

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.1377 OF 2011

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

1) The sole accused in Sessions Case No.304 of 2010 on the file of the I Additional Sessions Judge, Kurnool, is the appellant herein. He was tried for the offences punishable under Sections 302 and 498-A IPC, for harassing his wife Kadapa Lakshmi (hereinafter referred to as "the deceased") subjecting her to cruelty and also causing her death by pouring kerosene and setting her fire on 13.01.2010 at Kurnool Town. By its judgment, dated 27.06.2011, the learned Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of one month for the offence punishable under Section 302 IPC. He was further sentenced to undergo imprisonment for a period of two years and to pay fine of Rs.200/-, in default to suffer simple imprisonment for one month, for the offence under section 498-A IPC. Both the sentences were directed to run concurrently.

2) The facts as culled out from the evidence of the prosecution witnesses are as under:

i) PWs.1 and 2 are parents of the deceased. The accused is the husband of the deceased. His marriage with the deceased took

place about twelve years prior to the date of incident. Out of wedlock they blessed with three daughters. It is said that as the accused got addicted to vices like drinking and gambling, disputes arose between both of them. In view of the disputes, the accused used to harass the deceased which was informed to PW.1. As things stood thus, the Government granted a house site patta to the deceased. The evidence on record discloses that about 15 days prior to the incident, the accused demanded the deceased to give the documents pertaining to the house site, so that he can raise money. The deceased is said to have refused to give the documents, leading to beating the deceased apart from abusing her. PW.1 in his evidence deposed that on 03.01.2010, the husband of his elder daughter by name Hussaini died due to ill health. Because of his death, PWs.1 and 2 were staying with their elder daughter. On 12.01.2010, the daughter of the deceased telephoned to him stating that the accused is pressuring the deceased to hand over the house site papers and torturing her. PW.1 informed that after performing the obsequies of his son-in-law, he would come and settle the matter. On the next day at 11.00 a.m., it was informed to him that the accused poured kerosene and set fire the deceased; that neighbours rescued her and she is admitted in Government General Hospital, Kurnool for treatment. Similar is the version of PW.2, who is the mother of the deceased. The evidence of PW.3 discloses that on the date of incident ie. on 13.01.2010 at about 10.00 a.m. while she was at her house, heard the cries of the deceased from her house.

Immediately, she rushed to her house and found the deceased in flames. She tried to douse the flames. On enquiry, the deceased told her that the accused was insisting about the papers pertaining to house site in order to raise loan by pledging the same and when she refused to hand over the same, the accused poured kerosene and set her on fire. Accused was also present at the scene and he was in a drunken condition. In the meanwhile, the mother and sister-in-law of the accused came there and took the deceased to the hospital. The evidence of PWs.4 to 6 corroborates the evidence of PWs.1 to 3.

ii) Immediately after admission of the injured in the hospital, PW.10-the Casualty Medical Officer, Government General Hospital, Kurnool, sent an intimation (Ex.P5) to IV Town Police Station. Pursuant thereto, the Assistant Sub-Inspector of Police, proceeded towards the hospital and recorded the statement of the injured. The said statement is brought on record as Ex.P10. Basing on Ex.P10, a case in Crime No.12 of 2010 came to be registered by PW.11-the Sub-Inspector of Police, for the offences punishable under Sections 498-A and 307 IPC and issued the first information report, which is placed on record as Ex.P11. Later, PW.11 visited the hospital and recorded the statement of the injured. He also examined PWs.1 and 2 and others and recorded their statements. Thereafter, PW.11 visited the scene of offence, conducted panchanama of the scene of offence and also prepared a rough sketch of the scene in the presence of PW.7 and another. Ex.P1 is the panchanama of the scene and Ex.P13 is the rough sketch of the

scene. He also got photographed the scene of offence. Ex.P12 contains the positive photographs.

iii) While things stood thus, on receipt of the requisition from the Government General Hospital, Kurnool to record the dying declaration, PW.9-the Special Judicial Magistrate of First Class, Prohibition and Excise, Kurnool, proceeded to the hospital on 13.01.2010 at 1.30 p.m., and found the patient in Burns Ward and the Duty Medical Officer was attending the patient. After being satisfied with regard to the mental condition of the patient, by putting preliminary questions, he recorded the statement of the injured. Ex.P6 is the dying declaration. On the same day at about 8.00 p.m. the deceased died. Ex.P15 is the death intimation. On receipt of Ex.P15, PW.11 altered the section of law from Sections 498-A and 307 IPC to Sections 302 and 498-A IPC. Ex.P16 is the altered first information report.

iv) Further investigation in this case was taken up by PW.13-the Inspector of Police. On receipt of the altered F.I.R. he proceeded to the mortuary of the Government General Hospital, Kurnool, and conducted inquest over the dead body of the deceased in the presence of PW.7. Ex.P3 is the Inquest report. During inquest, he examined, PWs.1, 2, 5 and 6. Later, the dead body was sent for postmortem examination.

v) PW8-the Assistant Professor, Forensic Medicine, Kurnool Medical College, Kurnool, conducted autopsy over the dead body of deceased and issued Ex.P4-the postmortem certificate. According

to him, the cause of death was “shock due to mixed degree flame burns”.

vi) PW.10 is the doctor, who treated the accused, as he also sustained burn injuries at the time of the incident. Ex.P9 is the wound certificate. On 09.02.2010 at about 11.30 a.m., PW.13 arrested the accused at Krishna Nagar Junction. After completing the investigation, he filed the charge sheet, which was taken on file as P.R.C.No.69 of 2010 on the file of the Judicial Magistrate of First Class, Kurnool, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. which came to be numbered as S.C.No.304 of 2010.

3) On appearance, charges under Sections 302 and 498-A IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P16 and MOs.1 to 3. After the closure of prosecution 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 on behalf of the accused.

5) After considering the oral and documentary evidence on record, the trial Court convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that no reliance can be placed on two dying declarations since both the dying declarations appeared to be tutored. He would further submit that the oral evidence adduced by the prosecution amply established that the incident happened at the time when the accused was in drunken condition and due to a quarrel. In other words, his argument appears to be that the ingredients constituting an offence punishable under Section 302 IPC are not made out.

7) On the otherhand, learned Public Prosecutor would submit that there was a quarrel prior to the incident but the said quarrel was a recurring one and as such it cannot be said that because of the said quarrel, the accused poured kerosene and set fire. His argument appears to be that with an intention to kill the deceased only, the accused poured kerosene and set fire the deceased.

8) The short question that arises for consideration is whether the accused can be guilty of the offence punishable under Section 302 IPC.

9) The fact remains that at the time of incident, the accused was present in the house and he also sustained 15% burn injuries. The same is evident from the evidence of the doctor (PW.10) who treated the accused and also the wound certificate which is placed on record as Ex.P9, which discloses that there were burn injuries not only on two fore arms but also on the chest. That

being the position, it is to be seen whether the accused can be fastened with the liability of murder.

10) The first dying declaration came to be recorded by the Assistant Sub-Inspector of Police. In the said dying declaration, the deceased refers to the disputes between herself and the accused, with regard to non-furnishing of the house site documents, which was insisted by the accused to be mortgaged for taking loan. Her statement, which was made the basis for the first information report, would show that on 13.01.2010 at about 10.00 a.m., while she was in the house, her husband came and asked her to hand over the papers relating to the house plot. When she refused to hand over the same, the accused took the kerosene available in the house, poured the same on her and lit fire with a match stick. Due to which, her cloths got burnt and flames came out. Unable to bear the flames, she came out of the house by raising hue and cry. Her neighbours came and put off the flames. According to her, the accused also came and tried to put off the flames, due to which he sustained burn injuries to his hands. From the statement recorded by the Assistant Sub-Inspector of Police, it is clear that the accused was present in the house and after pouring kerosene and set fire, he made effort to put off the flames.

11) Coming to the dying declaration recorded by the Magistrate, which is placed on record as Ex.P6, it reveals that on the date of incident in the morning, the accused came to the house in a fully drunken condition, picked up a quarrel with her, poured

kerosene and set her on fire. Her three children went out. None were present in the house at that time. The said dying declaration is silent as to the involvement of the accused in putting off the flames and the accused sustaining burn injuries. But the statement recorded by the Magistrate show that the accused came to the house in fully drunken condition, picked up a quarrel, poured kerosene and then set fire. The fact that the accused picked up a quarrel before pouring kerosene and setting her on fire is consistent in both the dying declarations.

12) Coming to the oral evidence, PW.3, who is a neighbour, deposed that on the date of incident at about 10.00 a.m. while she was in her house, she heard the cries of the deceased. Immediately, she rushed and found the deceased in flames. She tried to douse the flames. When she questioned, the deceased told to her that when the deceased refused to give the house site documents, the accused poured kerosene and set her fire. Her evidence also discloses that the accused was also present in the house and he was in a drunken condition. It would be useful to refer to the relevant portion, which is as under:

“On 13.01.2010 around 10.00 a.m. while I was at my house, I heard the cries of Lakshmi from her house. Immediately, I rushed to her house and found the deceased in flames. I tried to douse the flames. On my questioning, Lakshmi gave the details that the accused was insisting about the papers pertaining to house site at Jagannatha Gattu in order to raise loans by pledging the same. As the deceased refused to handover the papers, accused set her on flames by pouring kerosene. Accused was also present at the scene and he was in a drunken mood. In the meanwhile, mother of the accused and

sister-in-law came there and took her to hospital on the same day. The deceased died in the hospital on the same day.”

13) From the evidence of PW.3, it is clear that the accused was in drunken condition and present in the house at the time of accident. Not only the two dying declarations but also the oral statement of the deceased made before PW.3 show that the accused was present in the house even at the time of the accident. If the two dying declarations and the oral statement are different in situation, it would reveal that there was a quarrel between the accused and the deceased prior to the incident and pursuant thereto, the incident in question took place.

14) In *Santosh v. State of Maharashtra*¹ the Apex Court while referring to the judgment of the Apex Court in *Kalu Ram v. State of Rajasthan*² reiterated the principle that the element of inebriation, when it is present in a case, may be taken into consideration as it considerably alters the power of thinking. It was further held that where the intention to kill is present, the act amounts to murder and where such intention is not present, the act amounts to culpable homicide not amounting to murder and that in order to determine whether the offender had the intention or not, each case must be decided on its own facts and circumstances.

15) In *Indrasan v. State of U.P.*³ the Apex Court held as under:

¹ (2015) 7 SCC 641

² (2000) 10 SCC 324

³ (2009) 14 SCC 532

“11....When on the very next day morning i.e. 14.10.1979, the accused-appellant saw the face of the deceased he simply picked up his lathi and with that gave one blow on the head of the deceased. The said blow was so forceful that as a consequence of which the deceased died within an hour and before he could be taken to the hospital. There is a direct nexus between the blow of lathi and death of the deceased which is immediately caused after giving the blow.

12. We, therefore, are of the considered opinion that although it is a case of culpable homicide not amounting to murder, but considering the nature of the injuries which was caused on a vital part of the body, we are of the considered view that there was intention on the part of the accused-appellant to cause death of the deceased.

13. We, therefore, alter the conviction of the appellant from [Section 302, IPC](#) to [Section 304](#) Part I IPC.”

16) Further, in *Devendranath Srivastava vs. State of U.P.*⁴, the Apex Court dealt with a situation where, there was a quarrel between the husband and wife when the husband was in drunken condition, and subsequently, the dead body of the wife was found in the house. No explanation was given by the husband as to how his wife died. In the facts of the said case, the Apex Court convicted the accused under Section 304 Part II IPC, and not under Section 302 IPC.

17) In the instant case also, as observed earlier, a quarrel ensued between the deceased and the accused with regard to house site papers and in the course of the said quarrel, he poured kerosene on the deceased and set her on fire.

⁴ AIR 2017 SCW 612

18) Having regard to the findings given in the judgments referred to above, we feel that it is a case where the accused may not be having any motive to cause death of the deceased. Therefore, we feel that it is a fit case where the nature of offence can be scaled down from 302 IPC to 304 Part-I IPC.

19) Accordingly, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No.304 of 2010 on the file of the I Additional Sessions Judge, Kurnool, for an offence punishable under Section 302 IPC is altered to one under Section 304-I IPC. For the altered conviction, the appellant is sentenced to imprisonment for a period of eight years. The conviction and sentence awarded for the offence punishable under Section 498-A IPC will remain un-altered. However both the sentences shall run concurrently. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ accused shall be set at liberty forthwith on completion of eight years rigorous imprisonment, if not required in connection with any other case.

20) As a sequel to it, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

11.12.2017
gkv

