

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.206 OF 2012

JUDGMENT : (per Hon' ble Sri Justice C.Praveen Kumar)

1) Assailing the judgment, dated 09.11.2011 passed in Sessions Case No.285 of 2009 on the file of the I Additional Sessions Judge, Kadapa, wherein the accused was convicted for the offence punishable under Section 302 IPC, for causing death of his wife by name Chennamma (hereinafter referred to as "the deceased") and sentenced to undergo rigorous imprisonment 'for life' and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of three month, the present appeal came to be filed.

2) The gravamen of the charge against the accused is that on 29.03.2009 at 03.00 p.m. on the occasion of Ugadi festival, he caused death of his wife by setting her on fire when she poured kerosene on herself with a view to threaten the accused.

3) The facts as culled out from the prosecution witnesses is as under:

PW.1 is the sister of the deceased. PW.2 is the brother-in-law of the deceased. PWs. 3 to 6 are residents of the same village. All of them are residents of Pulivendla. The marriage between the accused and the deceased took place about 10 years prior to the incident. There were disputes between the accused and the

deceased with regard to accused consuming alcohol and coming home late. Out of their wedlock, they got two male children. On 29.03.2009, which was a festival day, the accused and the deceased invited PW.3 and others for lunch. On that day, the accused after consuming liquor and food, picked up a quarrel with the deceased in the presence of PW.1, her husband and relatives at about 04.30 p.m. PWs.1, 2, 4 and 5 heard loud shouting of the accused and after some time they saw the deceased coming out of the house with flames. PWs.1, 2 and 6 rushed to the house of the accused and put off flames. When they enquired the deceased, she stated that she poured kerosene on herself with a view to threaten the accused, who was in drunken condition and taking advantage of it, the accused lit match stick and threw it on her. They immediately called the ambulance and shifted the deceased to the Government Hospital, Pulivendula. Four days thereafter, she succumbed to injuries i.e. on 03.04.2009 at 06.00 p.m. Basing on Ex.P.8-intimation received from the hospital, PW.11-the A.S.I visited the Government Hospital, Pulivendula and recorded the statement of injured, which is marked as Ex.P.9 after being satisfied with the mental condition of the injured. At the time of recording Ex.P.9 statement, Medical Officer of the Government Hospital, Pulivendula was present and certified the patient as conscious and coherent. At about 08.30 p.m, PW.11 proceeded to the police station and handed over Exs.P.8 and P.9. Basing on Exs.P.8 and P.9, PW.12 – the Sub-Inspector of Police registered a

case in Crime No.33 of 2009 for the offences punishable under Section 498-A and 307 IPC and issued Ex.P.5-FIR. Immediately thereafter, he proceeded to the Government Hospital, Pulivendula and recorded detailed statement of PW.1. The evidence of PW.12 further discloses that on the next day at about 09.00 a.m. he visited the scene of offence and prepared observation report in the presence of PWs.6, 7 and others. Ex.P.1 is the panchanama. He also prepared a rough sketch, which is placed on record as Ex.P.10. Thereafter on 03.04.2010, he received information about the death of the deceased. Basing on the said information, he altered the section of law from Section 498-A and 307 to Section 302 IPC. Ex.P.6 is the altered FIR. PW.10 the Inspector of Police, after receipt of the altered FIR, proceeded to the mortuary room, Government Hospital and conducted inquest over the dead body in the presence of Kothapalli Papaiah (LW4), Nallapalle Sreenivasulu (LW.5) and Ulimela Adilakshamma (LW.6). Ex.P.7 is the inquest report. During inquest, he examined PW.2, Mariyanna, Pullamma, Pullaiah and Lakshmidevi (LWs.8 to 11). Basing on the statements of witnesses and material, he opined, that taking advantage of deceased being drenched with the kerosene, the accused set her fire. Thereafter, PW.10 sent the dead body for postmortem. PW.9 the Civil Assistant Surgeon Area Hospital, Proddatur, conducted autopsy over the dead body and issued Ex.P.4 - the postmortem certificate. According to PW.9, the deceased died due to shock and septicemia due to 90 – 95 % of burns. Thereafter, PW.10

visited the scene of offence and verified the observations noted in Ex.P.1 and also the statements of PWs.1 to 5. On 17.04.2009, he arrested the accused. On receipt of postmortem report, he filed charge sheet, which was taken on file as PR.C.No.9 of 2009 on the file of Judicial Magistrate of First Class, Pulivendula. After compliance of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions under Section 209 Cr.P.C., where it came to be numbered as S.C.No.285 of 2009.

4) Basing on the material available on record, charges under Sections 302 and 498-A IPC came to be framed, read over and explained to the accused to which he denied the same and pleaded not guilty.

5) To substantiate their case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P.12 and M.Os.1 to 7. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced on behalf of the accused in support of his defence.

6) After appreciating the evidence on record, the Sessions Judge acquitted the accused for the offence punishable under Section 498-A IPC, but however, convicted the accused under Section 302 IPC in the manner referred to above. Challenging the same, the present appeal came to be filed.

7) Learned counsel for the appellant submits that even if the dying declaration is to be accepted, it was the deceased alone poured kerosene and that the accused set fire to her while he was in drunken condition. In view of the judgments of the Apex Court in *Santosh v. State of Maharashtra*¹ and in *Kalu Ram v. State of Rajasthan*² he would submit that the offence needs to be scaled down.

8) On the other hand, learned Public Prosecutor would submit that since the accused took advantage of deceased drenched in kerosene set her fire, by which cannot be said that the accused has no motive or intention to cause the death of the deceased.

9) The question falls for consideration is whether the accused is liable to be punished for the guilt of the charge under Section 302 IPC?

10) In *Santosh v. State of Maharashtra* (1 *supra*) the Apex Court while referring to the judgment of the Apex Court in *Kalu Ram v. State of Rajasthan* (2 *supra*) reiterated the principle that the element of inebriation, when it is present in a case, may be taken into consideration as it considerably alters the power of thinking. It was further held that where the intention to kill is present, the act amounts to murder and where such intention is not present, the act amounts to culpable homicide not amounting to murder and that in order to determine whether the offender had

¹ (2015) 7 SCC 641

² (2000) 10 SCC 324

the intention or not, each case must be decided on its own facts and circumstances.

11) The ratio that could be culled out from the foregoing judgments is that mere drunkenness cannot be pleaded as a ground for acquittal of the charge of murder. It is only in cases, where the drunkenness was such that the offender was incapable of forming an intention and having a knowledge that his act was likely to cause death, that drunkenness may be taken as a defence and depending upon the facts and circumstances of each case, the Court will have to take a decision.

12) In the instant case, the Sessions Judge acquitted the accused for the offence punishable under Section 498-A IPC. The evidence on record only establishes that there are some disputes in the family as the accused was in the habit of consuming Alcohol. The evidence of the witnesses would show that on the date of incident at about 04.30 p.m., they heard loud cries from the house of the accused and when they went there, the deceased as said to have told that with a view to threaten the accused, she poured kerosene and then the accused, who was in a inebriated condition, set her fire. The fact that the accused was in a drunken condition is not in dispute. It is also not in dispute that date of incident was a festival day and the accused and the deceased invited PW.3 and others to their house for lunch. Apart from the oral testimony, the dying declaration recorded by PW.8, discloses that the marriage

between the accused and the deceased took place about 10 years prior to the date of incident and there were disputes between the deceased and the accused. On the date of incident, they invited PW.3 for lunch. After he went away, her husband came to the house in a drunken condition, and picked up quarrel with the deceased. In the said quarrel, the deceased is said to have poured kerosene and then the accused lit fire with match stick.

13) From the above facts, it can be said that if really the accused had any intention to cause death of the deceased, definitely, he himself would have poured kerosene and set her fire. Therefore, it can be said that at the time of incident, the accused had no intention to cause the death of the deceased. But since she poured kerosene herself to desist the accused from consuming alcohol, the accused in a fit of anger threw the match stick on her. I cannot be said that the accused had any intention to cause death. But it can be said that he has knowledge that the said act would lead to death. Apart from that the deceased died four days after the incident. As per the evidence of PW.9, doctor, the cause of death was due to shock and septicemia due to 90 –95 %of burns.

14) In view of these circumstances and in the light of the judgments referred to above the offence can be scaled down to one under Section 304 part II IPC since the act of the accused cannot be said to be one of murder under Section 302 IPC.

15) In view of the above, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in S.C.No.285 of 2009 on the file of the I Additional District and Sessions Judge, Kadapa, for an offence punishable under Sections 302 is altered to one under Section 304 Part II IPC. For the altered conviction, the appellant is sentenced to undergo rigorous imprisonment for a period of seven years. The fine imposed by the Sessions Judge remains unaltered.

C. PRAVEEN KUMAR, J

N. BALAYOGI ,J

20.11.2017
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