

HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No. 1018 OF 2011

JUDGMENT: (per HON'BLE SRI JUSTICE N. BALAYOGI)

1. This Criminal Appeal is preferred against the judgment dated 01.04.2011 passed in SC.No.25 of 2009 whereby the learned District and Sessions Judge, Chittoor convicted the appellant/sole accused for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life.

2. Brief facts culled out from the prosecution evidence are as follows: The appellant-sole accused and the deceased- Amaramma are the husband and wife. According to the evidence of P.W.1, three years prior to the incident, while he was in the house of his eldest son at Yanadipalli, at about 8.00 PM, the deceased came to their hut with flames, due to which, their hut was also guttered in fire.

3. P.W.4 is the brother of the deceased, according to him, after marriage the appellant/accused and deceased lived happily for some time and thereafter the accused used to harass the deceased to bring money. He received information over phone from P.W.3 about his sister (deceased) admitted in the hospital with burn injuries. He rushed to the hospital.

4. P.W.3 is the brother while P.W.5 is the son of the appellant/accused who stated that the appellant poured petrol over the body of his mother and set her to fire. Nine days after admission into the hospital, she died.

5. P.W.6 spoke that before the death of the deceased-Amaramma, the appellant/accused purchased ¼ liter of petrol for Rs.16/- from him.

6. P.W.7 is the mother of the deceased who deposed that she received phone call from P.W.4 who is her son, and rushed to the hospital. Nine days after admission, her daughter (deceased) succumbed to injuries and she gave a report to the police.

7. P.W.8 is the mediator for Exs.P.5 and P.6 mahazars under which M.Os.1 to 5 were seized by the police.

8. P.W.9 as Judicial Magistrate of First Class as on the date of incident deposed that after receiving requisition to record dying declaration of Smt. Amaramma, W/o Sreenivasulu (appellant/accused), he rushed to the hospital and obtained the endorsement of the duty doctor on mental condition of the declarant Amaramma to the effect that she was conscious, coherent and in fit mental condition to give statement. After putting some simple question to satisfy himself that she was mentally fit to

give statement, recorded dying declaration vide Ex.P.8 and later obtained endorsement of the duty doctor about her mental condition to give statement to the effect that the patient has been conscious, coherent and give statement in a fit mental condition.

9. P.Ws.10 and 11 are the inquestdars to Ex.P.9 for the inquest over the dead body of Amaramma.

10. P.W.12 who conducted post mortem examination over the dead body of the deceased issued Exs.P.10 report opining that death is on account of shock and sepsis due to external burns 6 to 12 hours prior to post-mortem examination.

11. P.W.13 is the mediator while arresting the accused and seizing M.O.6 under the cover of Ex.P.12 mahazar.

12. P.W.14, Sub Inspector of Police, Kuppam, after receiving Ex.P.7 hospital intimation, proceeded to the hospital and recorded the statement of deceased vide Ex.P.13 and thereafter came to the police station and registered a case in Crime No. 96 of 2007 for the offence punishable under Sections 498-A and 307 IPC and issued Ex.P.14 First Information Report. He examined and recorded the statements of P.Ws.1 to 3 vide Exs.P.1 to P.3. He prepared Ex.P.15 scene of offence in the presence of P.W.8. He also seized M.Os.1 to 3 under Ex.P.5. He seized M.Os.4 and 5 under Ex.P.6. He also examined P.W.4.

13. P.W.15 was the then Dy. Superintendent of Police. On receiving information, he proceeded along with mediators-P.Ws.2 & 13 and staff and arrested the appellant/accused and seized M.O.6 under Ex.P.12. He also examined P.Ws.5 to 7 and recorded their statements.

14. P.W.15 took up investigation from P.W.14. After completion of investigation, he filed a charge sheet, which was taken on file as P.R.C.5 of 2008 on the file of Judicial Magistrate of First Class, Kuppam. After compliance of Section 207 Cr.P.C. and as the offences alleged are triable by the Court of Sessions, the case was committed to the Court of Sessions, which came to be numbered as S.C.No.25 of 2009.

15. Charges under Sections 498-A and 302 I.P.C. came to be framed, read over and explained to the accused, to which, he denied and claimed to be tried.

16. To substantiate their case, the prosecution examined P.Ws.1 to 15 and got marked Exs.P.1 to P.17 and M.Os.1 to 6. 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 prosecution witnesses, to which he denied. No oral or

documentary evidence was adduced on behalf of the accused in support of his defence.

17. On appreciation of the entire evidence on record, the learned District and Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present Criminal Appeal came to be filed.

18. Now the points that arise for consideration are- whether there is any conflict between the dying declarations recorded by the Magistrate-P.W.9 and police-P.W.14, if so, can they be relied on; secondly, whether identification of the property is in accordance with Rule 35 of the Criminal Rules of Practice and, thirdly whether identification of the accused is proper.

19. A reading of the evidence of P.Ws.1 to 5 and 7 goes to suggest that the accused is the husband of the deceased. P.W.4 is the brother, P.W.5 is the son and P.W.7 is the mother of the deceased-Amaramma. The marriage between the accused and deceased was solemnized about ten years prior to the incident. According to the evidence of P.W.1 about three years prior to his deposition, while she was in the house of her eldest son at Yanadipalli, at about 8.00 P.M., the deceased came out of the house with burning flames and in that connection, their hut was gutted in fire. P.W.2 deposed only as to how she came to know about the incident. P.W.3, brother of the accused deposed

that on the date of incident, he returned from Karnataka at 8.45 p.m. and came to know about the burn injuries of the deceased. Similarly, P.W.4, brother-in-law of the accused deposed that the deceased and accused lived happily for some time after their marriage and thereafter the accused started to harass the deceased to bring money and at about 10.00 p.m. he received a phone call from P.W.3 stating that the accused poured kerosene over the body of the deceased and set her to fire and she was admitted in the Government Hospital.

20. P.W.5 is none other than the son of the deceased and accused, whose evidence is that he was studying 3rd class and on the day of incident, the accused came in drunken state, poured petrol over the body of his mother and set her to fire.

21. P.Ws.1 to 3 turned hostile and did not support the prosecution case. Their evidence is that the accused used to harass the deceased on one pretext or the other and while so, on 18.08.2007 the accused abused the deceased for not planting Raagi plants in the field. Vexed with the attitude of the conduct of the accused, the deceased at about 7.30 PM poured kerosene on her body and attempted to commit suicide. Then P.Ws.1 and 2 intervened and prevented her to commit suicide. They removed her clothes drenched with kerosene and advised her not to commit suicide. Later at 9.30 PM, the accused came with petrol can, poured over the deceased and set her to fire. P.W.7 is the

mother of the deceased. She deposed that after receiving a phone call from P.W.4, they went to the Government Hospital, Kuppam and found her daughter with burn injuries and stayed with her daughter at hospital. Nine days thereafter, her daughter died. She gave Ex.P.4 complaint to the police.

22. There is no dispute that the deceased-Amaramma died with burn injuries on 26.08.2007 at about 11.10 AM. P.Ws.10 and 11 are the inquestdars for Ex. P.9. Though they admitted their signatures on Ex.P.9, but they turned hostile.

23. The Investigating Officer was examined as P.W.15. Before he took up investigation, P.W.14—Sub Inspector of Police, who received Ex.P.7 hospital information on 18.8.2007 at about 1.45 PM, proceeded to Hospital, Kuppam, recorded the statement of the deceased vide Ex.P.13 and returned to the Police Station at about 12.10 A.M. of 19.08.2007 and registered the case in crime No.96 of 2007 for the offences punishable under Sections 498-A and 307 IPC and issued Ex.P.14, FIR.

24. P.W. 15, Deputy Superintendent of Police, Guntur, arrested the accused in the presence of Mediators—P.W.2, P.W.13 and staff. Thereafter, he secured the presence of P.Ws.4, 7 and 16, K. Venkatesh, M. Mallappa and C. Betappa and prepared Ex.P.9 inquest report and sent the dead body of the deceased for Post-mortem examination through Police Constable.1952.

25. In KAMLA (SMT) Vs. STATE OF PUNJAB {(1993) 1 SCC 1} the Apex Court held that if a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout if the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. However, if some inconsistencies are noticed between one dying declaration and the other, the Court has to examine the nature of the inconsistencies namely whether they are material or not. In scrutinising the contents of various dying declarations, in such a situation, the Court has to examine the same in the light of the various surrounding facts and circumstances. In the said case, it was pleaded that it was not the case of suicide. It is also pleaded that the deceased affirmed in all the dying declarations that her husband saved her, who sustained burn injuries while doing so. His evidence shows that it could have been an accident. That is also the purport of one of the dying declarations. In another declaration, the deceased only expressed suspicion against her mother-in-law and father-in-law. There are glaring inconsistencies in the dying declarations in the above case.

In the case on hand, the evidence of P.Ws.14 is that he received the intimation from the hospital at 1.45 PM on 18.08.2007 and recorded Ex.P.13-statement of the deceased at 11.00 PM. In the said statement-Ex.P.13, recorded by the Sub Inspector-P.W.14, the deceased specifically stated that the

accused, i.e. her husband, poured petrol on her and set to fire on the ground that she suggested to her husband to plant 'Ragi' in the land, on which, a quarrel took place between them at 7.30 PM and on the same day, the accused grew wild, left the house and came back at 9.00 pm with a can containing petrol and poured over her and lit fire and went away. When a question put by P.W.14 as to 'how your body was burn', she replied that 'my husband poured petrol over my body and set fire with match stick'.

26. Similarly, the Judicial First Class Magistrate, Kuppam, who was examined as PW.9 deposed that on 19.08.2007 at about 12.30 PM he received Ex.P.7 requisition sent by the Medical Officer, Government Area Hospital, Kuppam through one Prakash, Junior Sanitary Worker, immediately he rushed to the hospital, met the doctor, who took him to the ward and shown the deceased- Amaramma. He took all precautions before recording the dying declaration. None else were present with the deceased at that time, except the staff of the hospital. At the request of the duty doctor, he examined the mental condition of the deceased. On examination, the Medical Officer endorsed on the report before starting the dying declaration that the patient/deceased was conscious, coherent and in fit mental condition to give statement to the Magistrate. To the question No.4-*

ఈ సమయంలో ఆమె మానసికంగా ఏమి స్థితిలో ఉన్నది? she replied that "వా మెనల్ గా ఉన్నాడని నాకు తెలియలేదు. ఆమె మానసికంగా ఏమి స్థితిలో ఉన్నది? నాకు తెలియలేదు."

Which means that her husband poured petrol over her body and set to fire with matchstick. She further stated to Question No.6-

"నేను దొంగమని తాళి చూసి వేరొచ్చాను. నాకు ఎదురు పుస్తావా అని నాకు అర్థమైపోయింది."

Which means, when she suggested her husband/accused to plant 'Raagi' in their land, the accused felt that she replied against his wish and having grown wild, poured petrol over her body and set to fire. In both the statements, motive of the offence is one and the same. There is no inconsistency in the statements recorded by P.W.14-Sub Inspector of Police and P.W.9-Judicial Magistrate, in both the statements, they got certificate before recording statements of the deceased that the deceased was conscious, coherent and in fit mental condition to give statement. After recording the statements also, the duty doctor certified that during the examination, the patient is conscious, coherent and in fit mental condition.

27. Similarly in *STATE OF PUNJAB vs. PARVEEN KUMAR* ((2005) 9 SCC 769) the Apex Court held that when there are two versions quite different and not consistent with each other, except that, so far as the accused is concerned, the act of lighting the fire is ascribed to him in both the dying declarations. While appreciating the credibility of the evidence produced before the Court, the Court must view the evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions are given but one name is common in both of them cannot be a ground for convicting the named

persons. In *AMOL SINGH Vs STATE OF MADHYA PRADESH* {(2008) 5 SCC 468} the Apex Court held that law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly it is not the plurality of the dying declarations, but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. As already discussed above, it is an undisputed fact that the deceased-Amaramma succumbed to burn injuries. In both the dying declarations, she specifically stated that due to non planting of Raagi plants in their land, the accused grew wild and after her returning to home, he picked up a quarrel with her, left the house and came back at 9.00 pm with a can containing petrol and poured over her and lit fire with match stick.

28. P.W.12, the Doctor who conducted Post Mortem Examination vide Ex.P.10 opined that the deceased died of shock and sepsis due to external burns 6 to 12 hours prior to post-mortem examination. In Ex.P.10, PME report, P.W.12 noted the cause for death of the deceased as, super flexural to deep burns all over the body and found the internal injuries :: Head and neck— all structures intact, heart normal cut section congested, lungs normal, cut section congested, liver normal cut section congested, Spleen normal cut section congested, Kidneys normal cut section congested, stomach is empty, uterus normal cut section congested, Bladder empty.

29. The statement in the dying declarations further corroborates the evidence P.W.5, who is the son of the deceased. P.W.5 deposed that on the day of incident, his father came in drunken state, poured petrol over his mother and set fire. P.W.4, his senior paternal uncle took his mother to Kuppam Government Hospital. Nine days thereafter, his mother died. P.W.5 was cross examined, but nothing incriminating was elicited to disbelieve his evidence. Therefore the ocular evidence of P.W.5 corroborates the dying declarations in Ex.P.8 recorded by the learned Judicial Magistrate and Ex.P.13 recorded by Sub Inspector, P.W.14

30. P.Ws.10 and 11 are inquestdars for Ex.P.9. The inquestdars also opined in Ex.P.9 that the accused who is the husband of the deceased harassed her. On 18.08.2007 at 9.00 pm the accused poured petrol over the body of the deceased- Amamma and set fire and ran away. While undergoing treatment, due to burn injuries, she died on 26.08.2007 at 11.10 AM. The opinion of the inquestdars is supported by post-mortem examination report at Ex.P.10.

31. The evidence of P.W.14 is that he secured the presence of P.W.8 and M.Munisiddaiah, observed the scene of offence, prepared Ex.P.15 rough sketch and Ex.P.16 observation mahazars. At the time of Ex.P.5, he seized MOs. 1 to 3 at 7.30 AM and at the time of Ex.P.6, he seized MOs. 4 and 5 at 9.00 AM on 19.08.2007. P.W.8 the mediator corroborates the evidence of

P.W.14 that P.W.14 seized M.O.1 saree, M.O.2 Petty coat, M.O.3 burnt saree, M.O.4 some burn hay, M.O. 5 under cover of Ex.P.5 and P.6 mahazars which contain his signatures. Though P.W.8 was cross examined by the defence, the only suggestion put to him was that M.Os. 1 to 5 are not seized under the cover of Exs.P.5 and P.6. Except that, there is no suggestion.

32. P.W.15 is the Investigating Officer, whose evidence corroborates the evidence of P.W.13, Village Revenue Officer. P.W.13 deposed that on 23.08.2007 he went to Police Station, Kuppam and at about 6.00 AM, the Inspector of Police took him and another- Seetharam in a jeep to 7th mile cross which is locally called as Kanamaladoddi where they found the accused running away. The confession of the accused under Ex.P.11 the relevant portion of which led recovery of MO.6-plastic can and the same was seized under Ex.P.12 whereat P.W.12 and others attested on it. In the cross examination, he stated that there are about 30 to 40 houses at 7th mile which is called Kanamalagutta and it was a busy locality. Except the suggestion put to him that Exs.P.11 and 12 are created and fabricated and that they are deposing falsehood, there is nothing to disbelieve the seizure. The seizure of plastic can—MO.6 in which the accused carried petrol, which was purchased from P.W.6 who was running a petty shop selling petrol, was not at all under dispute. The evidence of P.W.6 inspire the confidence that on the day of incident, the accused purchased

¼ litre of petrol for Rs.,16/- which was used for commission of offence.

33. In the facts and circumstances discussed hereinabove, I find that the motive for the offence is that as the deceased was not planting maize (Raagi) plants in the land, the accused grew wild and at 9.30 PM he brought petrol in MO.6, poured on her and lit fire. The medical evidence under Post-mortem examination corroborates that the cause of death was due to external burn injuries and sepsis.

34. Further the admission of P.W.5 that he goes to bed at 7.00 PM cannot make any difference with that of witnessing of the accused pouring petrol and set fire at 9.00 PM. There is nothing on record to show that P.W. 5 was tutored who is an independent witness and his evidence is reliable, trustworthy and inspires confidence. The arrest of the accused at 6.30 AM on 23.08.2007 by P.W.14, seizure of MO.6 under Ex.P.12, confession of commission of offence which led to recovery of M.O.6 and other circumstances corroborate the evidence of P.W.5, as contemplated under Section 27 of the Indian Evidence Act. Further, there is no inconsistency in the dying declarations recorded by P.W.9 under Ex.P.8 and P.W.14 under Ex.P.13. The evidence of P.W.5 corroborates the evidence of P.Ws.1 to 3 that the deceased sustained burn injuries at 9.00 pm of 18.8.2007

and while undergoing treatment, she succumbed to burn injuries on 26.8.2007 at 11.10 a.m.

35. For the foregoing analysis of the evidence on record, we find that the finding of the trial Court in convicting the accused for the offence punishable under Section 302 IPC and sentencing him to suffer life imprisonment is legal, valid and does not suffer from any legal infirmities.

36. Accordingly the criminal appeal is dismissed confirming the judgment dated 01.04.2011 passed in SC.No.25 of 2009 by the learned District and Sessions Judge, Chittoor.

37. Miscellaneous petitions pending consideration if any in the Criminal Appeal shall stand closed in consequence.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

Dated 14th December, 2017
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