

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.1399 of 2011

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

The sole accused in Sessions Case No.184 of 2011 on the file of Principal Sessions Judge (FAC) cum IV Addl. District and Sessions Judge, Guntur, is the appellant. He was tried for charges under Sections 304-B and 302 of IPC. Vide its judgment dated 19.09.2011, the Sessions Judge acquitted the accused for offence under Section 304-B IPC and while convicting under Section 302 of IPC, sentenced him to suffer imprisonment for life and pay fine of Rs.1,000/- and in default to suffer imprisonment for one month.

2. The gravamen of the charge against the accused is that on 28.09.2010 at about 06.00 p.m., while the deceased was cooking food, the accused in a drunken condition demanded her wife (deceased) to get money from her father to buy a rickshaw, for which the deceased refused. Thereby, the accused is said to have caused death of the deceased by pouring kerosene and setting her on fire.

3. The facts as culled out from the evidence adduced by prosecution witnesses are as under:

The accused is the husband of one Addanki Suneetha (deceased). PW2 is the mother-in-law of the deceased. PW3 is

the son of PW2, the accused is the elder brother of PW3. The accused is known to PW4 and PW5 is the husband of PW4.

There were frequent quarrels between the accused and deceased. On the date of incident at about 06.00 p.m., PWs.5 and 6 heard cries of the deceased and immediately thereafter she went to the scene and saw the deceased in flames. PWs.3, 4 and 5 rescued her by putting off the flames. When PW6 questioned the deceased, she told that the accused poured kerosene and set her on fire. The said version of PW6, with regard to the incident, stands on same line to that of PWs.1 and 2. Immediately after putting off the flames, the injured was shifted to Government hospital. PW10, the Head Constable received intimation from the hospital with regard to the admission of the deceased. Immediately thereafter, he proceeded to the hospital and recorded the statement of the deceased, at 10.00 p.m. Ex.P11 is the statement recorded. Subsequently, he sent Ex.P11 to Bhattiprolu Police Station, on point of jurisdiction. At about 11.30 p.m., PW13 the SI of Police, Nagarjunsagar police station, received the statement recorded by PW10 along with hospital intimation. Basing on the said statement, PW13 registered a case in Crime No.88 of 2010 for offences punishable under Sections 498A and 307 of IPC and issued Ex.P15 the express FIR. PW12, the then Principal Junior Civil Judge, Repalle, received hospital intimation for recording the statement of the deceased. Ex.P12 is the hospital intimation. He then proceeded to Government hospital and recorded the statement of the deceased. Ex.P13 is the dying

declaration. In the said dying declaration, the deceased stated that the accused poured kerosene and set her on fire. After receipt of death intimation from the hospital at about 09.00 a.m., on the next day i.e., on 29.09.2010, PW13 altered the sections of law to Sections 302 and 304(B) of IPC. Ex.P16 is the altered FIR. Ex.P17 is the death intimation. Pursuant thereto, the investigating officer PW14 took up the investigation on receipt of the FIR. Accordingly, he visited the scene of offence, prepared observation report and also rough sketch of the scene which are marked as Exs.P8 and P18. He also got photographed the scene of offence with the help of PW7. Exs.P4 to P7 are bunch of photographs and seized MOs. 1 to 3 in the presence of mediators. Thereafter, he conducted inquest and examined PWs.1, 2, 3 to 6 and recorded their statements. Ex.P9 is the inquest report. After conducting inquest, the dead body was sent for post mortem examination. PW9 the Assistant Professor, Department of Forensic Medicine, Guntur Medical College, Guntur, conducted autopsy over the body of the deceased and issued Ex.P10 the post mortem certificate. According to him, the cause of death was due to burns. On 07.10.2010, at about 11.00 a.m., PW14 arrested the accused near Government hospital, Repalle and after completing investigation, he filed a charge sheet, which was taken on file as PRC No.47 of 2010 on the file of Addl. Junior Civil Judge, Repalle.

On appearance of the accused, copies of documents were furnished to him as contemplated under Section 207 of Cr.P.C. and on committal, the IV Additional District and Sessions Judge,

Guntur, numbered the case as S.C.No.184 of 2011. Thereafter, charges came to be framed against the accused for the offences referred to above, which were read over and explained to the accused, to which he denied and claimed to be tried.

To substantiate its case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P18 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 of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced by the accused in support of his defence. After placing reliance on the evidence adduced by the prosecution witnesses, the Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed through legal aid counsel.

4. The learned counsel for the appellant mainly submits that no reliance can be placed on two dying declarations of the deceased which are recorded initially by the Head Constable – PW10 and subsequently by the Magistrate – PW12, which are inconsistent to each other. He further submits that the dying declarations recorded by the Magistrate and Head Constable states that the accused poured kerosene on her. But, insofar as the dying declaration recorded by the Magistrate, learned counsel for the appellant would contend that there is any amount of doubt with regard to the presence of PWs.2,4 and 6 at the scene of offence.

Therefore, it is urged that oral dying declaration cannot be acted upon.

5. On the other hand, learned public prosecutor submits that even if the evidence of dying declaration recorded by PW10 is excluded, still there exists the dying declaration recorded by the Magistrate, which alone can be made a basis to convict the accused. He further submits that dying declaration made before the Magistrate gets corroboration from the oral dying declaration made before the witnesses, who came to the scene at the earliest point of time. Hence, he submits that there are no merits in the appeal and is liable to be dismissed.

6. The short question that arises for consideration is whether the accused can be held responsible for causing death of the deceased?

7. There is no doubt that the accused and deceased were living together in a house. It is also not in dispute that the accused was present in the house at the time of incident. The suggestions given would establish the presence of the accused in the house at the time of incident. Though the learned counsel for the appellant tried to contend that it was a case of accident which occurred while the accused was present in the house, the suggestion given to PW6 would show that the accused made some efforts to put off or rescue the deceased by trying to extinguish the fire. It would be useful to extract relevant portion of the suggestion given to PW6, which reads as under:

“Deceased herself told about the incident to me alone. But I did not question her. I do not know when ambulance arrived. I do not know whether the accused sustained injuries while trying to rescue the deceased.”

8. From the suggestion given, it is clear that the accused was present in the house at the time of incident. The plea which appears to have taken by the appellant was that the deceased committed suicide and that the accused tried to extinguish the flames. If really the accused tried to extinguish the fire, he would have at least sustained some injuries or he would have been the first person to take the deceased to the hospital. But in the instant case, the suggestion is otherwise. There is no material to show that the accused sustained injuries and he never made any efforts to take the deceased to the hospital. On the other hand, the accused was found in the house, when PW6 and the family members rushed to the scene, on hearing cries of the deceased.

9. At this stage, it is to be noted that immediately after the incident, PWs. 1 to 6 reached the scene of offence on hearing cries of the deceased. PW6 in her evidence deposed that after putting off the flames, when they enquired the deceased as to how she sustained injuries, she told her that it was the accused who poured kerosene and set her on fire. The evidence of PWs. 1, 2 and other witnesses 4, 5, further establish that the accused and deceased were quarreling with each other. The evidence of PW1 discloses that there were disputes between the accused and deceased since 5 or 6 months prior to the incident. His evidence also discloses that the deceased informed him about the accused pouring

kerosene and setting her on fire. This oral evidence which is consistent with the version given in the statements made under Section 161 of Cr.P.C., gets corroborated with two dying declarations given by the deceased. The first dying declaration recorded at 10.00 p.m. was made before the Head Constable - PW10, which was made basis for issuance of FIR. In the said statement, the deceased categorically stated as to how she was set on fire. In her statements, she stated as under:

“....For the last two months, my husband was pressurizing me to purchase a rickshaw for him. Since I have no money, I could not purchase the same. Since two or three days, he intensified his demand and pressurizing me to purchase a rickshaw. While so, on 28.09.2010 at 06.00 p.m., while I was cooking food on the country stove, my husband came to me and demanded that without purchasing a rickshaw for me, why you are cooking food and so saying he poured the entire cooked rice into the country stove, and thrown the entire samans here and there. Then I called for neighbours Parisa Kotamma and her wife, they rushed to me and admonished my husband and they went away. Thereafter, my husband angry against me for calling the neighbours, took the kerosene tin which was kept by the side of the country stove and poured the entire two liters kerosene on me and when I was running, he lit fire to me with a match box. Due to those flames, I cried loudly, on hearing my cries, the neighbours, viz., Kamma, Kotamma and Vaka Nancharamma and my aunt came there and poured water on me. Thereafter, I was shifted to Government Hospital, Repally for treatment. The doctor treated me. When the police came and examined me, I revealed the above said facts. The contents were recorded and read over to me and they are on correct line”.

10. From the statement made by the deceased, it is clear that there were disputes between the accused and the deceased on the

date of incident and when the deceased denied to arrange money to purchase a rickshaw, the accused poured kerosene on her. On hearing cries of the deceased, PWs.2, 4 and 6 came there and rescued her.

11. Whereas, the relevant portion of vernacular dying declaration made by the deceased before the Magistrate – PW 12, which is marked as Ex.P13, is as under:

“..My husband bet and fired, today at 07.00 a.m. at my house. My uncles brought me here. I do not know at what time they brought me. He questioned me to buy a Riksha but I said that I did not have money. Then he poured kerosene on me. People who are living near by my house came and cried. I do not tell anything except the above.”

12. Though the statement is not very exhaustive and though it does not anywhere discloses as to the series of incidents which occurred prior to the commission of offence, but it clearly discloses that on the date of incident at about 07.00 a.m., he questioned the deceased for money, so as to purchase a rickshaw and when she refused, the accused poured kerosene on her and set her on fire. On hearing the cries, neighbours came and put off the flames. It may be true that in so many words, the deceased did not state that it was the accused who set her on fire, but definitely one can understand the agony and pain which she must be undergoing at the time of giving the statement. This circumstance cannot be made the basis to throw out the entire case, in view of the two statements of the deceased i.e., one made before the Head Constable and another the oral statement made before PW6.

Further, we feel that in the absence of any suggestions given to the witnesses as to how the deceased sustained injuries and in the absence of any plea taken by the accused, that she herself set on fire, this omission in the dying declaration has to be treated as a minor one. Having regard to the above, more particularly the oral statements made before PW6 and the dying declaration made before the Head Constable, which are corroborating with each other, we feel no grounds to interfere with the conviction and sentence imposed against the accused for the offences punishable under Sections 304B and 302 of IPC.

13. Accordingly, the appeal is dismissed confirming the conviction and sentence passed in S.C No.184 of 2011 on the file of Principal Sessions Judge (FAC) cum IV Addl. District and Sessions Judge, Guntur.

14. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

29.11.2017
vhb