

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No.1605 of 2010

JUDGMENT : (Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present appeal, the appellant has challenged the judgment and order dated 16th August 2010, passed by the Principal Sessions Judge, Kurnool, in Sessions Case No.175 of 2010, whereby, the appellant has been found guilty for the charge under Section 302 of IPC and accordingly sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default of payment of fine, he shall undergo rigorous imprisonment for a period of two months.

2. The case of the prosecution, in brief, is that the marriage between the deceased G.Chinnu Bai and the appellant was solemnized 9 years prior to the incident. During the wedlock, they were blessed with two children. The appellant is the maternal uncle-cum-husband of the deceased. The appellant got addicted to drinking and, for money, he used to abuse and beat the deceased. On 29th September 2009, at about 2 p.m., when the appellant demanded money from deceased, she replied that she had no money. On that, the appellant threatened to kill her if she would not give money, and saying so, he went into the house, picked up a kerosene tin, poured kerosene on her and lit fire. The deceased, while crying, came out of the house into the street with flames over the body. PW-1 (D.Venkatachalapathi), PW-2 (D.Babulal) and one D.Sreenivasulu covered the body of the deceased with a blanket and put-off the flames. PWs.1 and 2 shifted the deceased to Government General Hospital, Kurnool in an auto for treatment. On

07.10.2009, the deceased succumbed to the injuries while undergoing treatment.

3. It is pertinent to mention here that on receiving the information regarding admission of the deceased in burnt condition, Assistant Sub-Inspector of Police S.A. Azeem reached to the hospital and recorded the statement of the injured. Accordingly, on 29th September 2009, registered FIR.No.198 of 2009 under Section 307 of IPC. However, the injured succumbed to the injuries on 07.10.2009 and said information was given to Kurnool I-Town Police by PW-1/brother of the deceased. Accordingly, Y.Narasimha Reddy, A.S.I. of the Police Station, on recording the statement of PW-1, registered another FIR, but vide the same FIR number i.e. 198 of 2009 on 07.10.2009 for the offence punishable under Section 302 of IPC.

4. Learned counsel appearing on behalf of the appellant submitted that the Police registered two FIRs and the 2nd FIR registered for the offence punishable under Section 302 of IPC is illegal. She submits that as per the procedure, on receiving the information that the injured succumbed to the injuries, the Police had to alter the provision of law to the offence punishable under Section 302 of IPC, which has not been done.

5. Learned counsel further submitted that the dying declaration of the victim was recorded on 29.09.2009. Subsequently, after registration of the case for the offence under Section 307 of IPC, the ASI again recorded the statement of the victim under Section 161 Cr.P.C. Thus, there are two dying declarations of the deceased.

6. The learned counsel also submitted that after registration of the FIR for the offence punishable under Section 307 of IPC, no further steps are

taken by the Police, such as, the scene of crime was not visited, no evidence whatsoever was collected from the scene of crime and no panchanama of arrest was prepared by the Police. However, after the death of the deceased on 07.10.2009, Police hurriedly registered another FIR under the same number i.e. FIR.No.198 of 2009 for the offence punishable under Section 302 of IPC against the appellant. It is further submitted that in the charge sheet, nowhere it is mentioned that ASI/S.A.Azeem had recorded the dying declaration of the deceased on 29.09.2009. Thus, alleged dying declaration was wrongly taken into consideration and convicted the appellant.

7. PW-1 is D.Venkatachalapathi, brother of the deceased, who is informant of the 2nd FIR registered for the offence punishable under Section 302 of IPC. He deposed that the appellant used to abuse and beat his sister in drunken state. On the next day of Dassera festival in the year of the incident at around 2 p.m., the appellant returned home in a fully drunken state and demanded money from the deceased for drinking. As she refused to pay, appellant poured kerosene over her body and lit fire. The deceased came into the street with burning flames. On hearing the cries, self, father Babulal and one Sreenivasulu (LW-2, not examined by the Prosecution) rushed there and took a blanket, covered the body of the deceased and put-off the flames. Thereafter, they shifted the deceased to the Government General Hospital, Kurnool in an auto rickshaw. While taking treatment in the hospital, his sister died 7 days after the incident at around 12.00 in the midnight. Above named A.S.I. of Police registered the FIR under Section 302 of IPC on his statement, which is Ex.P-1.

8. PW-2 D.Babulal, father of the deceased, deposed that appellant and his daughter, after marriage, put up their family near to their house. The

appellant used to return home in a drunken state, abuse and beat his daughter. On the next day of Dassera in the year of the incident, the appellant returned home in a drunken state, abused and beat his daughter. The appellant poured kerosene on the deceased and lit fire. After hearing the cries, self, PW-1 and Srinivasulu (not examined) rushed to the spot, covered the body of the deceased with a blanket, put-off the flames and then shifted the injured to the hospital. The appellant killed his daughter as she refused to pay money for his drinking purpose.

9. PW-3, K.Chandra Sekhar Rao, stated that the appellant was a tenant in a house opposite to his house. Anything happened in the house of the appellant could be heard from his house. The appellant was present at home at the time of incident. Self and Veeresh Babu helped in putting off the flames.

10. Learned counsel appearing on behalf of the appellant submitted that PWs.1 and 2 stated that they, with the help of Srinivasulu, who is not examined, took a blanket, covered the body of the deceased and put-off the flames, whereas, PW-3 deposed that self and Veeresh Babu helped in putting off the flames.

11. Learned counsel further submitted that PW-4 Gunna Mark has deposed that at the time of inquest, they found entire body of the deceased was burnt except face. Thus, it creates a doubt on the story of the prosecution as to how the ASI had taken the impression of toe on the dying declaration.

12. PW-5 S.A.Azeem is the Assistant Sub-Inspector of Police, who recorded the statement of the deceased in injured condition on 29.09.2009.

He deposed that the deceased, in her statement, stated that her father, elder brother and junior uncle covered her body with a blanket and put-off the flames and her father (PW-2) carried her in an auto rickshaw to the Government General Hospital, Kurnool. He obtained endorsement Ex.P-5 of the Doctors that the deceased was coherent and was in a fit state of mind. Thereafter, recorded statement of deceased Ex.P-4, who, throughout the statement, remained coherent. Thereafter, he returned to the Police Station and basing on Ex.P-4, registered a case in Crime No.198 of 2009 Ex.P-6 for the offence punishable under Section 307 of IPC. He further deposed that after registering the FIR, again he went to the hospital, examined and recorded 161 Cr.P.C. statement of Chinnu Bai (deceased).

13. Learned counsel for appellant submitted that if the deceased was fully burnt except the face, the Doctor might have given some sedative, and if that was given, the injured could not be in a coherent condition, therefore, it creates a doubt on the dying declaration of the deceased recorded by PW-5.

14. PW-6, Y.Narasimha Reddy, Assistant Sub-Inspector of Police, deposed that he received information Ex.P-7 from outpost Police Station. Thereafter, he recorded the statement of PW-1 in the hospital, obtained his signature on Ex.P-1, returned to the Police Station at 11 a.m. and altered the Section of Law basing on Ex.P-1 and P-7. Ex.P-8 is the altered FIR under Section 302 of IPC.

15. Learned counsel appearing on behalf of the appellant further submitted that the aforesaid officer has not altered the Section of law basing on the statement of PW-1, however, registered another FIR under the same number i.e. 198 of 2009 for the offence punishable under Section 302 of

IPC. The said officer either was not aware that FIR was already registered for the offence punishable under Section 307 of IPC or he does not know the procedure how to alter the Section of Law. In such a situation, duty is cast upon both the Police Officers—one registered FIR for the offence punishable under Section 307 of IPC and the 2nd officer registered another FIR for the offence punishable under Section 302 of IPC, to explain as to why two FIRs are registered for the same offence.

16. The defence of the appellant is that while cooking food, the deceased was wearing saree, which caught fire and when she was in flames, he removed the saree, however, could not save her, and thereafter, his wife succumbed to injuries on 07.10.2009 in the hospital while taking treatment.

17. Learned counsel for the appellant, while concluding her argument, submitted that the appellant was falsely implicated in the case. Neither the dying declaration was recorded by ASI/S.A.Azeem on 29.09.2009 nor the statement of the deceased under Section 161 Cr.P.C. was recorded by him. Had he recorded the statement of deceased and had the deceased made allegation against the appellant, the ASI would have investigated the case accordingly, however, till 07.10.2009 when another FIR was registered for the offence punishable under Section 302 of IPC, no steps were taken by the Police. Thus, it creates a doubt on the story of the prosecution.

18. On the other hand, learned Public Prosecutor appearing on behalf of the State submits that the incident had taken place on 29.09.2009 at 2.30 p.m. Thereafter, the deceased was taken to the hospital. PW-5 S.A.Azeem, ASI recorded the dying declaration of the deceased and thereafter registered the case. Thereafter, again recorded the statement of deceased under Section

161 Cr.P.C. The ASI has given the explanation that on the very same day i.e. 29.09.2009, water started entering from nearby Thungabhadra river in the Town of Kurnool and the whole city was submerged in the water. Therefore, another FIR under the same number was registered on 07.10.2009 on receipt of information from the duty Doctor after recording the statement of PW-1. The learned Public Prosecutor clarified that 2nd FIR was not registered, however, the Section of law was altered from 307 to 302 of IPC on receipt of death intimation of the deceased. Learned prosecutor submitted that in the very first statement, the deceased stated that the appellant had poured kerosene and lit fire. Had the appellant was innocent, a person with 90% burns, could not have given a false statement, especially against her husband, who alleged to have tried to save her. Thus, the trial Court, after considering the case of prosecution and the defence, has found the appellant guilty and accordingly convicted him for the offence punishable under Section 302 of IPC.

19. Heard learned counsel for the appellant and the learned Public Prosecutor appearing for the State.

20. It is on record that 1st FIR was registered on 29.09.2009 by PW-5/ S.A.Azeem, Assistant Sub-Inspector of Police, I-Town Police Station, Kurnool for the offence punishable under Section 307 of IPC after recording the statement of the deceased. It is also on record that the 2nd FIR for the offence punishable under Section 302 of IPC was registered by PW-6/ Y.Narasimha Reddy, another Assistant Sub-Inspector of Police of the same Police Station, basing on the statement of PW-1 that the deceased had succumbed to injuries on 07.10.2009.

21. In his cross-examination, PW-7/T.Sreenivasulu, Inspector of Police, Kurnool, deposed that on 07.10.2009 itself, he visited the scene of offence. He did not seize any material objects at the scene of offence and no panchanama was held. He secured the presence of PW-3 and Veeresh Babu from their homes and examined them. He did not issue any summons to PW-3 and Veeresh Babu. He admitted that the appellant was arrested on 26.11.2009 at Ajantha Hotel, Kurnool. He stated that initially, a case in Crime No.198 of 2009 was registered for the offence punishable under Section 307 of IPC. For altered Section of Law also another FIR but with the same FIR No.198 of 2009 was registered.

22. PW-8, Dr.R.Shankar, Assistant Professor, Department of Forensic Medicine, Kurnool Medical College has conducted autopsy over the dead body at 3.10 p.m. on 07.10.2009 and found the following ante-mortem mixed degree burns over the body of the deceased :

1. Mixed degree burns noted over the right ear, outer parts of the face.
2. Mixed degree burns over the front and back sides of the neck, chest and abdomen, waist and buttocks noted.
3. Mixed degree burns over the front and back sides of both arms and fore arms and palms noted with patchy burns.
4. Mixed degree burns over the front and back sides of both thighs and legs and feet with patch burns and external genitalia with patchy burns.
5. Deep burns with charring present over the back of the neck, trunk and lower limbs.
6. Mixed degree burns with slugging of tissues with marginal redness and crest formation and softening and reddish offensive thick fluid oozing from the burns areas of 90% total body surface area.

The cause of death is mentioned as septicemia resulting from burns.

23. The dying declaration was recorded by PW-5 on 29.09.2009 at about 2.30 p.m., wherein, the deceased stated that the appellant had returned home in a heavily drunken condition and demanded money for drinking purpose. As she expressed that she had no money to give him, then the appellant threatened to kill her and by saying so, entered into the house, came with a kerosene tin and poured kerosene on her and lit fire. Immediately, she came out of the house, while in burning flames over her body. Then, her father, brother and Srinivasulu covered the body with a blanket and put-off the flames. Her father PW-2 carried her in an auto rickshaw to the Government Hospital, Kurnool and admitted there.

24. PW-5 had obtained the endorsement from the treating Doctor to the effect that the patient was coherent and in fit state of mind throughout giving statement. Ex.P-4 is the statement recorded by PW-5 and Ex.P-5 is the endorsement of the Doctor.

25. Though there are variations in the statements of PWs.1, 2 and 3, however, not much material for defence for the reason that PW-5 had recorded the statements of the deceased twice – first before registering the FIR and the second statement thereafter.

26. From the facts narrated in evidence as above, it is established that the appellant had intentionally poured kerosene on his wife G.Chinnu Bai, the deceased and set her ablaze and killed her for the simple reason that she did not give money for drinking purpose. PW-3 saw the accused running away from the house while the deceased was being shifted to Government General Hospital, Kurnool by PWs.1 and 2 in an auto rickshaw. The appellant did not take any steps to save the deceased by taking her to the hospital or

at least followed his wife to the hospital while PWs.1 and 2 were shifting her to the hospital. As the deceased did not meet the demand of the appellant to give money for his drinking purpose, he determined to do away with the life of his wife and set her ablaze. Had the accused had no intention to kill his wife or as suggested to PWs.2 and 3 that due to ill-health the deceased herself set her ablaze, he would have at least tried to put-off the flames and tried to save the life of the deceased. If the appellant had no intention to kill his wife, he need not run away from the house. However, to this affect, there is no explanation of the accused.

27. The medical evidence of PW-8 supported by Ex.P-10 (post-mortem report) corroborates the evidence of PWs.1 and 2, and establishes that the appellant had intentionally poured kerosene oil on his wife G.Chinnu Bai, set her ablaze and killed her. In the statement under Section 313 Cr.P.C., the appellant being husband and inmate of the house where his wife suffered burn injuries, has not given any plausible explanation with regard to the circumstances resulting in the death of his wife.

28. Coming to the issue raised by the counsel for appellant that the deceased was with 90% burns therefore, it was not possible to be in coherent and fit condition to give a statement, the Hon'ble Supreme Court, in the case of **Latoor Singh v. State of NCT of Delhi**¹, held as under :

“20. In burn cases, usually it is argued that the victim was possibly not capable of making the dying declaration because of burns or due to sedation given by the doctors, which is, in a way, the preliminary or first treatment to relieve and soothe the pain and anxiety. However, expert medical opinion does allay such suggestions, for they reject the impact of burn wounds or drugs used to treat

¹ (2015) 219 DLT 177 (DB)

burns, affect the higher functions of brain. They accept the proposition that *compos mentis* is neither affected by burns nor by treatment (refer Gupta BD, Jani CB. Status of *compos mentis* in relation to dying declaration in burn patients. Journal of Indian Academy of Forensic Medicine (JIAFM) 2004; 25(4): 133 to 136). Thus such arguments should not be accepted, without reference to the factual matrix and the deposition of the witness recalling and asserting that he had recorded the dying declaration.

21. In cases of 100 per cent burn injuries, a person can make a dying declaration or put a thumb impression. There are several decisions where the Supreme Court has relied on such dying declarations (See *Mafabhai Nagarbhai RAWal v. State of Gujarat*, AIR 1992 SC 2186; *Rambhai v. State of Chattisgarh*, (2002) 8 SCC 83; *Laxman v. State of Maharashtra*, AIR 2002 SC 2973; *Koli Chunilal Savji v. State of Gujarat*, AIR 1999 SC 3695; *Smt.Laxmi v. Om Prakash*, AIR 2001 SC 2383; *Govindappa v. State of Karnataka*, (2010) 6 SCC 533 and *The State of Punjab v. Gian Kaur*, AIR 1998 SC 2809)."
29. In addition to above, in '**Critical Appraisal of Dying Declaration**' by Dr.R.K.Gorea, Professor and Head, Forensic Medicine, GMC, Patiala and Dr.O.P.Aggarwal, Professor, Forensic Medicine, M.M.Medical College, Mullana, Ambala, printed in JIAFM 2004; 26(1). ISSN 0971-0973, stated as under :

"In burn cases usually it is debated the person is not capable of making dying declaration due to the effect of burns or due to the narcotic sedation given to treat burns. But Gupta and Jani have opined that neither effect due to burns nor the drugs used to treat burns victims conventionally affects the higher functions. Therefore they safely concluded that *compos mentis* is not affected either by burns or by its treatment."

30. On the issue of burn management, the opinion of Dr.Jayakumar Konuri, Medical Superintendent, Dr.G.V.K.Memorial Nellore Hospital, Red Cross Road, Nellore, which is provided by the learned Public Prosecutor appearing for the State, whereby, it is stated that ;

“Pain relief or analgesia is usually given using opioid analgesics like morphine, pethidine or tramadol. Opiates may cause sedation in painless conditions but in cases of severe pain, as is associated with burns, opiates act as only analgesic but not as sedatives. Drugs which can induce sleep even when there is severe pain come under the group of General anesthetics like Pentothal Sodium, Nitrous oxide etc. They are used in major surgeries but not in burns.”

31. In view of the oral and documentary evidence against the appellant including the medical evidence, we find no force in the argument of appellant and no illegality in the judgment passed by the trial Court in Sessions Case No.175 of 2010, whereby, the appellant was held guilty and convicted for the offence punishable under Section 302 of IPC. We hereby confirm the same.

32. Finding no merit in this appeal, same is accordingly dismissed. Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

U. DURGA PRASAD RAO, J

12th April, 2017

ajr