Section 300 IPC and that the subject offence would not qualify as murder but as culpable homicide not amounting to murder.

This Court finds merit in this submission. It is brought out in the evidence in clear terms that the accused was in a state of inebriation at the time of commission of the offence. In such a state, he pressurized the deceased to have sexual intercourse with him and upon her refusal; he resorted to this extreme act of violence. It is therefore clear that the act of pouring kerosene over the deceased and setting her on fire was consequent upon the sudden quarrel between the couple and in the heat of passion. Exception 4 to Section 300 IPC is therefore squarely applicable to the case and the killing of the deceased by the accused would not fall within the realm of the more serious offence of murder but within the lesser offence of culpable homicide.

The question would then arise as to whether the offence committed by the accused would attract Section 304 Part-I or Part-II IPC. It is brought out in the evidence that the accused dragged the deceased into the kitchen saying that she was of no use to him if she did not sleep with him and thereafter, he resorted to pouring kerosene over her and setting her on fire. This act coupled with his utterances therefore spelt out his clear intention to kill the deceased. Once intention was manifested so unmistakably, the case on hand attracts Section 304 Part-I IPC and not Section 304 Part-II IPC.

Unfortunately, the Sessions Court failed to take note of the vital fact that the accused was in a drunken state when the offence was committed and the fact that it was committed in the heat of passion.

In the result, the appeal is allowed in part setting aside the conviction of the accused under Section 302 IPC and substituting it with conviction under Section 304 Part-I IPC. In consequence, the sentence of life imprisonment visited upon the accused is set aside and he is sentenced to suffer rigorous imprisonment for a period of ten years under Section 304 Part-I IPC. The sentence as regards payment of fine and imprisonment, in default thereof, is however confirmed.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

30th SEPTEMBER, 2016

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