

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.776 OF 2012

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

1) The sole accused in Sessions Case No.424 of 2010 on the file of the III Additional District and Sessions Judge, Anantapur, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Nayakula Bommakka (hereinafter referred to as "Bommakka") by setting her fire on 19.03.2010 at 12.00 midnight. By its judgment, dated 11.11.2011, the Sessions Judge, convicted and sentenced the accused to suffer "imprisonment for life" and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for a period of two months.

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

i) PW.1 is the father, PW.2 is the mother and PW.3 is the sister-in-law of Bommakka (deceased). PW.4 is the sister of PW.2. PWs.5 and 6 are nieghbours. Bommakka, who was un-married, was eking out her livelihood as a Coolie under the accused, who was a mason. Both of them developed illicit intimacy with each other. When PW.1 questioned Bommakka about the same, the accused stated that he will put up separate residence. The evidence on record shows that by then the accused was having a wife and three children. After taking a portion of the house of PW.4 on rent, the

accused and Bommakka started living together as wife and husband. Few days prior to the date of incident, Bommakka came to the house of PW.1 and informed about the harassment of the accused. At that time, PW.1, who was also eking out his livelihood by doing coolie work, claims to have given Rs.1.00 lakh cash to Bommakka, which he received as compensation on the death of his son by name Anjaneyulu. The accused took Rs.30,000/- from the said amount promising to repay the same. However, the accused spent that amount for his bad vices. Thereafter, he again demanded for Rs.30,000/- and beat Bommakka to get that amount in a drunken state. Bommakka gave Rs.30,000/- to the accused. The accused again spent the said amount for his vices. A day prior to Ugadi, the accused again demanded Rs.2,000/- which was given by Bommakka. Thereafter, Bommakka demanded the accused to return back Rs.62,000/- which was paid to him. On the date of incident ie. on 19.03.2010 in the mid night, the accused came to the house in a drunken state, poured kerosene on Bommakka and set her on fire. On hearing the cries, PW.4 and others rushed to the house; noticed Bommakka in flames, put off the flames, called for an auto and shifted Bommakka to Government Hospital, Rayadurg. On the next day morning, when they enquired as to what happened, the deceased seems to have stated that when she demanded for return of money, the accused poured kerosene and set her fire. PW.10 is the doctor who treated the injured at Government Hospital, Rayadurg.

ii) The evidence on record further discloses that on the very same day at about 7.30 a.m. while PW.12-the Inspector of Police, was in police station, received an intimation about the admission of Bommakka in the hospital with burn injuries. Ex.P11 is the admit intimation. PW.12 claims to have entered the same in the General Diary, reached the hospital and recorded the statement of Bommakka. Ex.P12 is the statement and Ex.P13 is the endorsement of the doctor. Basing on Ex.P12-statement, PW.12 registered a case in Crime No.36 of 2010 for the offence punishable under Section 307 IPC and issued the first information report, which was placed on record as Ex.P14. PW.12 visited the hospital again and recorded the statements of Bommakka and PWs.1 to 4. He then, proceeded to Pallepalli Village and examined the scene of offence. In the presence of PW7, he prepared a panchanama of the scene, which was marked as Ex.P3. During the said proceedings, one burnt saree, partly burnt pancha, one shirt, one empty kerosene plastic can and one match box were seized. PW.12 also prepared a rough sketch of the scene which was marked as Ex.P15. On 20.03.2010 at about 7.30 a.m. PW.12 sent a requisition to the M.R.O., Rayadurg, to record the dying declaration of the deceased. On receiving the requisition, PW.9-the Tahsildar, Rayadurg, recorded the dying declaration of Bommakka. Ex.P6 is the dying declaration and Ex.P8 is the endorsement of the doctor on the said declaration.

iii) The evidence further discloses that Bommakka died on 26.03.2010. Ex.P9 is the intimation sent to the police. Basing on

the said intimation, section of law was altered from 307 IPC to 302 IPC. Ex.P16 is the altered F.I.R. Thereafter, PW.13, the Inspector of Police, took up investigation and proceeded to Government Hospital, Rayadurg. On 27.03.2010, PW3 conducted inquest over the dead body of deceased Bommakka in the presence of PW.7 and others. During inquest, he recorded the statements of PWs.1 to 6. Thereafter, he forwarded the body to the Government Hospital, Rayadurg, for postmortem examination. PW.11-the Civil Assistant Surgeon, Community Health Centre, Rayadurg, conducted autopsy over the dead body of the deceased and issued Ex.P10-the postmortem examination report. According to him, the cause of death was "shock due to burns (75%to 85%)". On 16.08.2010, PW.13-the Inspector of Police, arrested the accused and recorded his confession statement in the presence of PW.8. After completing the investigation, PW.13 filed a charge sheet before the Court of Judicial First Class Magistrate, Rayadurg, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.424 of 2010.

3) Basing on the material, a charge under Section 302 IPC was framed, read over and explained to the accused, to which he 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 P17 and MOs.1 to 5. 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 evidence was adduced on his behalf but Exs.D1 and D2, portion of 161 Cr.P.C. Statements of PWs.1 and 3 and Ex.D3-xerox copy of case sheet was marked, in support of his defence.

5) After considering the oral and documentary evidence on record, the Sessions Judge convicted the accused for the offence to which he was charged. Challenging the same, the present appeal is filed.

6) Sri M.Chalpathi Rao, who was asked to assist the Court in the absence of counsel, to whom the matter was allotted, strenuously contends that in view of the inconsistent dying declarations of the deceased Bommakka, conviction under Section 302 IPC is impermissible under law. He submits that there is no consistency in the dying declarations and even if the said dying declarations are accepted, it was only indicate that the deceased Bommakka committed suicide. He further places reliance on the evidence of PW.10 and the entries made in the case sheet to show that it was a case of suicidal death.

7) On the other hand, the learned Public Prosecutor would submit that the dying declaration recorded by Sub-Inspector of Police and the Executive Magistrate-Tahsildar are sufficient to base a conviction. According to her, the fact that the accused received injuries does not by itself mean that the deceased

Bommakka attempted to commit suicide, pursuant to which the accused made some attempt to put off the flames. It is his case that after setting the deceased on fire and in order to create a defence, the accused embraced her when the neighbours enter into the house. Therefore, he submits that there is nothing unnatural in accused sustaining burn injuries.

8) As seen from the record, immediately after the incident, PW.1, who is the father, and PW.2, who is the mother of deceased, came to the scene of offence, took the deceased to the Government Hospital, Rayadurg, in an auto. According to them, the incident took place at 12.00 mid night and within half an hour she was taken to the Government Hospital and was treated by the doctor at 12.30. It is not the case of the prosecution that the deceased Bommakka made any oral dying declaration before them. It is not the case of the prosecution that she was un-conscious when she was being shifted to the hospital. Strangely they never asked the deceased Bommakka how she sustained injuries. In the hospital, PW.10, the doctor, examined the deceased Bommakka, wherein she stated that she herself attempted to commit suicide. The same was recorded in the case sheet, which was marked as Ex.D3. It would be relevant to extract the portion of the case sheet.

“Suicidal burns by pouring kerosene on her body”

Answers elicited in the cross of PW.10 are as under:

“At the time of admission the patient stated that she herself attempted to commit suicide. The same was recorded in the case sheet of the patient. The Photostat copy of case sheet of the patient shown to me is in my hand writing the same is Ex.D3.”

9) Therefore, the earlier version given by the deceased was that she attempted to commit suicide, which fact is evident not only in the case sheet but also in the oral evidence of PW.10. The next statement of the deceased that was made before the A.S.I. of Police, was brought on record as Ex.P12. In the said statement, deceased Bommakka stated as under:

“On 19.03.2010 when Somasekhar (accused) came to me, I asked him about the money taken from me. He quarreled with me and abused me vulgarly. Today I will kill you and go, so saying taken kerosene can which is available in our house, poured on my body and lit match-stick and thrown on me. Flames caught hold me, I cried loudly that my uncle Gangappa my case people Gangamma, Thipperamma came, on seeing them thinking that they will do anything for me, he caught hold me when I am in flames.”

10) From the statement made before the Sub-Inspector of Police, it is clear that after setting the deceased on to fire, the accused embraced her and in the process he sustained burn injuries. The fact that the accused sustaining burn injuries is admitted by the prosecution and in fact the evidence of the investigating officer itself discloses that the accused took

treatment in Government Hospital, Rayadurg and even after his arrest, he noticed burn injuries on the body of the accused.

11) The third dying declaration was made before PW.9, the Tahsildar. In his evidence, PW.9 deposed that on 20.03.2010 at 11.00 a.m. he received a requisition from Rayadurg Police Station, to record the dying declaration of injured woman. Immediately, he proceeded to the hospital, wherein the deceased is said to have stated that when she demanded for payment of Rs.2,000/- which the accused took from her, the accused poured kerosene on her body and set her fire.

12) From these three statements, which are placed on record, it is clear that in the first statement made before the doctor, the deceased stated that she attempted to commit suicide. This was about 12.30 a.m. on 20.03.2010. The said version is given go bye in the statement recorded by the Sub-Inspector of Police, wherein it was stated that the accused poured kerosene and set fire to her and thereafter, the accused himself embraced the deceased Bommakka when the neighbours entered into the house, so as to create defence. In the third statement, she omits of the fact of accused embracing her and simply states that the accused poured kerosene and set her fire. Further in these statements, the accused is said to have set her on fire when she demanded Rs.2,000/-. In the oral dying declaration made before PW.1, on the next day morning, she states that when she demanded for Rs.62,000/-, the accused beat her, poured kerosene and set her

fire. The version in the earlier statement made before the Tahsildar, was that when she demanded for Rs.2,000/-, the accused refused to repay the same, had a quarrel, poured kerosene and set her fire.

13) As stated earlier, the fact that the accused sustained injuries is not in dispute. Apart from that the evidence of the panchayatdars, who conducted the scene of offence panchanama, show that the investigating officer visited the scene of offence, seized one burnt saree, partly burnt pancha, one shirt, one empty kerosene plastic can and one match box. These are all circumstances to indicate that the accused also sustained injuries.

14) The question is whether it was a case of suicide or homicide?

15) If really, the accused poured kerosene and set her fire, definitely he would not have made an attempt to embrace her knowing that he will sustain burn injuries in the said process. If it is a case of suicide and if the intention of the deceased was to cause injuries to the accused also she would have gone and embraced the accused, but that is not the case of the prosecution.

16) The Public Prosecutor contends that in order to create defence the accused embraced the deceased when the villagers were entering into the house. It is to be noted here that the accused has knowledge that he would sustain injuries if he embraces the deceased and he would not have anticipated the death of the deceased and also about a case being registered

against him at that time. Hence, it is very difficult to accept the plea of the State that in order to create defence the accused embraced the deceased.

17) It is also to be noted here that the conduct of PWs.1 and 2 in not questioning the deceased as to how she sustained injuries appears to be un-natural. Admittedly, it is not the case of the prosecution that the deceased was un-conscious by then. In view of these inconsistent statements made and having regard to the fact that the accused also sustained severe burn injuries, a doubt arises as to whether he really set fire to the deceased.

18) One other important factor is that if really the accused has poured kerosene, definitely, deceased would not have sustained injuries in ankle region. Learned counsel for the appellant submits that since it was a case of suicide, the injuries were noticed even in the ankle region which normally does not happen in case of homicide. Therefore, the said argument cannot be brushed aside.

19) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused in the judgment, dated 11.11.2011 in S.C.No.424 of 2010 on the file of the III Additional District and Sessions Judge, Anantapur, for an offence punishable under Section 302 IPC, are set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

20.11.2017
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