

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL APPEAL No.126 of 2011

DATE: 10-07-2017

Between:

Parigi Jagannatha Reddy

..... APPELLANT

AND

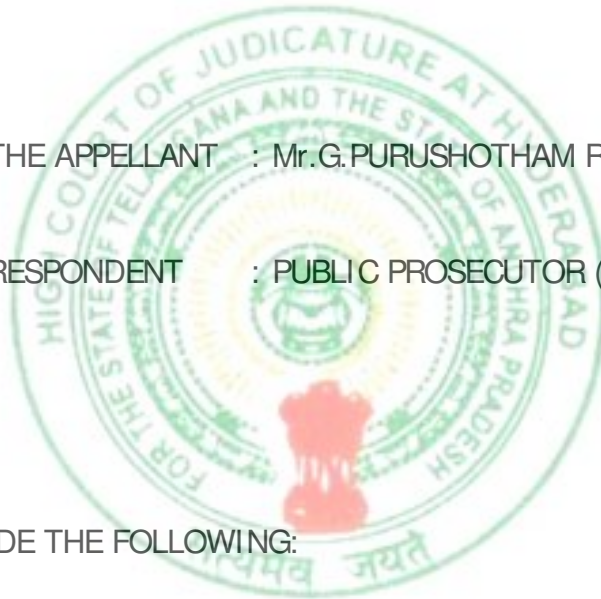
State of A.P., rep.by Public Prosecutor,
High Court, Hyderabad

.....RESPONDENT

COUNSEL FOR THE APPELLANT : Mr.G.PURUSHOTHAM REDDY

COUNSEL FOR RESPONDENT : PUBLIC PROSECUTOR (AP)

THE COURT MADE THE FOLLOWING:



THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE M.S.K.JAI SWAL

CRIMINAL APPEAL No.126 of 2011

JUDGMENT: (per Hon'ble Sri Justice M.S.K.Jaiswal)

This criminal appeal is filed against judgment dated 30.03.2010 in Sessions Case No.638 of 2007 on the file of the III Additional District and Sessions Judge (Fast Track Court), Gadwal, by and under which, the learned Sessions Judge has convicted the appellant for the offence punishable under section 302 IPC and sentenced him to undergo imprisonment for life.

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

Deceased No.1, by name Venkatamma was the wife of the accused and Deceased No.2, by name Janakamma, was the mother of Venkatamma. In 1987 the marriage of the deceased No.1 was performed with the accused. From the date of marriage, the accused used to harass her and he was having extra marital affairs. On 11.06.2007 the accused necked out his wife Venkatamma from his house and since then, deceased No.1 was residing with her mother, deceased No.2 at Chintharevula village. While so, on 06.07.2007 at 11 p.m., when both the deceased were sleeping on a cot in front of their house, the accused poured petrol on them and set fire. On hearing cries of the deceased, the neighbours rushed to the spot and on seeing them, the accused fled away. PW 4 informed the incident to PW 1, the brother of deceased No.1 and the son of deceased No.2. PW 1 visited the spot and found his mother and sister with burn injuries and immediately he gave report to the police, which was registered as Cr.No.49/2007. PW 16 took up the investigation, conducted inquest over the dead bodies of the deceased Venkatamma and Janakamma and arrested the accused. After completion of the investigation, filed the charge sheet.

3. The plea of the accused is one of denial.

4. In order to bring home the guilt of the accused, the prosecution examined PWs 1 to 17 and marked Exs.P1 to P17 and M.Os.1 to 3. On behalf of the accused, his daughter is examined as DW.1 and Ex.D1 was marked. Based on the oral and documentary evidence, the learned Sessions Judge has convicted the appellant and sentenced him, as stated supra.

5. Learned Counsel appearing for the appellant submitted that the Court below erred in basing its conviction on the dying declarations of the two deceased inspite of there being inconsistencies and material contradictions, that no adequate precautions were taken by PW.12 – the learned Judicial Magistrate of First Class, who recorded the dying declarations and therefore the conviction cannot be sustained. He further submitted that the circumstances go to show that PW.1 and his wife were disputing with the sister and mother (D.1 and D.2) about the property and therefore it may be he who committed the crime and falsely implicated the accused so as to remove the obstruction in his evil desire of usurping the entire property. The alternative submission of the learned Counsel appearing for the accused is that even if the entire evidence is accepted as truthful, the accused cannot be said to have committed the offence punishable under Section 302 IPC., and at best, his acts attract the ingredients of Section 304 Part-I of IPC., since it cannot be said that the accused had any premeditated intention of causing death of the two women. Learned Counsel for the accused further submitted that the accused and D.1 had four daughters, out of whom the eldest has already been married and it is the accused who is taking care of all the daughters both during the life time and subsequent to the death of his wife (D.1). Therefore, a lenient view in the matter of sentence may be taken.

6. On the other hand, learned Public Prosecutor submitted that there is cogent and reliable evidence in the shape of two dying declarations of the two deceased persons and nothing is elicited so as to disbelieve the statements which were given to the Judicial Magistrate of First Class who is examined as PW.12. That the wife and mother-in-law of the accused have consistently stated that when they were sleeping on a cot in front of their house, the accused came there, poured petrol on them and set fire due to which, both of them sustained extensive burn injuries. It is further submitted that the act of the accused was so barbaric that even though the deceased pleaded the accused not to set fire to them by offering obeisance at the feet of the accused but the accused was so determined to cause physical harm to them, that he set fire his wife and mother-in-law who were in helpless condition. Learned Public Prosecutor submitted that the Court below has properly appreciated the evidence on record and recorded the findings which do not warrant any interference and therefore the appeal is liable to be dismissed.

7. The point for consideration is whether the prosecution proved its case against the appellant beyond reasonable doubt so as to sustain the conviction and sentence recorded against him, or whether the same needs to be set aside, modified or varied?

8. We have carefully considered the respective submissions of the learned counsel for both parties and perused the record.

9. The facts that are borne out from the record are that the accused was the husband of Venkatamma (D.1) who was the daughter of Janakamma (D.2). The accused is alleged to have ill-treated his wife due to which she came down to her mother's house and was living there. This act of his wife appears to have infuriated the accused and he is alleged to have committed the offence.

10. The fate of the accused hinges on two dying declarations – Exs.P.8 and P.9, which are recorded by PW.12 – the Judicial Magistrate of First Class. The incident is said to have taken place at about 11.00 p.m. on 06.07.2007 and the two dying declarations came to be recorded before 09.00 a.m. on 07.07.2007. PW.12-the learned Magistrate, who recorded the dying declarations, gave evidence that on being requisitioned, he proceeded to the Area Hospital, Gadwal and in the presence of the Duty Doctor PW 7- Dr.K.Shobharani, he recorded the dying declarations of Venkatamma and Janakamma. He further deposed about the steps taken by him to rule out the possibility of the victims being tutored.

11. The contents of the two dying declarations may be noticed. Ex.P.8 is the dying declaration of Venkatamma, the wife of the accused. The relevant portion of her statement is to the effect that on the previous night in between 10.00 p.m., and 11.00 p.m., her husband came to her mother's house and poured petrol on her and set fire, that at that time herself and her mother together were sleeping on one cot, that the accused poured petrol on both of them inspite of her pleading not to do so by offering to touch his feet but that the accused did so having kept another woman.

12. Similarly, Ex.P.9 is the dying declaration of Janakamma, the mother-in-law of the accused, and she informed the Magistrate that in the previous night at 11.00 p.m., when herself and her daughter – Venkatamma were sleeping on the cot, her son-in-law/the accused came there and poured petrol and set fire, that both of them sustained extensive burn injuries, that hearing their cries the neighbours came there and thereafter, her son came and took them to the hospital after pouring water.

13. The two dying declarations given by both the deceased persons is consistent insofar as the act of the accused is concerned, namely, that when both of them were sleeping on a cot, the accused came there, poured petrol

and set fire to them. In the instant case, deceased No.1 is the wife of the accused and deceased No.2 is his mother-in-law. Both of them consistently gave the statements at the earliest point of time to the Judicial Magistrate of First Class wherein they are categorical in their assertion that it is the accused who poured petrol on them and set fire. Upon a careful perusal of the two dying declarations of the deceased, we see no reason to disbelieve the same since it is consistent insofar as the material aspect is concerned.

14. It is a well settled proposition of law that even in the absence of any corroboration to the dying declarations, the same can be made the basis for determining the guilt or otherwise of the person named therein if the circumstances of the case show that there is nothing to suspect the veracity of the statements of the declarants.

15. The specific defence of the accused is that there were disputes between PW.1 – the brother of D.1 and the son of D.2, and his wife on the one hand and D.1 and D.2 on the other with regard to the property. In support of this defence, the accused examined his daughter as DW.1. She deposed that her deceased mother and the accused-father were living happily and there were no quarrels or disputes in between them. She further deposed that her parents performed her marriage. According to her, PW.1 is the lone son of her maternal grandmother and at the time of marriage of DW.1, her deceased mother and accused-father were facing financial difficulties and her maternal grandmother (D.2) used to express her desire that she would give some property to D.1 and her children and there used to be disputes in that connection. It is further in her evidence that due to the said disputes, her maternal uncle – PW.1 shifted his family to Atmakur from Chintharevula village, that at Chintarevula village her maternal grandmother (D.2) alone was residing and her mother (D.1) used to visit now and then and look after D.2. She further deposed that at the time of the alleged

incident, she was staying at the parents' house having given birth to a child just then, and that her father is not responsible and had nothing to do with the death of her mother (D.1) and maternal grandmother (D.2), and that her uncle (PW.1) got foisted this false case against her father. She further deposed that initially the police took her maternal uncle (PW.1) into custody and subsequently released him and implicated the accused, who, as a matter of fact, has even performed the last rites of her mother.

16. The evidence of DW.1, who is the eldest of the four daughters and one son that the deceased No.1 and the accused had, does not inspire the confidence of the Court for the reason that the other evidence on record does not add credibility to the claim made by the accused as spoken to by DW.1 that it is PW.1, the maternal uncle of DW.1, who committed the crime and implicated the accused. According to the defence, the second deceased-Janakamma was contemplating to give some landed property to the deceased No.1 for the reason that she had four daughters and one son. This was being resisted by PW.1, who was the only son of D.2. On this score, there were differences between the mother and son and according to the defence, PW.1 left Chintharevula village and was staying at Atmakur, which was just about nine kms., from Chintharevula village. The evidence on record establishes that PW.1 was working as a Government Teacher, which was a transferable job, and he was transferred to Nandimalla of Atmakur mandal, and was working there. It is not as though that D.2-Janakamma had only one son-PW.1 and a daughter-D.1. D.2 also had another daughter. Therefore, there is no substance in the submission of the accused that since PW.1 had differences with his mother (D.2) and sister (D.1), he left the village.

17. Furthermore, if really it is PW.1 who had committed the heinous crime of setting on fire two women and if the relations between the mother

and son were strained, D.2 in her dying declaration would not have exculpated her estranged son and falsely implicate her son-in-law with whom she is said to have sympathized for the reason that D.1 and the accused had four daughters and a son. Not only the wife of the accused-D.1, but also his mother-in-law/D.2 gave categorical statement at the earliest point of time that it is the accused who committed the crime. If all was well in between the two deceased and the accused, they would have been the last persons to falsely implicate him by exonerating the real culprit who according to accused was PW.1 and with whom both the deceased were not having cordial terms in view of the reasons stated.

18. There is voluminous independent and almost direct testimony of several witnesses whose evidence leaves no room for doubt about the involvement of the accused.

19. It may be recalled that the specific case of the prosecution, as spoken to through PW.1, is that in the midnight when the two women were set fire, it is PW.4 who telephonically informed PW.1 who rushed with his wife and children to the village and immediately lodged the complaint and shifted the injured to hospital. PW.2 who is the wife of PW.1 substantially corroborates this claim of PW.1 that it is PW.4 who had telephonically informed about the tragedy that has befallen the family.

20. PW.4 is an independent resident of the village who does not have any bias towards either the accused or PW.1. It is in his evidence that on 06.07.2007 when he was witnessing the television, he noticed flames in the street, that immediately he came out and with the help of others put off the flames, that Janakamma-D.2 was not in a position to speak but Venkatamma-D.1 informed them that it is the accused who poured petrol on them and set fire. It is further in his evidence that about 25 days prior to the incident, D.1 came over to her mother-D.2 and was living with her in view of the conduct

of the accused. PW.4 further deposed that he gave information about the incident to PW.1 and that they all shifted the injured to hospital. PW.4 is elaborately cross-examined but nothing significant is elicited from him for disbelieving his sworn statement that he was informed by one of the victims that it is the accused who poured petrol on them and set fire and that PW.1 came to the village only on being informed about the incident.

21. PW.5 is another villager and she also deposed that hearing the cries, she went to the house of the deceased and found the two women in flames and when she asked D.1, she was told that it is the accused who poured petrol on them and set fire. This witness also reiterated the stand of PWs.1 and 2 that they came to the village after the incident.

22. On similar lines is the evidence of PW.6. The the evidence of these independent witnesses viz., PWs.4, 5 and 6 proves the case of the prosecution that it is the accused who set fire to the deceased.

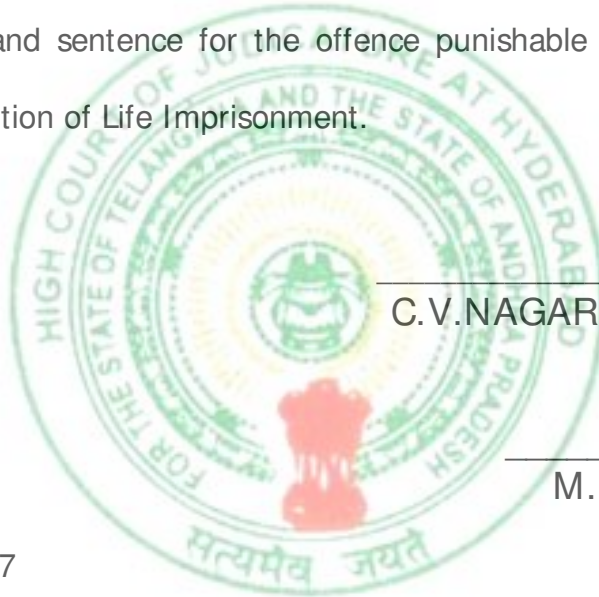
23. As already stated, there are two dying declarations from both the deceased and in both of them, the victim women specifically stated that it is the accused who poured petrol and set fire to them. The statements were recorded by the Judicial Magistrate of First Class-PW.12. The Medical Officer-PW.17 testified about the mental condition of the two victims at the time of giving their statements. The fact that both the deceased survived till 11.07.2007 and 12.07.2007 having sustained the burn injuries on 06.07.2007 also demonstrates that the condition of both the women at the time when their dying declarations were recorded was not so precarious so as to suspect their competence to give the statements.

24. In view of the foregoing discussion, we have no hesitation in holding that the prosecution proved beyond reasonable doubt that it is the accused who set fire his wife and mother-in-law on 06.07.2007 which resulted in their death on 11.07.2007 and 12.07.2007.

25. The alternative submission of the learned Counsel appearing for the appellant is that the alleged acts of the accused do not constitute an offence punishable under Section 302 IPC., and instead it may invite invocation of Section 304 IPC., since the said acts will fall within the contours of culpable homicide not amounting to murder. We have given our thoughtful consideration to the entire facts and circumstances of the case with reference to the oral and documentary evidence on record. We express our inability to subscribe to this contention of the accused. The evidence on record is consistent and cogent which is to the effect that the accused was not a resident of Chintharevula village, that the relationship between the accused and his wife-D.1 was not cordial and that the accused had subjected the wife-D.1 to ill-treatment, which according to her dying declaration is a result of the accused leading an immoral life with a concubine. The evidence further shows that unable to withstand the conduct of the accused, the wife-D.1 went away to her mother's house leaving behind the four daughters and son including DW.1, who was in the advanced stage of pregnancy. The said daughter is said to have delivered just a day or two prior to the incident. The accused went to the house of D.2 where D.1 was living for nearly a month prior thereto. He did not go to the house of D.2 empty handed. He carried the petrol in a plastic bottle, which was used for setting the deceased on fire. It is not as though that the accused had gone to the house of D.1 and D.2 empty handed, probably requiring his wife-D.1 to return home in view of the delivery of DW.1 and there was any exchange of words which resulted in the accused picking up the inflammable substance and setting fire to the deceased. On the contrary, the evidence shows that the accused went there fully prepared with the pre-meditation and intention to cause physical harm to the two women and having reached there, immediately poured the petrol and set them on fire. It is also in the dying declaration of D.1/the wife that

even after pouring the petrol on them, she implored the accused to spare them but the accused did not heed to the wailings of his wife and went ahead with completing the work which he intended to viz., setting fire after pouring the petrol. Therefore, the said acts of the accused clearly amount to murder but not culpable homicide not amounting to murder. Therefore, the conviction and sentence of the accused for the offence punishable under Section 302 IPC., cannot be said to be erroneous warranting any interference. In view of the foregoing discussion, we see no merits in the appeal and the same is liable to be dismissed.

26. In the result, the appeal fails and the same is dismissed confirming the conviction and sentence for the offence punishable under Section 302 IPC., and imposition of Life Imprisonment.



C.V.NAGARJUNA REDDY,J

M.S.K.JAI SWAL,J

Date: 10.07.2017
Dsr/smr