

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON' BLE SMT. KONGARA VIJAYALAKSHMI

CRIMINAL APPEAL No.133 of 2012

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

The accused in SC No.45 of 2011 on the file of the Principal Sessions Judge, West Godavari Division at Eluru, is the appellant herein. He was tried for the offences under Sections 498-A IPC and 302 of IPC, for harassment of his wife and also for causing death of his wife by pouring kerosene and setting her on fire. By its judgment dated 05.08.2011, the Sessions Judge found the accused guilty of the charges framed and sentenced him to undergo rigorous imprisonment for life and to pay fine of Rs.200/- for an offence punishable under Section 302 IPC, in default of payment of fine, to undergo rigorous imprisonment for one month and also sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs.200/- for an offence punishable under Section 498-A of IPC, in default of payment of fine, to undergo rigorous imprisonment for one month. Both the sentences were directed to run concurrently.

The case of the prosecution as seen from the evidence adduced by the prosecution is as under:

The deceased Matti Mangamma (hereinafter referred as 'deceased') was the wife of the accused. PWs.1 to 4 and 6 are the neighbours of the accused, residing at Raghavapuram village, while PW.9 is the mother of the deceased. The marriage of the deceased

with the accused took place about 14 years back prior to the incident and out of the wedlock, they blessed with two children. The accused and deceased were eking their livelihood by doing coolie work. The accused was in a habit of consuming liquor. Though PW.1 and others advised him not to do so, he did not mend his way.

On 19.02.2009 at about 4 p.m., when PWs.1 to 4 and 6 were at their houses, they heard cries from the house of the accused. Then rushed to the house of the accused and found flames over the body of the deceased. They put off such flames and then they telephoned for 108 Ambulance but did not get response. So they engaged an auto and took the deceased to the Government hospital. PW.9, who is the mother of the deceased, stated that at the time of marriage, she presented Rs.15000/- cash to the accused towards dowry in addition to Ac.1.00 of land and other lanchanams. After the marriage, the accused and deceased lived happily for two years. Thereafter, the accused developed a habit of taking alcohol and used to beat and abuse the deceased demanding her to sell the above land and get the sale proceeds. On account of such harassment, they used to get the deceased to their house, keeping her for one or two months and again send the deceased by giving cash and other provisions. In spite of the same, there was no change in the attitude of the accused. About two years back, at about 7.30 p.m. they received a telephone call, informing that the accused poured kerosene over the body of the

deceased and set her on fire and that she was taken to the hospital. Then they all rushed to the hospital.

The evidence on record further discloses that on 19.02.2009 at about 6.10 p.m. PW.14, the then Head Constable, Chintalapudi PS, received a requisition from the Government hospital, Chintalapudi, informing about the admission of Matti Mangamma in the hospital with burn injuries. Ex.P.13 is the hospital intimation. Immediately, thereafter he rushed to the hospital and recorded the statement of the deceased. Ex.P.14 is the said statement. After recording the said statement, he obtained the thumb impression of the deceased underneath the statement and also obtained endorsement of the doctor, as to the mental condition of the deceased. Basing on the said statement, he registered a case in Cr.No.27 of 2009 against the accused for the offences punishable under Sections 307 and 498-A of IPC at 7.00 p.m. and sent FIRs to all concerned. Ex.P.15 is the FIR. Thereafter, he took up investigation, examined and recorded the statements of the deceased, PW.1 and LW.2.

The evidence of PW.12, who is the then Junior Civil Judge, Chintalapudi, discloses that on 19.02.2009 at about 7.30 p.m., he received a requisition from the Government hospital, Chintalapudi, to record the dying declaration of Matti Mangamma. Ex.P.10 is the said requisition. He proceeded to the Government Hospital, Chintalapudi, and after satisfying himself about the mental condition of the deceased, recorded the dying declaration of the

deceased. He also took the endorsement of the doctor on the said dying declaration with regard to fitness of the deceased in giving the dying declaration. Ex.P.11 is the dying declaration recorded by PW.12.

In the dying declaration, the deceased categorically stated that she is a resident of Raghavapuram and wife of Venkateswara Rao (accused); that her husband came to her at 4 p.m. in drunken state of mind and asked her to give her coolie money; when she refused, he tried to beat her with a stick; when she pulled the said stick, the accused brought a kerosene tin, poured the kerosene on her, took a match box kept over the wall and set fire to her body. On hearing her cries, the neighbours gathered there, put off the flames and shifted her to the hospital.

On 20.02.2009, PW.14, along with PWs.5, 10 and LW.13 inspected the scene of offence, prepared a rough sketch of the scene of offence, which is Ex.P.16. Thereafter, he prepared a panchanama of scene of offence, which is marked as Ex.P.8 in the presence of the above mediators and also seized MO.1. He also got the scene of offence photographed through PW.5.

The evidence of PW.15, the then Assistant Sub Inspector, discloses that on 25.02.2009 at about 7.20 a.m. he received death intimation, regarding the death of Matti Mangamma, from Government Hospital, Vijayawada, which is Ex.P.17. On the basis of Ex.P.17, he altered the Section of law to 302 IPC and dispatched the altered FIRs to all concerned. Ex.P.18 is the altered FIR.

The evidence of PW.17, the then Inspector of Police, Chintalapudi PS, who took up further investigation, discloses that on 25.02.2009 at about 9 a.m. he received copy of express FIR in Cr.No.27 of 2009. Immediately, thereafter he proceeded to the scene of offence, situated in the house of the deceased, inspected the same in the presence of PW.10 and another. He also recorded the statements of PWs.3 and 6. Thereafter, he proceeded to the Government Hospital, Vijayawada, where he conducted inquest over the dead body of the deceased in the presence of PW.11 and others. On 03.03.2009, he received credible information regarding the whereabouts of the accused. Then himself and his staff proceeded to Raghavapuram village and arrested the accused at 7.00 a.m. near Raghavapuram bus stop. After completion of entire investigation and after receipt of the post-mortem certificate, he filed charge sheet before the Judicial Magistrate of I Class, Chintalapudi, which was taken on file as PRC No.12 of 2009. On appearance of the accused, copies of documents were furnished to him as required under Section 207 Cr.P.C. and then committed the case to the Court of Sessions, as one of the offence alleged against the accused is triable by the court of Sessions.

On committal, the accused appeared before the Court of Principal Sessions Judge, Eluru. The Principal Sessions Judge framed the charges under Sections 498-A and 302 of IPC against the accused, read over the contents and explained to him in Telugu in open court, for which the accused pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 17 and marked Exs.P.1 to P.18 and MO.1. PWs.1 to 4, 6 and 7 did not support the prosecution case and were treated hostile by the prosecution.

After closure of the prosecution side evidence, the accused was examined under Section 313 Cr.P.C., by explaining him the incriminating material found against him in the evidence of prosecution witnesses, for which he denied the same but did not choose to examine any witnesses on his behalf.

Relying upon the dying declarations recorded by PW.14 the then Head Constable, PW.12-the Judicial Magistrate of I Class, Chintalapudi and also the oral evidence of PWs.9 and 10, the trial court convicted the accused. Challenging the same, the present appeal came to be filed.

Mrs. A. Gayathri Reddy, learned counsel for the appellant would submit that the entire case rests on two dying declarations, which were recorded by PWs.14 and 12. The first dying declaration was recorded by PW.14, on the basis of which, FIR was registered. Learned counsel for the appellant, without disputing the procedure that was adopted in recording the dying declaration, would submit that the contents of the dying declaration, if taken into account, the ingredients therein would not constitute offence of murder. According to her, the accused brought a stick from the house, tried to beat the deceased and when he was unsuccessful in beating the deceased, poured kerosene on the body of the declarant, which

shows the intention of the accused was only to cause injuries to the deceased. She would further contend that the ingredients of Section 304-Part-II IPC would only attract to the facts in issue. She further submits that the medical evidence on record shows that the deceased died only due to lack of proper medical treatment, after five days of her admission into hospital. She further submits that since PWs.1 to 7 did not support the prosecution case, there is no cogent evidence to prove the alleged harassment by the accused and hence, the conviction of the appellant for the offence under Section 498-A of IPC is unsustainable.

On the other hand, learned Public Prosecutor would submit that merely because the deceased died after five days, there is no justification to disbelieve the two dying declarations given by the deceased, more so, when the declarations came to be recorded after being satisfied with the mental condition of the deceased. He further submits that there was no single suggestion to the doctor to show that the deceased died due to lack of proper medical treatment, for the injuries sustained by her. He would further contend that PW.9, the mother of the deceased, deposed about the harassment meted out to the deceased in the hands of the accused, which is sufficient to prove the charge under Section 498-A of IPC.

As seen from the record, the entire case rests on the evidence of PWs.8, 9, 12, 13 and 14 and the two dying declarations. The first dying declaration was recorded by PW.14,

the then Head Constable, Chintalapudi PS. According to him, on 19.02.2009 at 6.10 p.m. he received a requisition from the Government Hospital, Chintalapudi, pursuant to which, he rushed to the hospital and recorded the statement of the deceased, which is Ex.P.14. In the said statement, the deceased stated as under:

“I am a resident of Raghavapuram village, Chintalapudi Mandal. Myself, my husband and two sons are residing in harijanapeta colony house. About 14 years my marriage was performed with China Venkatesu 1st son of Matti Mutyalu. I got two male children. Myself and my husband are living by doing coolie work. My husband is a drunker and expensed the money for drinking everyday, which was derived from the coolie work. I am look after my family with my money derived from the coolie work. Everyday my husband disputed with me for my coolie money, if not he beat me. No change in his attitude even though my neighbours admonished him. Today i.e., on 19.2.2009, Thursday morning, I went coolie work. My husband did not attend coolie work and he is drinking from the morning at house. My sons went to school. I returned to house at 4.00 p.m. from coolie work. My husband is in intoxication mind and his disputed with me for my coolie amount, then I said that money to maintain family, then my husband got angry and brought stick from the house and tried to beat me, then I caught hold the stick and pulled from his hand and thrown it far away. Then my husband got more angry and brought 5 litres kerosene tin from the house near the hearth, and poured from it on my head and said, “I will see your end, why did not give money to me, and to give the amount to whose husband” in the meanwhile, he picked up match box from the top of the wall and lit the match stick with a view to kill me he thrown on me. Immediately, flames spread over my body and clothes due to fire the skin peeled out from face to thighs. I raised cries due to fear, their neighbours came and poured water on me and put off fire, and changed my dress, brought on a auto and admitted in Government hospital, Chintalapudi. My husband ran away after this incident. Police personal examined me and recorded my statement and read over to me and found correct. I can sign but at present both hands were burned, hence, I put my thumb impression.

LTI of Matti Mangamma

Patient was conscious coherent and in fit state of mind while giving the statement. Sd/- Dr. Shaik. Adam (Medical Officer) 19.2.2009, 8.00 P.M.”

A reading of the said statement would show that PW.14 took the endorsement of the doctor to show that the patient was conscious, coherent and in a fit state of mind while giving the statement. It further shows that on the date of incident, the deceased returned at 4.00 P.M. from the coolie work and the accused who was in intoxication, demanded the deceased for the money. When she refused to give the amount, the accused got angry, brought a stick and tried to beat her. The deceased caught hold of the stick, pulled it from the hand of the accused and threw it away. Then the deceased brought five litres of kerosene tin from the house, poured the same on the head saying that he will see her end, picked up a match box from the top of the wall, lit a match stick and threw it on her head. Immediately flames spread over on the body of the deceased, due to which the skin peeled out from the face to thighs. On hearing the cries of the deceased, the neighbours came and poured water on the deceased, put off the fire, changed her dress, brought an auto and admitted her in a Government hospital. The statement further discloses that the accused ran away after the incident. After explaining the contents of the statement, the thumb impression of the deceased was taken. Thereafter at about 7.30 p.m. PW.12 the Judicial Magistrate of I Class, Chintalapudi, on receipt of the requisition from the

Government Hospital, proceeded to the hospital and recorded the statement of the deceased (Ex.P.11), which is as under:

“I received the requisition from Government Hospital, Chintalapudi to record the dying declaration of Smt. Matti Mangamma, W/o Venkateswararao, resident of Raghavapuram village of Chintalapudi Mandal of West Godavari District at 7.30 p.m. on 19.02.2009.

I immediately proceeded to the government Hospital, Chintalapudi and reached the same at 7.45 p.m. on 19.02.2009, and commenced the recording of the dying declaration in the presence of Duty doctor Sri Shaik Adam, C.A.S

I put the following simple questions to know the state of mind of the declarant.

Q. What is your name? Ans.: Matti Mangamma.

Q. What is your Husband's Name? Ans.: Venkateswararao.

Q. what is your village? Ans.: Raghavapuram.

Q. Who brought you to the Hospital? Ans.: Neighbours brought me.

Q. Do you know, I am a Magistrate? Ans.: I know, after intimation.

From the answers given by the patient to the above questions, I am satisfied that, she is in conscious and is in a fit state of mind to make a statement voluntarily.

Q. what happened to you?

Ans.: Usually, I attend coolie work and returned home at 4.00 p.m. today, I came to house, my husband Venkateswararao, has drunk and came to house, he asked money which I brought money from coolie. I refused the same. Why didn't give money to me, and for to give it whom whose husband and brought stick. I pulled the stick from his hands. Not like this, I will pour kerosene and set fire by saying, and brought kerosene tin and poured on me, and picked up match box from the top of wall and set fire on my head. On hearing my cries neighbours came and poured water on me and brought to Hospital. My elder son age is 12 years. I married about 14 years back. I got two male children. Everyday he disputed with me and suspected me. The above

incident took place at my house, Paghavapuram village. Further what do you say? Ans.: Nothing, I studied up to 2nd class. I can sign at present I cannot.

LTI of Matti Mangamma

Patient was conscious, coherent and in fit state of mind while giving the statement. Sd/- Dr. Shaik. Adam (Medical Officer) 19.02.2009, 8.00 P.M.

After recording the above statement, the same was read over to the patient and she admitted the same to be true and correct.”

A reading of the said statement would show that the Magistrate, initially put preliminary questions to know the mental condition of the victim and on being satisfied with regard to the state of mind of the declarant, asked her as to what happened. Then she narrated the incident, which is in tune with what she has stated before PW. 14. Though there was slight variation with regard to the presence of children but a reading of the said statement shows that on the date of occurrence, the accused, who was in drunken condition, asked the deceased to give coolie amount and when she refused, the accused tried to beat her with a stick. When he was unsuccessful, brought kerosene, poured the same on the deceased, took a match box which was kept over the wall and set her on fire. The dying declaration also shows that on hearing the cries, the neighbours came and put off the flames. There is no inconsistency in both the declarations with regard to the manner in which the incident took place.

As stated earlier, counsel for the appellant did not dispute the manner in which the dying declarations were recorded. Her

main argument is to the effect that there was no intention on the part of the accused to cause the death of the deceased, since he initially tried to beat her with a stick and when the stick was pulled off from his hands, brought kerosene, poured the same over the deceased and set her on fire. We are unable to accept the argument of the learned counsel for the appellant for the reason that if really the intention of the accused was to cause injuries, he would have not set her on fire and then run away from the scene. On the other hand, the dying declaration discloses that when he was unsuccessful in beating the deceased, he brought kerosene, poured the same on the body of the deceased, saying that 'he will see her end', took a match box kept over the wall and set her to fire. If really, he had no intention to cause the death, he would have at least made some effort to save the life of the deceased by putting off the flames. The record shows that the neighbours rushed to the spot and extinguished the flames. This conduct of the appellant being unnatural, shows his intention to cause the death of the deceased.

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

¹ (2012) 7 SCC 569

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.”

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 each one of them in its correct perspective and satisfy itself that which one of them reflects the true state of affairs.”

In view of the consistency in the two dying declarations recorded by PW.14 and PW.12 which inspires confidence in the mind of the court and having regard to the decisions of the apex court referred to above, we are of the view that the court below was right in convicting the accused for the offence under Section 302 of IPC.

² AIR 2016 SC 3209

Learned counsel for the appellant would submit that the prosecution has not proved the alleged harassment by the accused towards the deceased. PW.8 is the mother of the deceased. She categorically stated in her evidence that at the time of marriage, she presented Rs.15000/- cash and Ac.1.00 of land to the accused towards dowry, in addition to sare samans. She further deposed that the accused used to harass the deceased by beating her and by abusing her for want of money for his pleasures. The evidence of PW.8 further shows that whenever they used to get the deceased to their house, they kept her with them for some days and sent her to the house of the accused, by giving cash and provisions. Though PW.8 was cross-examined at length, nothing useful was elicited to discredit her evidence. Similarly, the evidence of PW.9, who is the father of the deceased, corroborates the evidence of PW.8 in all aspects. Though learned counsel for the appellant tried to contend that the evidence of PW.9 cannot be believed, but nothing has been suggested in the cross-examination, to discredit his evidence as well. Hence, the conviction and sentence imposed by the court below, against the accused for the offence under Section 498-A of IPC, warrants no interference.

For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/accused beyond reasonable doubt and the trial Court was right in convicting and sentencing the appellant as stated supra.

In the result the appeal fails and it is accordingly dismissed, confirming the conviction and sentence passed in S.C.No.45 of 2011 on the file of the Principal Sessions Judge, Eluru.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

C. PRAVEEN KUMAR, J

KONGARA VIJAYALAKSHMI, J

Date: 07.11.2017
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HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
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Date: 07.11.2017

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