

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY

AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.939 of 2010

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29.03.2016

Between:
Koduru Chennakesava Achari
..Appellant/Accused No.1

And

The State of Andhra Pradesh,
represented by its Public Prosecutor, Hyderabad.
..Respondent

Counsel for the appellant: Mrs.A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

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

Accused No.1 in S.C.No.343 of 2006 on the file of learned II Additional Sessions Judge, Kadapa at Proddatur, filed this appeal against the judgment, dated 05.07.2010, whereby he was convicted for the offences punishable under Sections 302 and 498-A I.P.C. and was sentenced to suffer imprisonment for life and to pay a fine of Rs.1,000/- , in default to suffer simple imprisonment (S.I.) for a period of one month for the offence punishable under Section 302 I.P.C. and to suffer rigorous imprisonment (R.I.) for a period of three years and to pay a fine of Rs.500/-, in default to suffer S.I. for a period of fifteen days for the offence punishable under Section 498-A I.P.C.

2. The case of the prosecution, in brief, is that the appellant and K.Subba Lakshumma (hereinafter referred to as 'the deceased') – wife of the appellant were the residents of Proddatur and accused Nos.2 and 3 are the residents of Kadapa. The appellant and the deceased were married nine years prior to the date of the incident and they used to live at Kadapa along with the parents of the appellant. The appellant was an auto driver and addicted to heavy drinking, as a result of which, he was not looking after his family well. He developed suspicion on the character of the deceased. Himself and his parents – accused Nos.2 and 3 used to harass the deceased periodically. The appellant and the deceased shifted their family to Proddatur and started living separately from the parents of the appellant. In Proddatur also the appellant used to drive auto rickshaw.

A day before the day of occurrence, the appellant went to Kadapa to his parents' house and returned at 10.00 a.m. on the day of occurrence, in a drunken condition. When he was on the street

abusing the deceased in vulgar language, the latter took him inside the house. When the appellant uttered the words “you bitch, die, I will leave you and go away”, the deceased suspected that he is going to kill her. The appellant took kerosene oil kept in the nitch of the house and poured the same over the deceased and by abusing that “you bitch, die”, lit a match stick and threw it on her, as a result of which, the clothes of the deceased got burnt and she sustained burns all over her body. The neighbours came and put-off the flames. The parents of the deceased brought the deceased to the hospital and admitted her at 12.30 p.m. on the fateful day.

On receipt of Ex.P-10 - hospital intimation, P.W.9, the Head Constable of III Town Police Station, Proddatur, visited the hospital and recorded Ex.P-11 – statement of the deceased and based on the said statement, he registered crime No.83 of 2006 for the offences punishable under Sections 498-A and 307 I.P.C. and issued Ex.P-12 – F.I.R. He visited the scene of offence. On receiving Ex.P-13 - death intimation, he altered the Section of law from Section 307 I.P.C. to Section 302 I.P.C. and issued Ex.P-14 – altered F.I.R.

On receipt of Ex.P-3 – hospital intimation, on the same day, P.W.6 – I Additional Junior Civil Judge, Proddatur, visited the hospital and recorded Ex.P-4 - dying declaration of the deceased between 2.55 p.m. and 3.15 p.m. on 23.06.2006.

P.W.8 – the Civil Assistant Surgeon, Proddatur, visited the hospital, endorsed the dying declarations of the deceased recorded by the Magistrate and also the Police and issued endorsements Exs.P-7 to 9.

P.W.10, the Sub-Inspector of Police, III Town Police Station, Proddatur, conducted the investigation and recorded the statements of P.Ws. 1 to 3. On 24.06.2006, he visited the scene of offence, prepared Ex.P-15 - rough sketch, also prepared observation panchanama and seized M.Os.1 to 3 at the scene of offence. He visited the hospital and recorded the statement of the deceased.

On receiving the death intimation on 03.07.2006, P.W.11 – the Inspector, Proddatur Rural, visited the hospital and conducted inquest in the presence of the mediators between 10.00 a.m. to 1.00 p.m. and issued Ex.P-1 – inquest report. He forwarded the dead body for post mortem examination.

P.W.5, the Civil Assistant Surgeon, Government Hospital, Proddatur, conducted autopsy over the dead body of the deceased on 03.07.2006, opined that the deceased appeared to have died of septicemia with shock caused by 50 to 60% burn injuries and issued – Ex.P-2 post mortem certificate. On 17.07.2006, P.W.11 – Inspector of Police, Proddatur, arrested all the accused and remanded them to judicial custody. After completion of the investigation, he filed the charge sheet.

3. In support of its case, the prosecution examined P.Ws.1 to 11 and marked Exs.P-1 to P-15 besides producing M.Os.1 to 3. No evidence was let in on behalf of the defence. On appreciation of the oral and documentary evidence, the trial Court convicted the appellant and sentenced him as noted above.

4. Smt.A.Gayathri Reddy, learned counsel for the appellant/accused No.1, has submitted that the prosecution case was based on the circumstantial evidence and that in the absence of reliable evidence, it is not safe to rely upon such circumstantial evidence and on inconsistent dying declarations. Alternatively, she has submitted that the evidence on record does not prove that the appellant was addicted to alcohol and that the fact that the deceased survived for about 12 days after she suffered burns shows that the burns are not severe in nature and the appellant did not have the intention of causing her death.

5. The learned Public Prosecutor (AP) appearing for the respondent-State opposed the above submissions and supported the

judgment of the trial Court.

6. Having regard to the respective submissions of the learned counsel for the parties, the point that arises for consideration is whether the prosecution proved the guilt of the appellant of commission of the offences punishable under Sections 302 and 498-A I.P.C. beyond all reasonable doubt.

7. P.W.1, the mother of the deceased, gave a detailed narration of how the appellant used to harass the deceased having been addicted to alcohol. She deposed that unable to bear the harassment of the appellant, her daughter used to come and inform her about his attitude. That when she was informed about the incident by the neighbours of the appellant and the deceased, herself and her husband - L.W.1 - G.Narayanaachari rushed to the house of the deceased and that on hearing the cries of the deceased, the neighbours extinguished the flames. That by the time she reached the scene of offence, the deceased was alive and she informed her that the appellant is responsible for the injuries caused to her. She also deposed that in the hospital, the deceased gave a statement to the Police and also to the Magistrate. Nothing was elicited from the evidence of P.W.1 to doubt her testimony.

P.W.2 is the neighbour of the appellant and also the owner of the house, a portion of which was rented to the appellant. He deposed that the appellant was addicted to alcohol and used to consume alcohol everyday, that since the morning of the day of occurrence, both the appellant and the deceased were quarrelling and that he went out of his house in the morning hours and came back at 12.30 p.m. He further deposed that on hearing the cries of the deceased, the appellant fled away in front of the witness and that thereupon, he rushed to the house of the appellant and saw the deceased in flames.

That he and other neighbours extinguished the flames and meanwhile, P.W.1 and her husband - L.W.1 - Godlaveti

Narayanaachari – the mother and father of the deceased, arrived at the scene of the offence and shifted the deceased to the hospital. Except a suggestion that the witness was deposing falsely in order to help the deceased and her parents, who were allegedly his relatives, nothing could be elicited from the evidence of this witness to discredit his testimony. The witness replied to a suggestion put by the defence that he was not only related to the deceased and her parents but also to the appellant.

P.W.3, who is another neighbour of the appellant and the deceased, testified that the appellant was addicted to alcohol and that she saw the appellant running away from the scene of offence after the deceased suffered burn injuries and that the neighbours extinguished the flames. This witness also denied the suggestion that she is related to the deceased and that she was deposing falsely.

P.W.4, one of the inquest panchayatdars, deposed that the appellant is responsible for the burns suffered by the deceased.

8. The most vital evidence in this case is Ex.P-2 - post mortem certificate, Ex.P-11 – the statement of the deceased recorded by the Police i.e., Head Constable – P.W.9 and Ex.P-4 – the dying declaration of the deceased recorded by P.W.6 – the Magistrate. Among the two statements, Ex.P-4 is the earliest one. While Ex.P-4 was recorded by P.W.6 - the Magistrate at 2.55 p.m., a few minutes latter i.e., at 3.15 p.m., P.W.9 – the Head Constable recorded Ex.P-11, based on which the crime was registered. A perusal of Ex.P-11 shows that the deceased repeated the contents of Ex.P-4. These two documents are fully corroborated.

In Ex.P-4 – dying declaration recorded by P.W.6 – the Magistrate, the deceased unequivocally stated that on the previous day, her husband left their house by stating that he was going to his mother's house. That at 10.00 a.m. on 23.06.2006, he came to their house fully drunk, he was on the road and did not come inside, she

went and brought him inside the house, and on the ground that she called him inside the house, he abused and picked up quarrel with her. That the appellant asked the deceased to die or he will kill her and go to his mother's house. That the appellant brought kerosene tin from the nitch in the house and while saying that she should die, he poured kerosene on her and lit a match stick and threw it on her, as a result of which, fire engulfed her and the appellant fled away from the house. That on being informed by the neighbours, her father came, rescued her and admitted her in the hospital.

9. The contents of the above dying declaration are fully corroborated by the above oral evidence of the prosecution witnesses. The defence failed to bring out any circumstances which could throw any element of doubt on the part played by the appellant in causing the death of the deceased. The medical evidence also corroborated with the ocular testimony of the prosecution witnesses and the dying declarations. Therefore, from the evidence discussed above, we have no hesitation to hold that the appellant is responsible for the death of the deceased.

10. The next question which needs to be considered is what offence that the appellant has committed. The evidence on record would clearly reveal that the appellant was addicted to alcohol. He used to regularly quarrel with his wife – the deceased and harass her. Even on the day of the incident, he was fully drunk and stood on the street refusing to come inside the house. As stated by the deceased herself in Exs.P-4 and P-11, when he was taken by her inside the house, he started abusing her for being brought inside the house against his will. Being in such inebriated condition, he took out a kerosene tin, which was available in the nitch of the house, poured the same on the deceased and lit fire to her. The fact that the deceased survived for nearly 12 days with 55% burns would show that the quantity of kerosene used by the appellant was very moderate and the burns

were not too severe to cause instantaneous death. All these circumstances would show that the appellant may not have had the premeditated intention to cause the death of the deceased. On the contrary, having enraged by the act of the deceased in bringing him inside the house against his will, the appellant would have taken out the kerosene tin and lit fire to her after pouring the same on the deceased with the intention of causing bodily injuries as are likely to cause death. Apart from the above, the evidence of the prosecution witnesses also clearly establishes the fact that the deceased was subjected to harassment both physical and mental at the hands of the appellant.

11. In the above facts and circumstances of the case, we are of the opinion that the appellant is guilty of the offence punishable under Section 304 Part I I.P.C., apart from the offence punishable under Section 498-A I.P.C.

12. In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant/accused No.1 in judgment, dated 05.07.2010, in Sessions Case No.343 of 2006, on the file of the learned II Additional Sessions Judge, Kadapa at Proddatur, 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 conviction and sentence imposed against him for the offence punishable under Section 498-A I.P.C. is confirmed. Both the sentences shall run concurrently. The period of sentence already undergone by him is directed to be set off.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

29th March, 2016
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