

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.26 of 2011

14.06.2017

Between:

Allampalli Nagesh @ Budda Nagesh

..Appellant

And

The State of Telangana,
represented by its Public Prosecutor, Hyderabad.

..Respondent

Counsel for the appellant: Mrs.A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (TS)

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The appellant, who is found guilty of the barbarous act of burning his own wife alive and sentenced, *inter alia*, to life imprisonment, filed this appeal feeling aggrieved by his conviction and sentencing.

2. The case of the prosecution, in brief, is that the appellant and the deceased were married for one year prior to the gory event; that they were living in a small room of the size of 10 feet into 6 feet with a zinc sheet cover roof in an educational premises called Brilliant Grammar High School, Narayanaguda, Hyderabad. On the fateful night of 17.08.2007, P.Ws.1 to 3 found the deceased engulfed in furious flames. Immediately, thereafter, P.W.1, who is no other than the brother of the deceased, gave Ex.P-1 report to the Police, wherein he stated as under:

“My name is Batta Babu I am a native of Azimpet (V), Mothkur (M), Nalgonda Dist and I am an unmarried. We all together five children to our parents, in which I am the fourth child I have one elder brother Mr.Somaiah and two elder sisters Mrs.Anjamma, Mrs.Gangamma and one younger sister Mrs.Krishnaveni. My father Mr.Chandraiah age about 60 yrs is working as watchman and my mother was expired during the year 1996. We performed the marriages of my two elder sisters and they are eking their livelihood in Hyderabad by attending the labour work at Chintal. We all the family members came to Hyderabad in search of our livelihood, where my brother Mr.Somaiah is working as rickshaw puller at Balanagar of Hyd and my father is also working as watchman at Balanagar. Previously I worked as lorry cleaner and few years back I along with my father and younger sister Krishnaveni came to Narayanaguda to visit our sister-in-law Mrs.Chandramma who is working as domestic servant at the residence of Mrs.Bhudevamma. Where Mrs.Bhudevamma asked us to stay in her house to attend her domestic works, for which we agreed and stayed with her and my younger sister Krishnaveni is worked as domestic servant in the same house as well at the house of Mr.Narender Reddy who is the

grand son of Mrs.Bhudevamma, myself and my father used to attend the labour work. We worked there for about one year, thereafter we all left to our native place. While so, one Mrs.Budda Laxmamma of Koheda who known to Mr.Narender Reddy approached us with the marriage alliance for her son Nagesh with my younger sister Krishnaveni by informing that her son Nagesh is working as employee at Sanghi Temple. Further, on verifying the above alliance we performed the marriage of my younger sister Krishnaveni with Nagesh of Koheda during the year 2006. During the marriage my father has given an amount of Rs.24,000/- as dowry and also promised to give 10 guntas of agriculture land to my brother-in-law Nagesh. After the marriage of my younger sister she along with her husband came to Hyderabad and my brother-in-law Nagesh joined as attender at Brilliant Grammar High School, Narayanaguda Hyd which has been running in the premises of Mr.Narender Reddy while my sister Krishnaveni is working as domestic servant at the residence of Mr.Narender Reddy. They were provided with a small servant room by Mr.Narender Reddy at the said school premises, where our relative Mr.Yellaiah is working as watchman for the said school while his wife Mrs.Yellamma is also working as attender and they are also residing in the watchman quarter along with their son Giribabu in the school premises. I am eking my livelihood by running auto in Hyderabad and I am also staying with my younger sister Krishnaveni. I used to take meal in my sister's house and used to sleep in front of the quarter of Mr.Yellaiah. Further my brother-in-law Nagesh used to harass my sister to bring the dowry property which has been promised by my father during her marriage. On 16.08.07 at about 9.30 p.m., while I was cleaning my cloths at the tap situated at a little distance to the room of my younger sister, my brother-in-law Nagesh came to his house and picked up quarrel with my sister Krishnaveni on a petty matter. Thereafter my brother-in-law started beating my sister, by seeing the same I intervened and asked my brother-in-law as to why he is beating my sister. For which he slapped me also, then I also slapped him upon which he went to Mr.Narender Reddy and complained the same. As such Mr.Narender Reddy sent his driver Raju to our room, who informed us that Mr.Narender Reddy asked us to keep quite without quarrelling and he will pacify the matter on the next day. Mean while my brother-in-law again picked up

quarrel with me and my relatives Mr.Yellaiah and his wife, thereafter he left the premises with his clothing bag. While leaving the premises at about 10.30 pm my brother-in-law Nagesh threatened us by saying that 'I will come back and see your end' and left the premises by jumping over the school gate since it was locked. Again at about 11 pm my brother-in-law Nagesh returned to the said premises by jumping over the school gate and insisted my sister Krishnaveni to come to their room since she was sleeping in the room of our relatives Mr. & Mrs.Yellaiah. Due to fear my sister did not accompanied with him, then my brother-in-law abused her in filthy language and forcibly took my sister to their residential room. Thereafter we all went to bed at our respective places in the same premises, at about 2 am in the night I woke from the sleep since our relative Mr.Yellaiah, his wife and son came to me and informed that the power went off and they found some smoke and smell coming from the room of my sister. Then, I along with my said relatives rushed to the room of my sister, where we noticed the flames came out from the room, by seeing the same we immediately extinguish the fire by pouring the water on the flames and found the dead body of my sister Krishnaveni which was totally burnt in the said flames inside the room. On seeing us my brother-in-law Nagesh who conceal himself in the dark tried to escape from the spot, then we caught him and handed over him to Police Narayanaguda at about 4.15 am on 17.08.07 with a request to take necessary action against him since he murdered my sister and burn her in her room by pouring kerosene."

An F.I.R. was registered based on Ex.P-1 report and the process of investigation was set into motion by the Police on receiving Ex.P-1 report. P.W.11 investigated the case, during which, he conducted panchanama of the scene of offence and prepared the scene of offence-cum-seizure panchanama in the presence of L.W.6 – D.Narsimhulu and P.W.5, got the scene of offence photographed by L.W.14 – Suresh and made a request for holding autopsy over the dead body at the scene of offence itself as the state of the dead body deteriorated to such extent due to the intensity

of the burns that limbs got amputated, muscles got hardened, abdomen burst open and intestines protruded. Accordingly, P.W.10 – the Professor of Forensic Science Department, Osmania Medical College, Hyderabad, conducted autopsy at the scene of offence itself and gave Ex.P-8 post mortem examination report. P.W.11 conducted seizure panchanama for Mos.1 to 4 and prepared Ex.P-6 seizure report. On completion of the investigation, P.W.11 filed the charge sheet. As the plea of the appellant was one of denial, he stood trial, during which, the prosecution examined P.Ws.1 to 11, got marked Exs.P-1 to P-9 and produced M.Os.1 to 4. On behalf of the appellant, D.Ws.1 and 2 were examined and Ex.D-1 – certified copy of deposition in C.C.No.1492 of 2004, was marked. On consideration of the evidence on record, the Court below has disposed of the sessions case in the manner as indicated hereinbefore.

3. We have heard Mrs.A.Gayathri Reddy, learned counsel for the appellant and the learned Public Prosecutor for the State of Telangana.

4. This is a case based on circumstantial evidence. However, the evidence of P.Ws.1 to 4 reveals that they were the witnesses to both before and after the occurrence. Their evidence would clearly reveal that the death has taken place in a small shed in the presence of the appellant. P.W.1, not only in Ex.P-1 report but also in his evidence given before the Court, narrated in detail as to the events leading to the occurrence. It is clear from his evidence that the appellant used to quarrel with the deceased in a drunken condition; that even prior to the tragic event at about 9.30 p.m. on 17.08.2007, a quarrel took place between the couple – the appellant and the deceased, during which, the appellant beat the deceased warranting interference of this witness – P.W.1. On the

intervention of P.W.1, the appellant allegedly pushed him aside and fled away from the place by jumping over the gate in the presence of P.Ws.2 and 3, who were the watchman and his wife. On being informed by the appellant, the owner of the property sent his driver – P.W.4, who advised them not to quarrel and that the dispute would be settled. P.W.1 further deposed that after the driver went away, at about 11.00 p.m., the appellant returned home by jumping over the gate; that at that time, the deceased and P.W.3 were sleeping inside the room of P.W.2, while P.Ws.1 and 2 were sleeping outside that room; that on arrival, the appellant demanded P.W.1 to send the deceased with him and when P.W.1 did not meet his demand, the appellant forcibly dragged the deceased into his room; that P.W.1 slept while hoping that the couple would settle the dispute amicably; that at about 1.30 and 2.00 a.m., when the son of P.W.2 woke up for attending nature call, P.W.2 also woke up and he also woke up P.W.1 and informed him that there was smoke coming from the room, in which the deceased and the accused were sleeping and that thereupon, P.Ws.1 to 3 went to the room, noticed flames coming out of the room and also saw the deceased burning in flames inside the room. P.W.1 also deposed that when the appellant, who was at the scene of offence, tried to flee away, all the three witnesses caught hold of him, kept him in a room in the school premises and locked the room; that he observed M.O.1 – a pair of plastic chappals belonging to the deceased and M.O.2 – empty plastic kerosene tin. P.W.1 further deposed that himself and P.Ws.2 and 3 have put out flames by pouring water over the deceased, but by that time itself, the deceased died.

5. Nothing material except various suggestions suggesting that his testimony was false, could be elicited from the evidence of P.W.1 to

discredit his testimony. One of the suggestions put to P.W.1 was that following the quarrel between P.W.1, the deceased on the one hand and the appellant on the other hand, the latter fled away and never returned home during that night as he stayed away from the premises. A suggestion was also put that P.W.1's statement that the appellant was kept in a school room was not correct and a further suggestion was made to the effect that the appellant returned home only on the next day of the incident and that he was apprehended by the Police thereafter. All these suggestions were denied by P.W.1

6. P.W.2, the watchman of the property, who was living adjacent to the room, in which the appellant and the deceased were living, lent complete corroboration to the evidence of P.W.1. Except putting a suggestion to P.W.2 that no quarrel took place on the night of the occurrence and that the deceased and the appellant did not sleep together in their room after the former being forcibly taken away by the latter, nothing could be elicited from the evidence of P.W.2 to discredit his testimony. Interestingly, no suggestion was put to P.W.2 that the appellant has not returned to the premises at 11.00 p.m. and that he was away from the premises during the occurrence.

7. P.W.3, who is the wife of P.W.2, the watchman, also fully supported the version of P.W.1. P.W.4, the driver, testified that he was deputed by his owner Narender Reddy to pacify P.W.1 and the deceased on the complaint given by the appellant by taking him to the school and that accordingly, he took the appellant to the school and tried to settle the dispute.

8. Through the above discussed evidence, the prosecution was able to succeed in proving that not only that a serious quarrel took place prior to the death of the deceased, but also that the appellant was very much present when the death occurred. The prosecution also succeeded in proving that when the appellant was trying to flee away from the scene of offence, P.Ws.1 to 4 prevented him from fleeing and kept him in a room in the school premises and was handed over to the Police after registration of the case. M.O.2 – empty plastic kerosene tin seized under Ex.P-6 seizure report, clearly shows that kerosene was used for burning the deceased. The medical evidence in the form of Ex.P-8 - post mortem examination report and the deposition of P.W.10, the Doctor, proved beyond any reasonable doubt that death was not only homicidal but also burns were caused by pouring the substance like kerosene. The manner, in which the body was mutilated, as described in the post mortem examination report and also the evidence of P.W.10, the Doctor, would show the intensity of the burns suffered by the deceased.

9. The feeble attempt of the appellant in setting alibi was not successful. It was suggested to P.W.1 that after the appellant left the premises, he never returned during the night of the occurrence and that he stayed away from the premises, which was denied by the said witness. The evidence of P.Ws.2 and 3, who categorically supported the version of P.W.1 that the appellant returned home by jumping over the gate and forcibly took the deceased to his room, completely belies the version of the appellant that he was away from the premises. Interestingly, the suggestion that the appellant being away from the premises was not even repeated to P.Ws.2 and 3. During Section 313 Cr.P.C. examination, the appellant answered question No.5 by saying that he was in his village and

he came to know about the death of the deceased through phone. As reflected in the cross-examination of P.W.1, it was never suggested that the appellant was in his village at the time of occurrence. P.Ws.2 to 4, being the independent witnesses, they have no axe to grind against the appellant. All these persons are the last seen witnesses proving the presence of the appellant at the scene of offence at the time of occurrence. The appellant failed to discharge his burden under Section 106 of the Indian Evidence Act, 1872, as the manner of the deceased suffering burns leading to her death was exclusively in his knowledge. In the light of the aforementioned discussion, we have no hesitation to hold that the prosecution was able to prove the guilt of the appellant beyond all reasonable doubts. The appellant committed a heinous act of causing the death of his wife, while she was obviously sleeping with all innocence without suspecting his mal-intention of putting an end to her life during her sleep. Therefore, the appellant was rightly convicted for the offence punishable under Section 302 I.P.C. and sentenced to suffer life imprisonment.

10. In the result, the Criminal Appeal is dismissed. The conviction and sentence recorded in judgment, dated 02.11.2010, in Sessions Case No.442 of 2009, on the file of the Metropolitan Sessions Judge, Hyderabad, are confirmed.

A perusal of the record shows that by order, dated 02.01.2017, this Court has granted bail to the appellant as he served more than five years of the sentence post conviction, following the order of this Court in *Batchu Ranga Rao v. State of A.P.*¹ Therefore, the appellant, who is

¹ 2016 (3) ALT (Crl.) 505 (DB)(AP)

present in the Court at the hearing, shall surrender himself to the Superintendent, Central Prison, Cherlapally, Hyderabad, on or before 5.00 p.m. on 19.06.2017.

C.V.NAGARJUNA REDDY, J

J.UMA DEVI, J

14th June, 2017

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