

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHAVA RAO

CRIMINAL APPEAL No.813 of 2011

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

1) The sole accused in Sessions Case No.505 of 2010 on the file of the V Additional Metropolitan Sessions Judge (Mahila Court), Hyderabad, is the appellant herein. He was charged for the offences punishable under sections 302 and 498-A IPC. By its judgment dated 16.03.2011, the learned Sessions Judge, while acquitting the appellant for an offence punishable under Section 498-A IPC, convicted and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.500/- for the offence punishable under Section 302 IPC.

2) The gravamen of the charge against the accused is that on 16.03.2010 at about 10.00 a.m. in the house of the accused situated at Aman Nagar-B, Talabakatta, Hyderabad, the accused is said to have poured kerosene on his wife namely Smt. Sofia, set her fire and caused her death.

3) The case of the prosecution as culled out from the evidence adduced by the prosecution is as under:

4) PW.1 is the sister of the deceased. PW.4 is the mother of the deceased. PW.3 is a resident of that locality. The marriage of the accused and the deceased took place about four months prior to

the date of incident. The first wife of the accused died and he was having two children through his first wife. After marriage, the deceased and the accused along with children of the accused through his first wife started living at Yakuthpura. It is stated that the accused used to beat the deceased stating that she was not preparing the food properly. Unable to bear the harassment, the deceased came to her parents house. Thereafter, the accused is said to have been gone to the house of his in-laws and brought her back, promising to look after her well. The evidence on record also shows that the deceased was also married earlier and her husband died about four years prior to her marriage with the accused. The deceased informed PWs.1 and 4 about the harassment in the hands of the accused.

The case of the prosecution is that on the date of incident the accused called the deceased and thereafter is said to have poured kerosene and set her fire. The neighbours shifted the deceased to the hospital. On receipt of a telephonic information from Osmania General Hospital, about the admission of the deceased with burn injuries, PW.13, the A.S.I. of Police, proceeded to the hospital, identified the injured with the help of duty doctor and recorded the statement, after satisfying himself about the state of mind of the deceased to give the statement. In the said statement, the deceased stated that the accused sent their daughter to bring milk and thereafter poured kerosene and set her fire. It was further stated that the accused set her on fire on the ground that she was not good looking and also suspecting her

character. The statement made by the deceased which was in Urdu was recorded in telugu and thereafter, the contents were read over and explained to her to which she agreed to be true and affixed her toe impression. The evidence of PW.13 also shows that duty doctor was present at the time of recording the statement and also endorsed that the deceased was in a fit condition while recording the statement. Ex.P7 is the statement of the deceased. The said statement was forwarded to PW.9-the Sub-Inspector of Police. Basing on the said statement, PW.9 registered a case in Crime No.29 of 2010 under Sections 498-A and 307 IPC and issued Ex.P8 F.I.R. Immediately thereafter, he visited the hospital and examined the deceased, PWs.1 and 7. Thereafter, he gave requisition to PW.5, the IX Additional Metropolitan Magistrate, Hyderabad, to record the dying declaration of the deceased. Ex.P2 is the requisition. On receipt of said requisition, PW.5 proceeded to Osmania General Hospital, put some questions to the deceased to test her mental condition. After satisfying that she is in fit condition to give statement and after taking the endorsement of the duty doctor, he recorded the statement of the deceased, wherein she stated that her husband poured kerosene and set her on fire. After recording the statement, the same was read over and explained the contents of it to the deceased and when she admitted the same to be true and correct, obtained her right toe impression. Ex.P4 is the dying declaration of the deceased. PW.9 visited the scene of offence and prepared a panchanama of the scene of offence which was marked as Ex.P9. During the said

process he seized a plastic kerosene tin, match box and burnt cloth pieces. Ex.P10 is the rough sketch of the scene. On 17.03.2010, he arrested accused and on interrogation, the accused is said to have confessed about the commission of offence. Thereafter, the deceased died due to burns on 21.03.2010. Thereafter, he handed over the C.D. file to PW.10, for further investigation. On receipt of death intimation, PW.10 altered the section of law from 498-A, 307 IPC to 498-A, 302 IPC. Ex.P17 is the alteration memo. He sent a requisition to PW.2 to conduct inquest over the dead body, who inturn conducted inquest in the presence of PW.3 and another. Thereafter, PW.6-Assistant Professor, Osmania Medical College, Hyderabad, conducted post mortem examination over the dead body of the deceased and issued Ex.P6, the Post Mortem Examination Report. According to her, the cause of death was "due to burns". After collecting all the materials, PW.11 filed the charge sheet, which was taken on file as P.R.C.No.34 of 2010 on the file of the VIII Additional Chief Metropolitan Magistrate, Hyderabad, which on committal came to be numbered as S.C.No.505 of 2010.

5) After complying with the provisions under Section 207 Cr.P.C., charges under Sections 498-A and 302 IPC were framed, read over and explained to the accused. The plea of the accused is one of total denial.

6) To substantiate their case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P17 and M.Os.1 to 3 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 his behalf in support of his defence.

7) By taking into consideration the evidence of PWs.1 to 4 and Exs.P4 and P7, the learned Sessions Judge convicted the accused for an offence punishable under Section 302 IPC as stated supra while acquitting him for an offence punishable under section 498-A IPC. Challenging the same, the present appeal is filed.

8) Learned counsel for the appellant mainly submits that multiple dying declarations made by the deceased, which are relied upon by the prosecution to base a conviction cannot be acted upon as they are inconsistent with each other. In the absence of any other material, he pleads acquittal of the accused.

9) On the other hand, learned Public Prosecutor opposed the same contending that there is no inconsistency in the dying declarations and even if there are any inconsistencies, the same would not go to the root of the matter.

10) In order to appreciate the rival arguments it would be appropriate to extract the relevant portions of the judgments of the Apex Court, wherein the Apex Court dealt with issues relating to multiple dying declarations.

11) In *Sudhakar v. State of Maharashtra*¹ the Apex Court held as under:

“21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the court in such matters.”

12) In *Raju Devade v. State of Maharashtra*² the Apex Court held as under:

“Each dying declaration has to be considered independently on its own merit so as to appreciate its evidentiary value and one cannot be rejected because of the contents of the other. In cases where there is more than one dying declaration, it is the duty of the court to consider the each one of them in its correct perspective and satisfy itself that which one of them reflects the true state of affairs.”

¹ (2012) 7 SCC 569

² AIR 2016 SC 3209

13) Keeping in view the principles of law enunciated by the Apex Court, we shall now proceed to deal with the case on hand.

14) In the first dying declaration recorded by the A.S.I.-PW.13 which is marked as Ex.P7, the deceased stated as under:

“My husband started quarrelling with me because he is thinking that I am having illegal contacts with some other guys. Yesterday ie. On 15.03.2010 in the night time my husband came to house and as usually started quarrelling with me and also beaten me, due to which I bite on the right side chest of my husband, later my husband quarrelling with me, then my aunty by name Fareeda Begum and neighbours also came to us and settled the matter. Later on next day at about 10.00 hours my husband abusing me by suspecting my fidelity and sent his daughter to bring milk from the shop with intention to kill me at that time no one is in the house and took out kerosene tin and poured kerosene on me and lit the fire with matchstick and went into bathroom. Due to huge flames I got burns and shouting crying loudly, on heard my noises one Kaleem who is another tenant in our building in first floor rushed there and put off flames by pouring water, on seeing him my husband also rushed and pouring water and they were wrapped me with blanket and shifted me to Osmania General Hospital for treatment.”

15) The said statement made before PW.13 gets corroborated from the evidence of PW.12, who is the neighbour of the deceased and accused. PW.12 stated in his evidence that on hearing the cries of the wife of the accused he went upstairs and found her in flames. While he was putting off the flames, the accused came there and also started putting off the flames. Later, PW.7 called

the ambulance and then the deceased was shifted to Osmania General Hospital.

16) The next dying declaration made by the deceased was before PW.5-the Magistrate, which was brought on record as Ex.P4. In the said statement, the Magistrate initially put preliminary questions to satisfy himself about the mental condition of the deceased and thereafter recorded the statement, wherein the deceased stated that at about 9.00 a.m. her husband poured kerosene and set her on fire. At the end of the dying declaration he took the toe impression of the deceased and also the endorsement of the doctor with regard to mental condition of the deceased. The contents of the statement were also read over to the injured.

17) PW.5, who recorded the dying declaration categorically deposes about the endorsement made by the doctor and also the contents of the dying declaration. In the cross examination it has been elicited that, by the time the Magistrate reached the hospital, the deceased was conscious. It was also elicited that though the deceased sustained 95% of burns, she was conscious enough to make the statement. In further cross-examination, it has been stated that the victim stated in Hindi and he got the same recorded in English. It was also elicited that PW.5 understood Hindi and also speaks hindi. It was categorically admitted by PW.5 that the deceased was making declaration only in Hindi. To a suggestion that he could not understand the answers given by the

victim was denied. To a suggestion that dying declaration was prepared at the instance of police, was denied.

18) From the answers elicited, it is clear that the deceased made the statement in Hindi, which was translated into English by the Magistrate himself, who was aware about both the languages. It is also to be noted here that the contents of the dying declaration were read over and explained to the deceased, which were admitted to be true and correct. Such being the position, recording of dying declaration in English though the deceased made the statement in Hindi, which languages were known to the Magistrate, cannot be found fault with in view of the judgment of this Court in *Sk.Mohammed @ Md.Miya v. State of Andhra Pradesh*³.

19) As seen from the two statements, there was no inconsistency with regard to act of the accused pouring kerosene and setting the deceased on fire. The statements of the deceased also get corroboration from the oral dying declaration made before PWs.1 and 4. In their evidence, PWs.1 and 4 categorically stated that when they enquired with the deceased as to what happened, the deceased stated that the accused sent their daughter out to bring milk from the shop and thereafter, he poured kerosene and set her on fire. Though PWs.1 and 4 were cross-examined at length, nothing useful was elicited to discredit their evidence with regard to oral dying declaration made by the deceased before them.

³ (2014) 2 ALD (CrI.) 54 (A.P.)

20) Since the dying declaration made before the Magistrate coupled with the earlier statement made before the A.S.I., which gets corroboration from the evidence of PW.12 an independent witness, and the oral dying declarations being consistent and inspires confidence in the mind of the Court, we feel that the findings arrived at by the trial Court, warrants no interference.

21) Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

02.11.2017

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