

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.312 of 2012

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

1. The sole accused in Sessions Case No. 8 of 2010 on the file of the II Additional Sessions Judge, Kadapa at Proddatur is the appellant herein. He was tried under Sections 498-A and 302 IPC for causing the death of his wife, Muchuguntla Lakshamma. By its judgment dated 14.10.2011, the Sessions Judge convicted the accused under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.3,000/-, in default simple imprisonment for a period of three months. He was also convicted for an offence punishable under Section 498-A IPC and was sentenced to suffer imprisonment for one year and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of fifteen days. Both the sentences were directed to run concurrently.

2. The facts, as culled out from the evidence of the prosecution witnesses are as under:

The accused is the husband of the deceased. PW2 is the brother of the deceased while PWs 3, 4, 5, 6 and 7 are residents of Nagapatnam village of Khajipeta Mandal. The gravamen of the

charge against the accused is that on 22.07.2009, at about 10 a.m., at the house of the accused, he is said to have caused death of his wife by pouring kerosene and setting her on fire by a matchstick.

3. On 22.07.2009, at about 1 p.m., while PW12-the Sub Inspector of Police, Khajipeta police station, was present in the police station, he received a medico legal intimation from RIMS Hospital, Kadapa. Pursuant to the said intimation, which is marked as Ex.P12, he proceeded to RIMS Hospital, Kadapa and recorded the statement of Muchukunta Laxmamma (the injured). The said statement was endorsed by the duty doctor, as to the mental fitness of the injured. The said statement is placed on record as Ex.P13. On the same day, at about 1.10 p.m., PW1, the IV Additional Judicial First Class Magistrate, Kadapa recorded the dying declaration of the deceased between 1.10 p.m. and 2 p.m. Ex.P2 is the dying declaration.

4. Basing on Ex.P.13, PW12 registered a case in Crime No. 132 of 2009 under Sections 498-A and 307 IPC. Ex.P.14 is the original F.I.R. By the time PW12 reached the hospital, he received information that the injured, who was undergoing treatment for burn injuries, succumbed to the injuries while on treatment. Accordingly, he altered the section of law from 307 to Section 302 IPC and submitted the altered F.I.R to all concerned. Ex.P16 is the altered F.I.R. Thereafter, he handed over the investigation to PW14-the Circle Inspector of Police, Mydukur Rural Circle.

5. On receipt of the altered F.I.R., PW14 proceeded to Government Hospital, Khammam and conducted a panchanama of the scene of offence, which is marked as Ex.P11. During the said process, he seized M.Os 1 to 4. He also prepared a sketch of the scene, which is placed on record as Ex.P18. Subsequently, in the presence of PW9, he conducted inquest over the dead body of the deceased and sent the dead body for postmortem examination. Ex.P9 is the inquest report.

6. The Civil Assistant Surgeon, Department of Forensic Medicine, RIMS Medical College, Kadapa conducted autopsy on the body of the deceased and issued Exhibit P19, the Post Mortem Report. According to him, the cause of death was due to complications of burns.

7. PW14 further deposed that on 30.07.2009, on receipt of credible information, he and his staff went to Kasinayana temple on Khajipeta-Kadapa main road and arrested the accused. They noticed burn injuries on the accused. On the basis of the requisition given by the doctor, the accused was sent for medical examination. PW13 examined the accused and issued Wound Certificate, which is placed on record as Ex.P13.

8. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.39 of 2009 on the file of Judicial Magistrate of First Class, Mydukur. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be

numbered as S.C.No.8 of 2010 on the file of II Additional Sessions Judge, Kadapa at Proddattur. Basing on the material on record, charges for the offences punishable under Sections 498-A and 302 of IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

9. In support of their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P19 and M.Os.1 to 4. 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. In support of his case, the accused examined DW1.

10. As the evidence of the prosecution witnesses established the guilt of the accused beyond all reasonable doubt, the Court below convicted the accused. Challenging the same, the present appeal came to be filed.

11. The learned counsel for the appellant mainly submits that there is absolutely no legal evidence to connect the accused with the offences punishable under Sections 498-A and 302 IPC. According to him, no reliance can be placed on the dying declaration recorded by the Magistrate and the police, since the evidence on record neutralizes the version of the deceased. Insofar as the offence under Section 498-A is concerned, the counsel for the appellant would submit that there is no iota of

evidence in support of the said charge. The same was opposed by the Public Prosecutor.

12. As seen from the record, the accused is charged for the offences punishable under Section 498-A and 302 IPC. PW2 is the brother and PW7 is the mother of the deceased, while PWs 3, 5 and 6 are the relatives of the deceased. Out of the (14) witnesses examined by the prosecution, PWs 2 to 7 and PW10 did not support the prosecution case and they were treated hostile. In this case, the doctor who conducted postmortem, was not examined by the prosecution, but the certificate issued by the doctor came to be marked through the investigating officer as Ex.P.19.

13. In the dying declaration recorded by the Magistrate, the deceased never spoke about any earlier quarrels between her and her husband nor she complained about any harassment by her husband to her parents or relatives. To the question as to whether she complained to her sister and brother-in-law regarding the quarrels with her husband, the deceased answered that she never made any such complaint. To a question as to who brought her to the hospital, she replied that her brother brought her to the hospital. Therefore, we feel that there is no evidence of any previous harassment by the accused. In the absence of any evidence on record with regard to harassment, the accused cannot be convicted for the said offence under Section 498-A IPC.

14. Coming to the charge of murder, the case of the prosecution is that on the date of incident, at about 10 a.m., the accused is

said to have caused her death by pouring kerosene and setting her on fire with a matchstick. The case now rests on the two dying declarations, one recorded by the Sub Inspector of Police, which formed the basis of issuance of F.I.R and the second by PW1, the learned Magistrate, which was brought on record as Ex.P2. There are no discrepancies with regard to the contents of the two dying declarations. But the issue is whether the contents of the dying declarations can be believed, when the accused also sustained burn injuries in the said transaction.

15. Before proceeding further, it would be useful to refer to the contents of the dying declaration recorded by the Magistrate. As per the dying declaration, immediately after receipt of burn injuries, the deceased came out of the house and went towards her sister and brother-in-law, who were living next to her house and they are said to have covered her with a blanket, to put off the flames. Strangely, none of them made any effort to take the deceased to the hospital. Her version in the dying declaration is that on coming to know about the incident, her brother went to her house, found her with burn injuries, he called an ambulance and then shifted her to the hospital. If really the version of the dying declaration has to be accepted, the brother and sister-in-law would have immediately taken the deceased to the hospital. This statement of the deceased gets falsified, in view of the evidence of DW1 and the evidence of PW13, the doctor.

16. DW1, in his evidence, deposed that on that day, at about 9 a.m., the accused came to him and informed him about the deceased harassing him on the ground that he was having intimacy with other women. His version is that while the accused was in his house, he heard cries of the deceased and rushed to the spot and tried to put off the flames which were on the deceased. He further deposed that along with him and the accused, PWs 3 to 5 also rushed to the house of the accused, and while putting off the flames, the accused sustained burn injuries on his hands and legs and immediately thereafter, they shifted the injured/ deceased to RIMS Hospital, Kadapa. Though DW1 was cross-examined by the Public Prosecutor, nothing useful was elicited. His evidence gets support from PW13, the doctor who treated the accused.

17. As per the evidence of PW13, he noticed four injuries on the accused, which are as follows:

1. A burnt injury is found on the base of the right thumb and
2. A burnt injury on the right ring finger.
3. A burnt injury on the ventral aspect of the right wrist joint 3 x 3 cms each
4. A burnt injury on the left thumb and left elbow joint 2 x 2 cms each they are simple burns.

18. From the evidence of PW13 and DW1, a doubt arises as to whether really the deceased is speaking the truth with regard to the manner in which the incident occurred. If really the intention of the accused was to put an end to the life of the deceased, he

would have not intervened to save her, which fact is evident from the injuries sustained on the hands and fingers of his body.

19. It is, no doubt, true that a conviction can be based on the dying declaration alone, if it is found reliable and trustworthy. But, in the instant case, having regard to the discrepancy pointed out and in the absence of any other evidence supporting the miniscule of the contents of the dying declaration, we feel that it is a case where the benefit has to be given to the accused, by disbelieving the two dying declarations.

20. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 14.10.2011 in Sessions Case No.8 of 2010, on the file of the II Additional Sessions Judge, Kadapa at Proddattur for the offences punishable under Sections 302 and 498-A is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

20.11.2017
DMG