

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

CRIMINAL APPEAL No.140 of 2012

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

The sole accused in Sessions Case No.270 of 2010 on the file of the VIII Additional District and Sessions Judge, (Fast Track Court), Chittoor, filed this Criminal Appeal against judgment, dated 21.9.2011, wherein the accused was convicted for an offence punishable under Section-302 of the Indian Penal Code, for causing the death of his wife-Shaik Khasembee and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/-, in default to suffer rigorous imprisonment for three months.

2. The case of the prosecution, in brief, is as follows:

The deceased is the second wife of the accused. Their marriage was performed about 14 years prior to the date of the incident and out of wed-lock, they were blessed with two sons. It is said that since one year from the date of the marriage, the accused started suspecting the character of the deceased under the guise of attributing illicit intimacy with others. The deceased used to harass her physically and mentally. Keeping the future of their children, the deceased used to bear the harassment of

the accused. At times, P.W-3 and another by name Shaik Khadar Basha rescued the deceased from the acts of harassment of the accused prior to the date of incident. While so, on 23.3.2010 at about 6 pm., the accused with an intention to kill the deceased, kept kerosene can in their house and was waiting for an opportunity. On 24.3.2010, the accused in furtherance of his evil intention, reached the house in a drunken state, picked up a quarrel with the deceased, beat her and saying that she should die, poured kerosene on her and lit her on fire with a match stick. Thereafter, the accused ran away from the scene of offence by bolting the door. On hearing the cries of the deceased, P.W-3 and two others rushed to the scene of offence, opened the door, put off the flames and shifted the deceased to the Government Hospital, Piler. On 08.4.2010, the deceased succumbed to the injuries.

3. On 24.3.2010, P.W-13-the Head Constable recorded the statement of the injured in the Government Hospital, Piler. Based on the same, he registered a case in Crime No.16 of 2010 for the offence under Section-498-A IPC and investigated into the case. During the course of investigation, P.W-14-the Sub-Inspector of Police, Kallur Police Station examined and recorded the statements of the deceased and P.Ws.1 to 3 and another. He also visited the scene of offence, prepared a rough sketch of the

scene of offence in the presence of P.Ws.2 and 3, panch witnesses, and seized the kerosene can under the cover of police proceedings.

4. During the course of investigation, on 24.3.2010 at about 1.10 pm., P.W-11 recorded the Dying declaration of the deceased. On receipt of death intimation of the injured, P.W-14 altered the Section of law from 498-A IPC to 302 I.P.C. P.W-15-the Inspector of Police, Pakala Circle, examined and recorded the statements of the witnesses, visited S.V. Medical College, Tirupati, conducted inquest over the dead body of the deceased in the presence of P.W-10 and two others under the cover of inquest report duly signed by the said witnesses and sent the body for post-mortem examination. P.W-12-the Assistant Professor, S.V. Medical College, Tirupati, conducted autopsy over the dead body of the deceased and issued Ex.P-6-the Post-mortem examination report. According to him, the deceased died due to hypovolaemic shock as a result of burns. Further, on 26.3.2010, P.W-14 arrested the accused in the presence of two persons and recorded his confessional statement, duly signed by the said persons, and sent the accused for remand.

5. After the completion of the investigation and after collecting all the relevant documents, P.W-14 filed the charge

sheet which was taken on file as P.R.C.No.4 of 2010 on the file of the Judicial Magistrate of First Class, Pakala.

6. On appearance of the appellant, copies of the documents were furnished to him. Since the offence under Section-302 I.P.C. is triable by a Court of Sessions, the case was committed to the Court of Sessions, which came to be numbered as Sessions Case No.270 of 2010 on the file of the VIII Additional District and Sessions Judge, (Fast Track Court), Chittoor.

7. Basing on the material on record a charge under Section-302 IPC was framed, read over and explained to the accused in Telugu, to which he pleaded not guilty and claimed to be tried.

8. As the plea of the accused was one of denial, he was made to stand trial, during which, the prosecution examined P.Ws.1 to 14 and got marked Exs.P-1 to P-15 and M.O.1. On behalf of the accused, no oral evidence was adduced but Exs.D-1 and D-2 were marked.

9. After the completion of the prosecution evidence, the incriminating material appearing against the accused through the evidence of the prosecution witnesses was put to him during his examination under Section-313 Cr.P.C., to which he denied.

On appreciation of the oral and documentary evidence, the trial Court has convicted and sentenced the appellant as stated supra.

10. At the hearing, Mr. B.S.Venkat Ramesh, learned counsel for the appellant/accused, mainly urged that the three dying declarations of the deceased are inconsistent with each other and that no reliance can be placed on the Dying declaration recorded by the Magistrate, as the same was not endorsed by the duty doctor. According to him, the first Dying declaration recorded by the Station House Officer, Piler Police Station contains various facts which are not found in the second and third dying declarations. In view of the discrepancies, the learned counsel would contend that all the three dying declarations cannot be taken into consideration for holding the accused guilty of the offence punishable under Section 302 IPC.

11. On the other hand, learned Public Prosecutor for the State of Andhra Pradesh would submit that there is absolutely no variation in the three dying declarations of the deceased with regard to the manner in which the incident took place. Hence, the trial Court rightly believed the dying declarations of the deceased and convicted the accused.

12. We have carefully considered the submissions of the learned counsel for both the parties with reference to the record.

13. In order to appreciate the same, it will be useful to refer to the first dying declaration recorded by the Station House Officer, Piler Police Station on 24.3.2010, in which the deceased stated as under: -

“My address is as stated above and I am eking out my livelihood by coolie work. My marriage was performed 14 years back. I have got two sons, my husband addicted to drinking and not taking any interest towards family. I am doing coolie work and used to feed my children, whenever I insisted my husband to take interest towards family, he used to beat me and inflict injuries to me and thrown me out of house. I hear all insults and living with him for sake of my children. Recently, he bat me on head and inflicted bleeding injury even then I kept quiet. Today. i.e., on 24.10.2010 night at 8 pm., he came fully drunken state, he beat me and thrown me on floor saying you are not required for him and also assaulted, picked up kerosene tin, kept by my side and lit the same and poured on me and thrown, lit match stick on me though I am shouting my body was burning in flames saying die and put bolted the door and went away. Subsequently, on hearing my shouts, neighbours came there, opened the bolt, poured water and put of the fire and brought me in 108 Ambulance and admitted me in Pileru Government Hospital. Later, you Pileru Police came and enquired my husband with intent to kill me voluntarily poured kerosene, lit fire and went away. My whole body was burnt to ashes so I informed all things happened.”

14. The second dying declaration was recorded by P.W-11. In his evidence, P.W-11 deposed that on 25.3.2010, he received an intimation through hospital staff to record the dying declaration of the injured. He immediately rushed to SVRRGG Hospital, Tirupati, identified the injured with the help of the duty doctor and after being satisfied with regard to the state of mind of the injured, he obtained the endorsement of the duty doctor with regard to mental state of the injured and then recorded the dying declaration of the injured, which is marked as Ex.P-5. It will be useful to extract the said dying declaration, which reads as under:

“My husband has doubt against me since 2 or 3 years suspecting my fidelity, today i.e., on 24.3.2010 my husband came in intoxicating mood and quarrelled with me while I am sleeping, my husband poured kerosene on me and lit fire and went away. At that time, my two sons are in my house. My neighbour lady brought me and admitted me to the hospital. Due to doubt on me, quarrelled with me, while I am sleeping poured kerosene on me and lit fire.”

15. Learned counsel for the appellant/accused mainly contended the procedural illegality being followed by the Magistrate while recording the dying declaration of the deceased.

16. The second dying declaration which was recorded by the Magistrate clearly discloses that only after being satisfied with regard to the state of mind of the injured, the Magistrate proceeded to record the dying declaration of the injured. Therefore, the argument of the learned counsel cannot be sustained.

17. Though the Magistrate in his evidence deposed that he has obtained the endorsement of the duty doctor, the typed copy which is placed before this Court does not indicate the endorsement of the duty doctor. However, a perusal of the original dying declaration contains the endorsement of the duty doctor on it. Therefore, the objection raised with regard to the endorsement of the doctor cannot be accepted.

18. Though there is some variation with regard to the presence of the two children at the time of the incident, and also about the quarrel which took place prior to the incident which came to be referred to in the dying declaration recorded by the ASI, there is no inconsistency with regard to the manner in which the deceased was set on fire by the accused. In all the three dying declarations, the deceased stated that the accused came to the house in a drunken condition, had a quarrel with her and while she was sleeping, poured kerosene on her and set

her on fire. The reason for this appears to be that the accused was suspecting the fidelity of his wife. In view of the consistency in the three dying declarations of the deceased with regard to the manner in which the incident took place and in the absence of any procedural irregularity, we are of the view that the trial Court was justified in holding the accused guilty of the charge levelled against him.

19. For the foregoing reasons, the Criminal Appeal is dismissed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE KONGARA VIJAYA LAKSHMI

08th November, 2017

dr

