

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRL.A. No.930 OF 2012

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

The sole accused in S.C.No.487 of 2009 on the file of the VIII Additional Sessions Judge (FTC), Warangal District at Warangal, is the appellant herein. She was tried for an offence punishable under Section 302 IPC, for causing the death of her husband, K.Srinu (hereinafter referred to as "the deceased"), on 08.05.2009 at 2.30 p.m., by pouring kerosene and setting him on fire. Vide judgment dated 18.04.2012, the Sessions Judge, Warangal, convicted the accused for the offences under Sections 302 IPC and sentenced her to suffer 'imprisonment for life'.

2. The substance of charge against the accused is that on 08.05.2009 at about 02.30 p.m., the accused caused the death of the deceased by pouring kerosene and setting him fire.

3. The facts in issue are as under:

(i) The appellant is the wife of deceased K.Srinu.

(ii) Accused and deceased fell in love and their marriage took place about five years prior to the date of incident. After marriage, the appellant and the deceased lead a happy life for a period of one year and out of wedlock, they were blessed with one female child. Subsequently, the deceased got addicted to alcohol and used to harass the accused by suspecting her character. The

deceased used to beat the accused alleging that the daughter was not born through him. They were residing in the rented house of Ravula Samabaiah (LW.2). On 08.05.2009 at 9.00 a.m., the deceased consumed liquor, picked up a quarrel with the accused, beat her and at 2.30 p.m., again the deceased consumed liquor and humiliated the accused suspecting her character and thereafter, he slept in the house. Thereafter the accused with an intention to kill her husband, poured Kerosene, lit fire and ran away from the house along with her daughter. Due to fire, the deceased woke up and raised hue and cry. On hearing the cries, PWs.2 and 3 rushed to the spot, extinguished the fire by pouring water and shifted him in 108 Ambulance to MGM Hospital, Warangal.

On receipt of information about the admission of the injured in Hospital, PW.16-the Sub-Inspector of Police went to the hospital and recorded the statement of the injuries. Ex.P5 is the statement. Basing on the said statement, PW.9-the A.S.I. of Police, registered a case in Crime No.149 of 2009 for the offence punishable under Section 307 IPC and issued the first information report, which is placed on record as Ex.P6. Thereafter, PW.16 visited the scene of offence, conducted the scene of offence panchanama and also prepared a rough sketch of the scene in the presence of PW.13 and another. Ex.P10 is the rough sketch. During the course of panchanama PW.16 seized white plastic can, one match box and burnt cloth pieces in the presence of

mediators. He also recorded the statements of PWs.1 to 3 and others.

On 08.05.2009 PW.14-the Judicial Magistrate of First Class, Adilabad, received a requisition from PS Out Post, MGM Hospital, to record the dying declaration of Kallaboina Srinivas (deceased). Ex.P13 is the requisition. On receipt of said requisition, PW.14 proceeded to M.G.M.Hospital, put some preliminary questions to the deceased to test his mental condition. After satisfying himself with regard to the mental condition of the injured and after taking the endorsement of the duty doctor, she recorded the statement of the deceased, wherein he stated that his wife poured kerosene and set him on fire while he was sleeping in the house. After recording the statement, the same was read over and explained. When he admitted the same to be true and correct, obtained his signature on the dying declaration. Ex.P14 is the dying declaration of the deceased.

On 11.05.2009 PW.17, S.I of police took up further investigation, arrested and produced before the Court. While undergoing treatment in MGM Hospital, the deceased succumbed to burn injuries on 17.09.2009. On receipt of death intimation of the injured, he altered the Section of law from 307 IPC to 302 IPC. Ex.P15 is the alteration Memo. PW.17 handed over the C.D. file to PW.15 for continuation of the investigation. On receipt of the death intimation and the altered F.I.R., PW.15 visited the scene of offence and subsequently proceeded to the mortuary at

M.G.M.Hospital, where he held inquest over the dead body of the deceased in the presence of PW.4 and PW.9. Ex.P7 is the inquest panchanama. During the course of inquest, he recorded the statements of PWs.6 to 8 and 11.

PW.5, the Assistant Professor, M.G.M.Hospital, Warangal, conducted autopsy over the dead body of the deceased and issued Ex.P4 the postmortem certificate. According to the doctor, the cause of death was “due to anti mortem burns, complications due to septicemia and also multi organ failure. After collecting all the materials, PW.15 filed the charge sheet, which was taken on file as P.R.C.No.45 of 2009 on the file of the I Additional Judicial First Class Magistrate, Warangal, which on committal came to be numbered as S.C.No.487 of 2009.

4. Basing on the material on record, charge for an offence punishable under Section 302 IPC was framed, read over and explained to the accused, to which she denied and claimed to be tried.

5. In support of its case, the prosecution examined PWs.1 to 18 and got marked Exs.P1 to P20 and M.Os.1 to 3. Out of 18 witnesses examined, PWs.1 to 4 did not support the prosecution case and were treated hostile by the prosecution.

6. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against her in the evidence of the prosecution witnesses, to which she denied. No oral or

documentary evidence was adduced on behalf of the accused in support of her defence.

7. Relying upon the dying declaration recorded by the Magistrate coupled with the oral evidence, the learned Sessions Judge convicted and sentenced the accused to suffer simple imprisonment for life. Challenging the same, the present Criminal Appeal came to be filed.

8. Learned counsel for the appellant mainly submits that the statement made by the deceased is an outcome of tutoring and he was not in normal sense at the time of making the dying declaration. According to him, though the deceased was treated at MGM Hospital, Warangal, the nature of treatment given at the Hospital, was suppressed by the prosecution.

9. On the other hand, learned Public Prosecutor opposed the same contending that the dying declaration of the deceased itself is sufficient to base a conviction.

10. The point that arises for consideration is whether the accused is responsible for the death of the deceased, and if so, whether she is liable to be convicted under Section 302 IPC.

11. As seen from the record, PW.16, the S.I of Police at P.S Mills Colony, received information from MGM Hospital, Warangal that one K. Srinu, S/o. Rajesham, aged 28 years, was admitted with burn injuries. On receipt of the said information, he proceeded along with his staff to MGM Hospital and recorded the statements

of victim before the duty doctor. After recording the statement of victim, he send a special messenger i.e., PW.12 requesting the SHO of PS mills colony for registration of the crime. Basing on the statement recorded by PW.16, PW.9 registered a case in Crime NO.149 of 2009 and issued FIR. He also sent the CD file for continuation of further investigation. Ex.P5 is the statement of K.Srinu recorded by PW.16. As per the statement made by K.Srinu and according to Ex.P5, the deceased got married to one Manda Govindu's daughter by name Sarada. It was a love marriage. Out of their wedlock, they were blessed with a girl aged about 3 ½ years and both of them lived happily for about 2 years. After that they developed misunderstandings between them. The deceased who is husband of accused used to sell butter milk packets at the Grain market for their livelihood. On 08.05.2009 in the morning at 9.00 a.m., the deceased after consuming liquor came to the house leading to a quarrel between the deceased and the accused. The deceased is said to have beat the accused. Thereafter she prepared food. He further went to Market and came back to the house in the afternoon at about 2.30 p.m. He again consumed liquor and both of them quarreled again. In that intoxicated condition, he slept on the floor. He woke up on hearing the shouting of her wife. Then she poured kerosene and lit the fire. Unable to bear the pain, he raised hue and cries. According to him, not only the clothes but also the articles in the room were set on fire. Thereafter, the neighbours came there, put off the fire and shifted the deceased to MGM Hospital in 108 ambulance. He

sustained burn injuries on the right side stomach, right side ribs and right side of his body. He further stated that the accused with an intention to kill him, poured kerosene and lit fire with a match stick. The said statement was recorded by PW.16, the S.I of police, on 08.05.2009 at about 4.40 p.m., which was made the basis for registering a crime.

12. It is also to be noted here on the very same day at about 5.30 p.m., VI Judicial First Class Magistrate, Warangal received intimation from MGM Hospital. Accordingly, she proceeded to the hospital and on being satisfied with the mental condition of the deceased and on being certified by the doctor, recorded the statement of the deceased, which is placed on record as Ex.P14. In the said dying declaration, the deceased stated that on that day there was a quarrel between him and his wife, and he beat her twice. Thereafter, he went away from the house and came to the house by consuming liquor. At about 3.30 p.m., the accused poured kerosene and set him fire. While he was shouting and crying for life, his wife locked the entrance door and went away. The neighbours came there and put off the fire and shifted him to hospital. The deceased stated that his wife is only responsible for the incident. She read over and explained the contents of dying declaration to the declarant in Telugu who admitted the same as correct. Thereafter she obtained the signature of the declarant on the dying declaration.

13. Learned counsel for the appellant tried to contend that no credence can be given to this dying declaration since the same are not recorded in accordance with Rule 33 of Criminal Rules of Practice and as such the same cannot be made the basis to convict the accused.

14. The record also shows that apart from the dying declaration, there is an oral dying declarations. The deceased is alleged to have stated before PWs.2 and 3 that while he was sleeping on the floor, the accused poured kerosene and set fire. But PWs.2 and 3 did not support the case of prosecution and they were treated hostile.

15. From the evidence, it is clear that the incident in question took place on 08.05.2009 and the injured died on 17.09.2009. He survived for a period of 4 months, after the incident. At this stage, it is relevant to refer to the evidence of the doctor-PW.5, who conducted autopsy over the dead body, which is as under:

“On 18.09.2009 at 12.30 p.m. (afternoon) I received a requisition from PS Mills Colony for conducting PME examination on dead body of K.Srinivas. Accordingly, I conducted the postmortem examination on the same day from 12.30 p.m. to 1.35 p.m. I found 8 injuries the details of which were furnished in the post mortem examination report at column No.11. All those injuries are due to anti mortem burns. I opined the cause of death was anti mortem burns and their complications septicemia etc. and also multi organ failure.”

16. PW.18, the doctor deposed that the patient was admitted on 08.05.2009 and he succumbed to injuries on 17.09.2009. It shows

that the deceased survived for nearly four months after the incident and according to the postmortem doctor, the deceased died due to ante mortem burn injuries and their complications like septicemia etc. and multi organ failure.

17. Relying upon the said certificate, learned counsel for the appellant would contend that even if the entire prosecution case is true, the death was not due to burn injuries, but due to complications, septicemia and multi organ failure. The prosecution did not make any effort to produce evidence to show that in every case of burn injuries there would be septicemia. In the absence of any such evidence and as the deceased died nearly four months after the incident due to septicemia, it can be presumed that had proper treatment was given, the deceased would have survived.

18. In *MANIBEN V/s. STATE OF GUJARAT*¹, the Supreme Court was dealing with a case where Terylene clothes of the deceased were set on fire by means of a burning wick of rags. The deceased remained under treatment in hospital for eight days and died thereafter. She sustained about 60% burn injuries and also developed septicemia, which was the main cause of death. The evidence on record proved that the action of the accused in throwing the burning wick was preceded by a quarrel between the deceased and the accused. The Supreme Court therefore concluded that it could not be said that the accused had the intention to cause death or such bodily injury to the deceased which was sufficient in the ordinary course of nature to cause

¹ = 2009 (16) SCC (316)

death. The Supreme Court therefore opined that the case could not be said to be covered under clause 4 of [Section 300](#) IPC. The conviction was accordingly reduced to one under [Section 304](#) Part II IPC.

19. Even in the instant case, incident in question is said to have taken place on 08.05.2009 and nearly four months thereafter, he died because of Septicemia. The doctor categorically stated that death was due to anti mortem burn injuries and the complications such as Septicemia and failure of multi organs. Therefore, it appears that the act of the accused was not the direct cause of death. Because of improper treatment, the injured might have developed infection, which lead to his death.

20. Hence, in view of the judgment of the Apex Court referred to above and since the burn injuries are not direct consequences leading to death but due to Septicemia, we feel that the case on hand is squarely covered by the judgment referred to above and as such the Conviction of the accused under [Section 302](#) IPC can be scaled down to one [Section 304](#) Part II IPC. At this stage, learned counsel for the appellant submits that the accused who is lady is in jail since five years.

21. Accordingly, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in S.C. No.487 of 2009 on the file of the VIII Additional Sessions Judge (Fast Track Court), Warangal, for an offence punishable under [Section 302](#) IPC is altered to one under [Section 304-II](#) IPC. For the

altered conviction, the appellant is sentenced to imprisonment for the period already undergone by her. Consequently, the appellant/ accused shall be set at liberty forthwith, if she is not required in connection with any other case.

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALA YOGI

Date: 28.12.2017
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