

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

&

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

+ CRIMINAL APPEAL No.915 of 2010

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% Dated 08.03.2016

Between:

Dasari Vanimma

..... APPELLANT/ACCUSED

AND

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

.....RESPONDENT

! Counsel for the Appellant : **Sri Srinivasa Rao Madiraju**
For Sri A. Dattanand

^ Counsel for the Respondent : **PUBLIC PROSECUTOR**

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> HEAD NOTE:

? Cases Cited:

1. (1997) 4 SCC 524

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

TUESDAY, THE EIGHTH DAY OF MARCH
TWO THOUSAND AND SIXTEEN
(08.03.2016)

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

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Counsel for the Appellant : **Sri Srinivasa Rao Madiraju**
For Sri A. Dattanand

Counsel for the Respondent : **PUBLIC PROSECUTOR**

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. 915 of 2010

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

The sole accused in Sessions Case No. 228 of 2006, on the file of the III Additional District & Sessions Judge (Fast Track Court), Nellore, filed this criminal appeal against her conviction for an offence under section 302 IPC and sentencing to suffer imprisonment for life and to pay a fine of Rs.500/-.

The case of the prosecution, in brief, is that the appellant/accused is a resident of Jyothinagar colony, Atmakur and the deceased was her own daughter. The accused was discarded by her first husband. She was blessed with a male child and a female child through her first husband. Later the accused married one Sriramulu and got through him four children, (two male children and two female children) including the deceased. The deceased was the elder daughter. About 6 years prior to the offence, Sriramulu died in an accident. A sum of Rs.2,00,000/- was received by the accused as compensation for the death of her husband. The deceased wanted to disburse the compensation amount among all her children, including the two children, born to her first husband. But the deceased objected to the same and demanded the accused to disburse the compensation amount only among the four children, born to Sriramulu. In connection with the said issue, there used to be quarrel between the deceased and the accused, as a result of which, the deceased was living alone in a thatched house, situated by the side of the house of her mother.

On 03.07.2005 at about 22.30 hours, while the deceased was sleeping in the thatched house, the accused went to the house, poured kerosene on the deceased and set fire with an intention to do away

with the deceased as she became a hurdle to her in disbursing the compensation amount to all her children, including those who were born to her through her first husband. While the accused was returning after lighting fire to the deceased, PWs 3 and 5 saw her. Due to the burns, the deceased woke up and came out from the house with flames, and on seeing the same, PW 2 put off the flames. On enquiry, the deceased while struggling for life informed PWs 1 to 10 who lived in the vicinity that her mother poured kerosene on her and set fire with an intention to kill her. PWs 1, 2 and 4 shifted the deceased to K.K.R.Hospital, Atmakur for treatment. On 04.07.2005 at 09.15 hours, PW 19-Sub-Inspector of Police, Atmakur received intimation from the hospital regarding burns of a woman. On receipt of the said intimation, PW 19 visited the hospital and found that the victim has received burns of about 60% all over the body. On the advice of the Doctor at K.K.R.Hospital, Atmakur, PW 19 shifted the victim to the Government Hospital, Atmakur, where PW 17-the Doctor examined the victim and gave treatment. PW 19 visited the Government Hospital, Atmakur, recorded the statement of the victim and registered a case in Cr.No.75/2005 for the offence under Section 307 IPC on 04.07.2005 at 10.00 hours and issued the copies of First Information Report (FIR) to all the officers concerned and took up investigation. During the course of investigation, PW 19 visited the Government Hospital, Atmakur where he examined the deceased and PW 1 under Section 161 Cr.P.C and recorded their detailed statements in Part-II case diary. Since the condition of the victim became worse, PW 17 sent a requisition to PW 16-the Judicial Magistrate of First Class, Atmakur, who visited the Government Hospital and recorded Ex.P18-dying declaration of the victim. At about 14.00 hours the victim was referred to the Government Head Quarters Hospital, Nellore for better treatment.

In continuation of his investigation, PW 19 visited the scene of offence, inspected the same in the presence of the mediators, viz., PWs 11 and 12 and drew rough sketch of the scene of offence,

besides examining PWs 3 to 5. Later, PW 19 arrested the accused on 06.07.2005 and sent her for remand. On 28.08.2005 at 18.30 hours, the victim, who was undergoing treatment at the Government Headquarters Hospital, Nellore, was declared dead. Consequently, PW 19 altered the provision of law to one under Section 302 IPC and issued a copy of altered FIR to PW 20-the Inspector of Police, Atmakur for investigation. PW 20, who has taken up the investigation, visited the scene of offence, verified the investigation of PW 19, enquired PWs 1 to 5 and inspected the scene of offence. On 29.08.2005 PW 20 held inquest over the dead body of the deceased in the presence of PWs 11 to 13. During the inquest, PW 20 examined PW 6, who is the elder brother of the deceased and the people living in the vicinity of the scene of offence, viz., PWs 7 to 10 who witnessed while the deceased was informing that her mother committed the offence. PW 18 conducted autopsy over the dead body of the deceased and issued Ex.P22 post mortem certificate, wherein he opined that the deceased died due to shock and extensive burns. On completion of the investigation, PW 20 laid the charge sheet.

In support of its case, the prosecution examined PWs 1 to 20 and marked Exs.P1 to P27 and M.Os.1 to 4. On behalf of the accused, DWs 1 and 2 were examined and Exs.D1 to D4 were marked.

On appreciation of the oral and documentary evidence, the lower court has rendered its judgment, as referred to above.

Mr. Srinivasa Rao Madiraju, learned counsel representing Mr.A.Dattanand, learned counsel appearing for the appellant, submitted that the prosecution failed to establish the motive for the appellant who is the natural mother of the deceased to kill her. That the prosecution case is based on circumstantial evidence and that except the evidence of PWs 1 and 2, all other private witnesses examined by the prosecution have turned hostile and therefore, the

lower court has committed a serious error in convicting the appellant only on the evidence of PWs 1 and 2 who were admittedly not eyewitnesses. That evidence of PW 2 is self-contradictory as to the nature of death and it is not safe to rely upon his testimony. That PW 6 who is no other than the own brother of the deceased deposed that the deceased has informed him that she herself poured kerosene and set fire as she grew angry against her mother on the issue of distribution of compensation amount. The learned counsel further argued that the two dying declarations, one recorded by the Judicial Magistrate of First Class and the other recorded by the Sub-Inspector of Police suffer from contradictions and therefore, it is not safe to convict the appellant only based on the dying declarations, unsupported by the prosecution witnesses.

Sri Posani Venkateswarulu, learned Public Prosecutor for the State of Andhra Pradesh, opposed the above submissions and contended that the evidence of PW 1 fully corroborates with the statement of the deceased made in the two dying declarations and that therefore, there is no reason to discard the dying declarations and the lower court has rightly convicted the appellant for the offence under section 302 IPC and imposed the sentence of imprisonment for life.

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

At the outset, we need to consider whether the appellant had motive to kill the deceased. It is not in dispute that the appellant had two children through her first husband and four children, including the deceased, through her second husband. Her second husband died in an accident and she has received some compensation for his death. In her statement, while answering a question put by the Magistrate in Ex.P21 dying declaration, the deceased replied that she has no enmity with her mother and that as she has asked her father's property, the accused committed the offence. DWs 1 and 2 who were two sisters of

the deceased admitted that their family received compensation for the death of their father. Even PW 6 who turned hostile has admitted in his cross examination that their family has received compensation. PW 1 who is an independent witness also deposed that according to his information, the accused has received a sum of Rs.2,00,000/- towards compensation for the death of her husband and that the deceased was claiming the said amount to be apportioned among the four children, born to Sriramulu and not to the two children of the accused born through her first husband, and that on account of the disputes arising between the deceased and the accused in this regard, the former was living separately in a thatched house. In our opinion, this evidence on record is sufficient to conclude that there was a serious dispute between the deceased and the accused in connection with the apportionment of compensation amount. It is also on record that for a long time the deceased stayed with PW 6 at Hyderabad and away from her mother, which also suggests that there was not much affection and warmth between the deceased and the accused. In these facts and circumstances of the case, we are of the opinion that the ill-feelings between the deceased and the accused and the altercation that may have ensued prior to the occurrence may have provoked the accused to commit the offence.

As regards the evidence placed by the prosecution before the Court below, the foremost are the two dying declarations. The first dying declaration (Ex.P23) was recorded by PW 19 on 04.07.2005. This statement was recorded in the presence of PW 17-Medical Officer, Government Hospital, Atmakur, who endorsed the same which was marked as Ex.P.19. The victim has stated that her mother was not looking after her properly, that after the death of her father in an accident, compensation was received from the Government recently and in that connection disputes arose between herself and her mother. She has further stated that she has slept in her house during the night

at about 10.30 hours and while she was sleeping, her mother poured kerosene on her and burnt her by lighting a match stick, and that unable to bear the pain, she came out and cried loudly and her neighbours, including PW 2 along with some others came and that they took her to Kondareddy Hospital for treatment.

Ex.P18 dying declaration was recorded on the same day at about 12.45 p.m by P.W.16 - the Judicial Magistrate of First Class, Atmakur. The deceased has stated therein that for the last 10 days her mother was quarrelling with her as she has demanded her father's property and she threatened and abused her stating that she will kill her at any time. She has further stated that while she was 7 years of age, her mother sent her to Hyderabad for work, that she does not know about the money received due to the death of her father and that after her return from Hyderabad, her mother did not allow her into the house. Though the form in which the statements have been made may vary, the substance remains same.

If we closely examine the contents of these two documents, we find a little variation between the two on the reason for the disputes between the deceased and the accused. In Ex.P.23 she stated that disputes arose over the compensation received towards the death of her father and that the accused has developed enmity against the deceased, as she was persistently demanding payment of compensation. In Ex.P.18 she has stated that there is a dispute over her father's property. In our opinion this is not a material discrepancy for in a broad sense even compensation also is considered as property. In the position as the deceased was with severe burn injuries, she was not expected to be precise in her expressions. We have to therefore understand her statements contextually. The defence has not denied the fact that the father of the deceased died in an accident and the accused received compensation. When the deceased referred to her demand of her father's property, it is

reasonable to presume that she intended to mean, compensation awarded for her father's death.

The Dying Declarations are corroborated by an independent witness, namely, P.W.1. She has *inter alia* deposed that about three years back during night at about 10.30 p.m, she heard the cries of the deceased and herself and some others went to the house of the deceased and found that the deceased was outside the house in flames and that the accused was going from the thatched house into her house. P.W.2 put out the fire with a door curtain and in the process he has also sustained burn injuries on his hands. P.W.1 has further deposed that when they have gone to the accused and informed her that the Doctor is calling her to the hospital, she has questioned as to why they have joined the deceased in the hospital and informed them that she is not going to come to the hospital. She has further deposed that when she has enquired with the deceased, she has told that the accused poured kerosene and set fire to her due to the disputes with regard to the compensation amount. Nothing could be elicited in the cross examination of P.W.1, which would discredit her evidence. The defence has not suggested any enmity between P.W.1 and the accused for deposing against the latter. P.W.1, who has no axe to grind against the accused and being an independent witness, we have no reason to not accept her testimony, which fully corroborates with the statement of the deceased contained in the two dying declarations.

Prosecution has also examined another witness i.e., P.W.2, who sustained injuries when he tried to put out the flames on the deceased. Of course, we find prevarication in his evidence with regard to the cause of death. In his chief examination, the witness stated that when he enquired with the deceased, she has stated that her mother poured kerosene and set fire to her in view of a dispute over money. In his cross- examination on 02.03.2009, he has deposed that he does not know who has lit the flames on the deceased and that he does not

know whether the deceased herself committed suicide by pouring kerosene. He was further cross examined after about eight months during which he has changed his version by stating that the deceased informed him that due to anger against her mother, she poured kerosene on herself and set her ablaze.

The conduct of P.W.2 shows that he was obviously won over by the defence during the time gap before he was further cross- examined on 16.11.2009. Therefore, it is not safe to place reliance on the testimony of P.W.2, even if his first evidence is eschewed from consideration.

We do not find any reason whatsoever to discard the two dying declarations of the deceased. Indeed even before P.W.19, the Sub Inspector, has recorded Ex.P.23 - statement of the deceased, P.W.17, the Medical Officer of the Hospital, in which the deceased was admitted with injuries, endorsed on Ex.P.17 – Intimation of Accidents and Injuries to Police, that grievous burn injuries were caused by pouring kerosene by the victim's mother. It is thus clear that the deceased has informed the Doctor at the earliest point of time that her mother set her on fire. Thus, the version of the deceased is credible and reliable which gives no room for any doubt that it is only the accused, who is responsible for causing the burn injuries to her daughter. The medical evidence in the form of post mortem certificate - Ex.P.22 and the oral evidence of P.W.18, who conducted autopsy, support the case of the prosecution on the cause of death, namely, due to burns.

Further, the conduct of the appellant immediately after the deceased sustained the burn injuries points towards an irresistible inference that it is she who is responsible for the burn injuries sustained by the deceased. It was spoken to by the witnesses that immediately after the deceased was in flames and came out and she was about to be taken to the hospital, the persons assembled there

asked the accused to come along with the injured to the hospital but she refused and the fact that she did not come to the hospital either along with the injured or at any subsequent point of time itself indicates the extent of differences in between herself and the daughter. Her explanation that she did not come to the hospital due to fever or that prior to the incident, the deceased daughter beat her with chappal and abused her cannot be taken as grounds for a natural mother for not visiting her daughter who was virtually on the death bed if really she was not the person who was responsible for the burn injuries sustained by the injured/deceased. Based on the above discussion, we have no hesitation to hold that the prosecution proved the guilt of the appellant beyond all reasonable doubt.

The next aspect of the matter is as to what offence was committed by the appellant?

Learned Counsel appearing for the appellant submits that the material on record does not constitute an offence punishable under Section 302 IPC., and that taking into consideration the totality of the facts and circumstances, the acts committed by the appellant fall within the contours of Section 304 Part-I of IPC. Learned Counsel, in support of his contention, relied upon a decision of the Supreme Court in ***Kishore Singh v. State of M.P.***^[1] wherein in paras 15 and 16 it was held as follows:-

“15. Having regard to the entire evidence and the circumstances of the case and in view of the somewhat hesitant medical opinion with regard to the cause of death given by the three doctors and the further fact that the deceased died a month after the occurrence, we think that clause “thirdly” of Section 300 IPC has not been established beyond reasonable doubt in this case. The evidence fulfils one of the ingredients of Section 299, namely, that the appellants caused the death by doing an act with the intention of causing such bodily injury as is likely to cause death as deposed to by the Surgeon (PW 12).

16. The distinction between the expression “likely to cause death” and “sufficient in the ordinary course of nature to cause death” is significant, although rather fine, and some times deceptive. At any rate in view of the somewhat discrepant medical opinion the appellants are entitled to the benefit and we hold that it is a fit case where the conviction of the appellants should be under Section 304 (Part 1) IPC. Both the appellants are, therefore, convicted under Section 304 (Part 1) read with Section 34, IPC and sentenced to ten years’ rigorous imprisonment. The sentence of the appellants under Section 307/34, IPC will run concurrently with this sentence. The appeal is dismissed with the above modification of the conviction and sentence.”

Learned Counsel submitted that in the case before the Supreme Court it was proved that the appellants have caused injuries on the vital parts of the body of the deceased with dangerous weapons and that it was absolutely clear in the evidence that both the appellants intended to cause bodily injuries to the deceased. In the instant case, learned counsel submits, the evidence on record is not sufficient to prove that the injuries found on the deceased were not such that they are sufficient in the ordinary course of nature to cause death and therefore it is a fit case where the benefit can be extended to the appellant by converting the conviction from Section 302 IPC to the one under Section 304 Part-I of IPC.

The facts proved in the instant case are that the appellant was the mother of the deceased, aged about 18 years and was used to frequently quarrel over the improper distribution of the compensation received by the appellant in view of the accidental death of Sriramulu, who was the natural father of the deceased. PW 2 in his earlier statement recorded by the police, the relevant portion of which is marked as Ex.D.2, has clearly stated that the appellant refused to come and see the daughter while she was undergoing treatment after the incident stating that the appellant will not come to see the

deceased as the latter beat her with chappal and abused. It is also on record that when the incident took place on 03.07.2005, the deceased succumbed to the burn injuries on 28.08.2005 i.e., more than 55 days after the incident. The Doctor-PW.18 who conducted autopsy over the dead body did not rule out the possibility of the deceased sustaining injuries by self-immolation. The prosecution has not placed material on record to show that the appellant has gone to the deceased carrying the kerosene oil. Apparently, as usual, there would have been some altercation in between the deceased-daughter and the appellant-mother and out of sudden provocation, the appellant would have poured little quantity of kerosene oil on the deceased and set fire to her. Therefore, the essential ingredients constituting an offence of murder viz., pre-meditation and intention to cause death have not been established. The fact that the deceased survived for 55 days after suffering burn injuries shows that the injuries cannot be said to be such as are sufficient to cause death in the ordinary course of nature. On the contrary, the appellant can be attributed with the knowledge that her act is likely to cause death and therefore the offence falls under Part-I of Section 304 IPC. In view of the above, the appellant is liable to be convicted for the offence punishable under Section 304 Part-I of IPC instead under Section 302 IPC.

In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant/accused in the judgment, dated 15.04.2010, in Sessions Case No.228 of 2006, on the file of the learned III Additional District & Sessions Judge (Fast Track Court), Nellore, for the offence punishable under Section 302 I.P.C., is modified to that under Section 304 Part – I I.P.C, and she is sentenced to undergo rigorous imprisonment for 7 (seven) years. The sentence regarding the fine imposed by the trial Court is confirmed.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

Date: 08.03.2016
Note: L.R Copy to be marked.
B/o
Dsr/va

[\[1\]](#) (1977) 4 SCC 524