

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE P. KESHA RAO

CRIMINAL APPEAL No.720 of 2011

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

1) The sole accused in S.C.No.34 of 2011 on the file of the II Additional District and Sessions Judge (FTC), Sangareddy is the appellant herein. Vide judgment, dated 08.06.2011, the learned Sessions Judge while acquitting the accused under Section 498-A IPC, convicted him under Section 302 IPC and sentenced him to undergo life imprisonment and also sentenced him to pay a fine of Rs.200/- . Assailing the said judgment, the present Criminal Appeal is filed by the accused.

2) The facts as culled out from the evidence adduced by the prosecution are as under:

3) The accused is the husband of the deceased. PW.2 is the wife of PW.1. The accused is the elder brother of PW.1 and the deceased is his sister-in-law. PWs.3 and 4 are also related to the deceased. The accused and the deceased had no issues and were living together in a house at Asthabai, Sangareddy. Both of them lived happily for sometime after marriage. Thereafter, the accused got addicted to liquor and used to harass the deceased for money to purchase alcohol. On the date of the incident, the deceased left to Jarasangam village to attend the funeral of their relative. It is the case of the prosecution that after the funeral, PW.1 and others returned to their respective houses and after having bath

and dinner, slept. At about 9.00 p.m. on hearing the cries of the deceased they came out of the houses and found the deceased in flames and immediately thereafter the injured fell down. PW.1 and others covered the body, put off the flames, called the ambulance and shifted the deceased to Government hospital, Sangareddy. It is stated that while undergoing treatment, the deceased succumbed to burn injuries. On 21.10.2010, PW.12, the Inspector of Police, on receipt of intimation from Government hospital, Sangareddy, proceeded to the hospital and recorded the statement of the deceased in the presence of PW.11. He read over the contents of the statement to the patient in Telugu and obtained her left thumb impression. Ex.P8 is the statement of the injured. Basing on Ex.P8, he registered a case for the offences punishable under Sections 498-A and 307 IPC and thereafter, he made a requisition to the Magistrate, for recording the dying declaration of the injured.

4) On 21.10.2010, PW.14, who was working as Special Judicial First Class Magistrate, Sangareddy, proceeded to the hospital at 11.00 p.m. and recorded the dying declaration of the injured in the female burns ward. Ex.P6 is the requisition and Ex.P12 is the dying declaration of the deceased.

5) On 22.10.2010, at about 3.15 hours, PW.12 received the death intimation of the deceased and on receipt of the same proceeded to the hospital and found the deceased dead, as such, he altered the Section of law from Sections 498-A and 307 IPC to

498-A and 302 IPC. Ex.P11 is the altered F.I.R and Exs.P3 to P5 are the Scene of offence panchanama, Rough sketch and inquest panchanama respectively. Subsequently, the body of the deceased was sent to postmortem examination.

6) PW.6, the Medical Officer, conducted autopsy over the dead body and issued Ex.P1. He noticed about 92 to 98% burns on the body of the deceased. According to him, the cause of death was due to Hypovolaemic shock due to burns.

7) After completing the investigation, PW.13 arrested the accused and produced before the Magistrate. PW.13 filed the charge sheet, which was taken on file as P.R.C.No.01 of 2011 on the file of the Addl. Judicial Magistrate of First Class, Sangareddy, which on committal came to be numbered as S.C.No.34 of 2011.

8) After complying with Section 207 Cr.P.C., charges were framed, read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

9) In support of his case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P12 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 adduced by the prosecution, to which he denied. No oral or documentary evidence was adduced on behalf by the accused.

10) On appreciation of the entire evidence on record, more particularly, the dying declaration recorded by the Magistrate, the learned Sessions Judge convicted the accused and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

11) Though this matter was entrusted to Miss. G. Niveditha, as Legal Aid counsel, there is no representation on her behalf on 04.10.2017, as such, the matter was directed to be listed today. Even today, there is no representation on behalf of the appellant/ accused. Hence, this Court perused the material and with the assistance of the learned Public Prosecutor disposed of this appeal.

12) The main grounds on which the trial Court convicted the accused was on the oral dying declarations made by the deceased to PWs.1 to 5 coupled with the dying declaration recorded by the Magistrate and the Sub-Inspector of Police. In view of the dying above declarations, which were held to be consistent with regard to the manner in which the incident took place, the trial Court found the accused guilty for the offence under Section 302 IPC while acquitting him for the offence under Section 498-A IPC.

13) Learned Public Prosecutor would contend that though there are more than one dying declarations, each dying declaration contains some reason with regard to the manner in which the incident occurred. Insofar as the dying declaration recorded by the Magistrate is concerned, learned Public Prosecutor would contend

that there is no reason to disbelieve the same. Insofar as the nature of the offence is concerned, the learned Public Prosecutor fairly placed on record the judgment of the Hon'ble Supreme Court in Kalu Ram v. State of Rajasthan¹ and the judgment of this Court in Banavath Ravi v. The State of A.P., rep., by its Public Prosecutor² to show that there are circumstances which warrant conviction recorded against the accused under Section 302 IPC can be modified to that of Section 304 Part II IPC. In order to appreciate the same, it would be useful to refer to the dying declarations.

14) The first dying declaration was recorded by PW.12, which was made the basis for registering the crime. As per Ex.P8, the deceased stated that her marriage was performed long back, but they have no children. It is stated that since marriage, her husband, the accused, was habituated to drinking by taking money from her. She tolerated the same with the hope that the accused would change his attitude in future. It is further stated that on the date of incident while the deceased was preparing curry, the accused demanded money for drinking purpose. When she rejected, he beat her, as a result of which she poured kerosene on herself and thereafter the accused set her on fire. Latter the brother-in-law of the accused shifted her to hospital through 108 ambulance. It is to be noted here that in Ex.P8 there is a reference to a quarrel when the deceased was preparing curry and pursuant thereto the accused is said to have beat her. In anger,

¹ 2000 SCC (CrI.) 86

² 2016 (2) ALD (CrI.) 1051

the deceased poured kerosene on her body and then the accused set her on fire.

15) The dying declaration recorded by the learned Magistrate, who was examined as PW.14, was marked as Ex.P12. In the said dying declaration, the deceased stated that as she was unable to bear the torture in the hands of her husband, she poured kerosene on herself and thereafter the accused set her on fire by throwing a matchstick on her. The dying declaration also shows that the accused asked money and in a drunken condition beat her when she refused. The relevant portion of Ex.P12 is extracted hereunder:

"నా భర్త బాధ పడలేక గ్యాసునూనె పోసుకున్నా. ఆయన పుల్లగీకి వేసిండు. పైసలు అడిగింది. తాగి కొట్టిండు. రోజు ఇదే బాధ. తిట్టి కొట్టిండు. ఎంతమంది వచ్చి విడిపించినా విడువడు."

16) From the said statement, it is clear that the incident took place when the accused was in a drunken condition. It is also clear that the accused on his own never poured kerosene on the deceased, but he said to have lit the matchstick, after the deceased poured kerosene on herself. Coming to the oral dying declarations made before PWs.1 to 5, any amount of variation is noticed.

17) PW.1 in his evidence deposed as under:

"When I questioned my sister-in-law Yellamma, she informed me that in order to make a threat to her husband she poured kerosene on herself and threatened him that she will commit suicide if he will not stop the harassment. Then the

accused lit a matchstick and thrown it on her by saying "Chavu Lanja Chavu Lanja" and she sustained burn injuries because of the act of the accused."

18) PW.2 in her evidence deposed as under:

"When I questioned Yellamma she informed me after attending the funeral and when she came back to the house and about to cook food the accused came behind her and beat her with a stick indiscriminately on that she poured kerosene on herself then the accused lit a match stick and thrown on her by saying "Chave Lanja Chave Lanja"."

19) PW.3 in his evidence deposed as under:

"When I questioned my sister, she informed me the accused demanded money for consuming liquor when she failed to pay the money, he beat her then she poured kerosene on herself on that the accused lit match stick and thrown on her."

20) PW.4 in his evidence deposed as under:

"When I questioned my sister she informed me that on that day she attended a funeral and came back to the house at that time the accused beat my sister and demanded money for liquor on that she poured kerosene on herself due to the harassment, then the accused lit fire of a match stick and thrown it on my sister and she sustained burn injuries."

21) PW.5 in his evidence deposed as under:

"When I questioned she informed me on the date of incident they went to Yetigadda Sangam to attend a funeral and came back to the house. Latter the accused demanded money and she has given money. The accused came to the house in fully drunken condition and beat her. As she was unable to bare the torture, she pour kerosene on herself and the accused lit fire of a match stick and thrown it on her after closing the doors."

22) From the above oral dying declarations said to have been made by the deceased, there appears to be variations in each of the statements made by her.

23) In the first oral dying declaration, the deceased said to have told PW.1 that in order to give a threat to her husband, the deceased poured kerosene on herself and thereafter the accused

lit the matchstick on her saying “Chavu Lanja Chavu Lanja”. Which fact was not mentioned by the deceased in any of the earlier dying declarations.

24) Coming to the second oral dying declaration, the deceased is said to have told PW.2 that while she was cooking food, the accused came from behind, beat her with a stick indiscriminately, then she poured kerosene on herself and the accused lit a matchstick and threw it on her by saying “Chavu Lanja Chavu Lanja”. This version is at variance with the version stated to PW.1 with regard to the time and circumstances under made the deceased poured kerosene on herself.

25) Coming to the third oral dying declaration, it is stated that when the accused demanded money for consumption of liquor and when the deceased refused to pay, the accused beat her and then she poured kerosene on herself and that the accused lit the match stick and threw it on her. In this dying declaration, there is no reference to the words used by the accused, namely, “Chavu Lanja Chavu Lanja”.

26) The fourth dying declaration is similar to what PW.3 has stated. However, there is slight variation in the fifth dying declaration said to have been made to PW.5, wherein PW.5 stated that the accused came to the house in drunken condition and demanded money and after the deceased paid the money, the accused beat her. As she was unable to bear the torture, poured

kerosene on herself and thereafter the accused set her on fire by throwing a match stick.

27) From the above oral dying declarations, though the version with regard to the deceased pouring kerosene on herself and the accused setting fire to the deceased in a drunken condition, is common, but the circumstances which lead to the said incident are at variance. It is not the case of the prosecution that the deceased separately made the above five oral dying declarations to each of the witnesses. It appears that only once the deceased made her statement, but different versions are sought to be put-forth by each of the witnesses before the Court, which, in our view, are inconsistent with each other with regard to the circumstances which lead to the incident. Therefore, this court is not inclined to believe the oral dying declarations made by the deceased to PWs. 1 to 5. But, however, we do not find any reason to disbelieve the dying declaration recorded by the Magistrate, which, according to us, is in consonance with Rule 33 of the Criminal Rules of Practice. The fact remains that the deceased poured kerosene on herself, but the accused in inebriated condition, set her on fire, which is evident from Exs.P8 and P12. Though the dying declarations state that the accused was beating the deceased regularly and demanding money for consumption of liquor, the learned Sessions Judge found the accused not guilty for the offence punishable under Section 498-A IPC and acquitted him, which is not challenged by the State.

28) In a situation like this, can it be said that the accused has caused the murder of the deceased. In somewhat similar circumstances, the Apex Court in Kalu Ram (supra) held that it would be an offence under Section 304 Part II IPC. It was a case where the accused in a highly inebriated condition demanded ornaments from the deceased and on her refusal, she got infuriated and doused herself with kerosene. The accused gave a match box to her to light herself and on her failure to do so, he took the matchstick and threw on her setting her ablaze. On seeing the flames, he poured water to save her. In view of the above, the Apex Court set aside the conviction imposed by the High Court under Section 302 IPC and convicted the accused under Section 304 Part II IPC.

29) In the instant case also the evidence on record reveal that the deceased poured kerosene on herself and thereafter the accused is alleged to have set fire to the deceased. In the cross-examination of PW.1, it has been elicited that the accused also sustained burn injuries to his right hand and also on his forehead. It may be true that there is no medical evidence to that effect but that by itself cannot be a ground to discredit the evidence of PW.1 and to disbelieve the said admission made by PW.1, when there is no re-examination by the Public Prosecutor in that regard. It could be possible that he might have taken treatment elsewhere, apprehending arrest in the hands of the police since his name figured in the crime by then. Therefore, having regard to the manner in which the incident took place, namely, that the

deceased poured kerosene on herself and also the fact that the accused made some effort to save her after realizing that she might die, which is evident from the admission made by PW.1 and the injuries sustained by the accused on his right hand and forehead, we feel that it is a case where the accused can be convicted for the offence punishable under Section 304 Part II IPC, but not under Section 302 IPC. Having regard to the judgment of the Apex Court referred to above, we are of the opinion that the accused could not have had the intention to cause the death of the deceased. Therefore, we are persuaded to bring down the offence from the first degree murder to culpable homicide not amounting to murder. Hence, we alter the conviction from Section 302 IPC to Section 304 Part II IPC and sentence the accused to undergo rigorous imprisonment for a period of seven (7) years.

30) Accordingly, the appeal is allowed in part.

Miscellaneous petitions, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

Date: 05.10.2017.
ES/ CCM