

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.470 OF 2012

JUDGMENT: (*Per Hon'ble Dr. Justice Shameem Akther*)

1. This Criminal Appeal, under Section 374(2) of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is filed by the accused challenging the judgment dated 21-10-2011 passed in Sessions Case No.215 of 2011 by the III Additional District and Sessions Judge, Tirupati (for short, 'the trial Court'), whereby the accused is convicted under Section 235(2) of the Cr.P.C and sentenced to suffer imprisonment for life and also to pay a fine of Rs.1,000/-, in default, to suffer simple imprisonment for one month, for the offence under Section 302 of the Indian Penal Code, 1860 (for short, 'I.P.C.').

2. Heard Smt.G.Jaya Reddy, learned counsel for the accused, learned Additional Public Prosecutor (A.P.) appearing for the respondent-State, and perused the record.

3. The parties hereinafter are referred to as arrayed before the trial Court.

4. The case of the prosecution, in brief, is that the accused, who is residing at Dr.No.4-225, Venkatapathi Nagar (Thatihopu), Tirupati rural, with K.Meena (hereinafter referred to as 'the deceased'), used to harass and beat her daily in a mood of intoxication on petty issues in their matrimonial life. On 28.11.2010 at 05:30 p.m. the accused

warned deceased to leave the house and go to her mother's house for not preparing the lunch; when the deceased refused, in the evening the accused beat her, doused her in kerosene and set her ablaze in a mood of intoxication; due to raising of flames, the deceased raising cries ran out of the house, neighbours came there and put off the flames by pouring water, shifted her to Sri Venkateswara Ramnarain Ruia Government General Hospital, Tirupati (for short, 'the S.V.R.R.G.G. Hospital') and admitted therein; wherein the dying declarations of the deceased were recorded.

5. On 29.11.2010 at 08:00 a.m. P.W.13, B.Mallikarjuna Guptha, Sub-Inspector of Police, M.R.Palle Police Station, conducted investigation in the case, recorded the statement of deceased and, on the basis of hospital intimation and statement of the deceased, registered a case in Crime No.168 of 2010 under Section 307 I.P.C.; during course of investigation, again recorded the statement of the deceased on 29.11.2010, examined P.W.4 G.Munemma, P.W.5 S.Vasanth and P.W.6 G.Syamala and recorded their statements, observed the scene of offence, got the scene of offence photographed, seized M.O.1. burnt cloth pieces and M.O.2 kerosene stove from the scene of offence under the cover of panchanama, prepared the rough sketch of the scene of offence; on 29.11.2010 at 08:45 p.m., during the course of further investigation, P.W.14, B.Nagaraju, Inspector of Police, M.R.Palle Police Station, arrested the accused in the presence of P.W.9 Y.Subramanyam and P.W.10 T.Subramanyam under the cover of mahazar and on the next day

forwarded the accused for remand. On 04.12.2010 at 08:00 a.m. K.Meena (deceased) succumbed to injuries, while undergoing treatment in S.V.R.R.G.G. Hospital, Tirupati. On the date of burnings the dying declaration Ex.P.24 was recorded by P.W.15, Judicial First Class Magistrate. On receipt of death intimation from the hospital, P.W.14 altered Section of law from Section 307 to 302 I.P.C. and submitted altered F.I.Rs. to all the concerned, examined P.W.1 K.Kaviyarusu, P.W.2 K.Munemma, P.W.3 C.Dhananjaya, P.Ws.4 to 6 including others and recorded their statements, held inquest over the dead body of deceased on 05.12.2010 between 09:30 and 11:30 a.m. in the presence of panchayatdars. P.W.16 Dr.G. Bhagya Lakshmi, Civil Assistant Surgeon in S.V.R.R.G.G. Hospital, who treated the deceased informed P.W.15 for recording the dying declaration. P.W.12 Dr.B.Venkateswarlu, Assistant Professor, Department of Forensic Medicine, Sri Venkateswara Medical College, Tirupati, conducted autopsy over the dead body of deceased and issued Ex.P-11 post-mortem examination report on 05.12.2010 opining that the deceased died due to *ante mortem* burn injuries and, on completion of investigation, filed charge sheet against the accused for the offence under Section 302 I.P.C.

6. The learned III Additional Judicial Magistrate of I Class, Tirupati, took cognizance of the offence under Section 302 I.P.C., registered the charge sheet as P.R.C. No.5 of 2011 and committed the case to the Principal Sessions Court, Chittoor, and the same was

made over to III Additional District and Sessions Judge, Tirupati *i.e.*, the trial Court, for disposal, according to law.

7. On appearance of the accused before the trial Court, charge for the offence under Section 302 I.P.C. was framed against him, read over and explained to him in telugu, for which he pleaded not guilty and claimed to be tried.

8. During course of trial, the prosecution examined P.Ws.1 to 18, marked Exs.P.1 to P.27 and M.Os.1 and 2. After closure of evidence of prosecution witnesses, when the accused was examined under Section 313 Cr.P.C. with regard to the incriminating material appearing against him, he pleaded not guilty, did not adduce any evidence to defend his case.

9. On appreciation of the oral and documentary evidence, the trial Court held that the prosecution proved the guilt of the accused for the charge under Section 302 I.P.C., convicted and sentenced him as stated hereinabove. Challenging the said conviction and sentence, the accused preferred this Appeal.

10. Learned counsel for the accused would submit that the findings of the trial Court are contrary to law and against the evidence and probabilities of the case. The learned Judge might have seen that there are no direct witnesses to the alleged offence; there was no motive for the accused to commit the offence; the findings of the trial Court are based on surmises, conjectures and without any evidence to believe that the accused caused the death

of deceased K.Meena. The relationship between the accused and the deceased is also disputed by the accused; the circumstances of the case do not establish the guilt of the accused for the offence under Section 302 I.P.C. There is inconsistency in the dying declarations marked as Ex.P.13, Ex.P.15 and Ex.P.24; wherein there is specific mention in the dying declarations *i.e.*, Ex.P.13 and Ex.P.15 that the offence is alleged to have committed around 05:00 p.m. and in Ex.P.24 dying declaration there is a specific mention that the offence was committed in the morning, which will go to the root of the matter and ultimately prayed to allow the Appeal setting-aside the conviction and sentence recorded against the accused.

11. On the other hand, learned Additional Public Prosecutor (A.P.) appearing for the respondent-State would contend that the deceased is a widow, married the accused, begot a female child through him; the accused got addicted to bad habits, used to drink and quarrel with the deceased, assault and beat her and on 28.11.2010 evening beat the deceased indiscriminately in intoxication, poured kerosene on her and set fire to her. Thereafter, the deceased was hospitalized; in the course of her treatment P.W.13 Investigation Officer recorded the statements of the deceased, marked as Ex.P.13 and Ex.P.15. There is also endorsement of the duty doctor to the effect that the deceased was conscious, coherent and capable of giving statement; in those two statements, there is specific mention of commission of the offence as contended by the prosecution. On the date of alleged offence *i.e.*, on 28.11.2010 at 10:30 p.m. dying

declaration under Ex.P-24 was recorded by P.W.15, Judicial First Class Magistrate; wherein also the deceased specifically stated that in the evening hours her husband *i.e.*, the accused poured kerosene on her and set fire to her; thereafter, she was taken to hospital by ambulance. There is no inconsistency in any of the dying declarations, as contended by learned counsel for the accused. There is also other evidence to believe the guilt of the accused for the offence under Section 302 I.P.C. The findings of the trial Court are based on record; there is nothing to take a different view and ultimately prayed to dismiss the Appeal, confirming the conviction and sentence recorded against the accused.

12. In view of the contentions put forth by both sides, the following **points** have come up for determination:

- 1. Whether the accused poured kerosene and set fire to K.Meena (deceased) around 05:00 p.m. on 28.11.2010 in their house situated at Dr.No.4-225, Venkatapathi Nagar, Tirupati?**
- 2. Whether the prosecution proved the guilt of the accused for the offence under Section 302 I.P.C.?**
- 3. Whether the conviction and sentence recorded against the accused is unsustainable?**

13. **POINT Nos.1 to 3:** In view of the contentions put forth by both sides, it is appropriate to refer the evidence on record. P.Ws.1 and 2 are the parents of the deceased, who have specifically deposed that their daughter *i.e.*, the deceased developed illegal intimacy with the

accused, started living with him, begot a female child through him, used to reside at M.R.Palle and other places in and around Tirupati and by the date of incident, residing at Dr.No.4-225, Venkatapathi Nagar, Tirupati. On 29.11.2010 when they visited their daughter, she informed them that the accused poured kerosene and set fire to her; thereafter she was admitted in the S.V.R.R.G.G. Hospital, Tirupati, found their daughter with burn injuries; they further deposed that the deceased informed them that when the accused asked her to cook non vegetarian and when she did not do so, he quarrelled with her, beat and ultimately set fire to her by pouring kerosene. They were subjected to lengthy cross-examination, wherein they reiterated the same.

14. P.Ws.3 to 11 did not support the case of prosecution.

15. The evidence of Dr.B.Venkateswarlu, P.W.12, reveals that he conducted autopsy over the dead body of deceased on 05.12.2010, started at 12:00 noon and completed the same at 01:15 p.m., found the following injuries suffered by the accused:

Dermo epidermal burns present all over the body except

- 1) Over the face, front and back of neck;
- 2) Front and back of lower 1/3rd legs;
- 3) Front and back of lower abdomen;
- 4) Dermo epidermal burns are seen with hyperemic border, with blackened skin tags, underneath surface in black and greenish in colour.

16. P.W.12, the doctor, further opined that the deceased appear to have died due to consequence of *ante mortem* burns on 04.12.2010 at 08:10 a.m. in S.V.R.R.G.G. Hospital, Tirupati. Ex.P-11 is the post-mortem examination report given by him which corroborates with the evidence of P.W.12.

17. P.W.13 is the Investigation Officer in this case. His evidence reveals that on 29.11.2010 at 07:30 a.m. he received a phone message from outpost police station S.V.R.R.G.G. Hospital, Tirupati, and immediately rushed there; he also received hospital information Ex.P-12 from the hospital, visited the deceased in the burns ward of S.V.R.R.G.G. Hospital and recorded her statement in the presence of Dr.K.M.Harika Reddy, P.W.18, who certified the condition of the patient as conscious. After recording the statement of the deceased, he read over the contents to her and explained her in telugu, the deceased admitting them to be true signed on the statement which is marked as Ex.P.13. Ex.P.13 reveals that on 28.11.2010 there was a quarrel between the deceased and the accused at their house and the accused in a drunken stage poured kerosene on the deceased and set her fire in the evening at 05:30 p.m.; due to flames the deceased came out of the house and made hue and cry, she was taken to the Hospital. There is also endorsement of the duty doctor, P.W.18, on Ex.P.13 showing that the deceased was conscious and coherent at the time of recording her statement by P.W.13. There is also record to show that P.W.13 basing on Ex.P.12 hospital information and Ex.P.13 declaration given by the deceased, reached

the Police Station and registered a case in Crime No.168 of 2010 for the offence under Section 307 I.P.C. against the accused. Ex.P.14 is the F.I.R. issued in this case. Thereafter, during the course of investigation, P.W.13 recorded the statement of deceased in the hospital, which is marked as Ex.P.15. The deceased corroborated her earlier statement *i.e.*, Ex.P.13. Thereafter, scene of offence panchanama was conducted under Ex.P.16; seized M.O.1 burnt cloth pieces and M.O.2 kerosene stove, which were marked under the cover of panchanama Ex.P.17 and got the scene of offence photographed through a photographer, altered the Section of law from Section 307 to 302 I.P.C. on receipt of death intimation of K.Meena from S.V.R.R.G.G. Hospital. Ex.P-20 is the altered F.I.R.

18. There is also evidence of P.W.14 B.Nagaraju, Inspector of Police, M.R.Palle Police Station, on receipt of altered F.I.R. Ex.P.20, he took up further investigation on 04.12.2010. On 05.12.2010 he visited S.V.R.R.G.G. Hospital, conducted inquest over the dead body of deceased in the presence of P.Ws.1 to 3, L.W.3 S.Sasikumar and L.W.5 P.Srinivasulu at 09:30, which is marked as Ex.P-9 and forwarded the dead body for conducting post-mortem examination.

19. There is also specific evidence of PW.15 V.Bhavanamma, Judicial First Class Magistrate, Tirupati, that she recorded the dying declaration of the deceased *i.e.*, Ex.P.24 on 28.11.2010 at 10:30 p.m. on an information received by her under Ex.P.23. The deceased had specifically stated to her that there was a quarrel

between her and her husband at 10:00 a.m. on that day morning; on that day the accused poured kerosene on her then she ran outside of the house; thereafter on the very same day in the evening the accused came to their house in a drunken stage, picked up quarrel with her and asking why she did not leave to her parents house, poured kerosene on her and set fire to her; then she made hue and cry and came out of the house, her neighbours poured water on her and put off the flames; thereafter her husband brought her to the hospital.

20. The submission of learned counsel for the accused is that there is variation with regard to accused setting fire to the deceased in Ex.P.13 and Ex.P.15 and as per Ex.P.24 dying declaration recorded by the Judicial First Class Magistrate, the time of setting fire is 10:00 a.m. on 28.11.2010. When all these three documents are examined, the time of setting fire in Ex.P.13 is mentioned as 05:30 p.m.; the time of setting fire in Ex.P.15 is mentioned as 05:00 p.m.; in Ex.P.24 there is a mention that in the morning the accused poured kerosene on the deceased and the deceased ran out of the house; again there is also a mention in Ex.P.24 that the accused in the evening, in a drunken stage, questioning the deceased why she did not go to her parents house, picked up quarrel with her, poured kerosene and set fire to her. So in all the dying declarations there is a specific mention that the accused set fire to the deceased in the evening. Therefore, it cannot be said that there is discrepancy in the

dying declarations with regard to mentioning the time of setting fire to the deceased by the accused.

21. There is also evidence to this effect by the Judicial First Class Magistrate, who deposed as P.W.15, when the dying declaration was recorded under Ex.P.24 there was a duty doctor, P.W.17, endorsed that the patient *i.e.*, deceased was conscious, coherent and in a fit statement of mind throughout recording the statement. In Ex.P.13 also there is an endorsement of the doctor, P.W.18, that the deceased was conscious, coherent and capable of giving the statement.

22. There is also evidence of P.W.16 Dr.G.Bhagyalakshmi, Civil Assistant Surgeon, S.V.R.R.G.G. Hospital that she intimated to the Police about the deceased getting admitted in the hospital in the ward of burn injuries.

23. There is also evidence of P.W.17 Dr.B.C.Jahnavi, that the Magistrate recorded the dying declaration Ex.P.24 in her presence, she made an endorsement to that effect *i.e.*, Ex.P.25 on the dying declaration.

24. It is apt to state that a conviction can be recorded on the basis of a dying declaration alone, if it is found to be wholly reliable (*Khushal Rao Vs. State of Bombay*¹, *P.Mani Vs. State of Tamil*

¹ AIR 1958 SC 22

***Nadu*², *Prem Kumar Gulati Vs. State of Haryana*³ and *Ramakant Mishra Alias Lalu Vs. State of Uttar Pradesh*⁴)**

25. Section 32(1) of the Indian Evidence Act, 1872 (for short, 'the Act of 1872') deals with dying declarations and states that when a statement, written or verbal, made by a person who is dead, as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death would be relevant in cases in which the cause of that person's death comes into question. Such statements are admitted in evidence on the principle of necessity.

26. Section 32(1) of the Act of 1872 is distinguishable from English Law on the subject, inasmuch as it does not require the statement to have been made in actual expectation of death. However, the words 'as to any of the circumstances of the transaction which resulted in his death' appearing in Section 32(1) show that contents of the statement must have a proximate relation to the actual occurrence. In other words, such a statement must be sufficiently/closely connected with the actual transaction resulting in death of the person who made it. A dying declaration is given due weight owing to the maxim '*Nemo Moriturus Praesumitur Mentiri*' – a man would not meet his maker with a lie in his mouth. If such a statement is reduced to writing, the scribe must be produced in Court.

² 2006 (3) SCC 161

³ 2014 (14) SCC 646

⁴ 2015 (8) SCC 299

27. Nothing is brought in the cross-examination of P.W.1, P.W.2 and P.Ws.12 to 17 to discard their testimony. In Ex.P.24 dying declaration recorded by the Magistrate, on the date of commission of the offence, the deceased clearly and categorically stated that the accused quarrelled with her, poured kerosene on her and set fire to her; thereafter, she was admitted in the hospital. Nothing is brought in the cross-examination of any of the above witnesses to discard their testimony. The Court has to carefully examine the dying declarations and form an opinion before they are relied upon. There is no evidence of tutoring or influencing the deceased either by her parents or anybody else to falsely implicate the accused in a case of this nature. There is no reason to discard the evidence of P.W.13 and P.W.15. When the accused was examined under Section 313 Cr.P.C., he simply stated that the evidence of the prosecution witnesses is false, did not state anything to prove that he is not guilty of the alleged offence and was not present at the house when the deceased suffered burn injuries. Had the accused was innocent definitely he would have brought some evidence to rebut the proof off his innocence.

28. When the dying declarations were recorded by P.W.13, Sub-Inspector of Police, and P.W.15, Judicial First Class Magistrate, the deceased was conscious, coherent and capable of giving statement. The same is supported by the evidence of doctors as well as the endorsements made on the dying declarations. There are no discrepancies or material omissions in the dying declarations *i.e.*,

Ex.P.13, Ex.P.15 and Ex.P.24. Therefore, these dying declarations can be safely relied upon.

29. On perusal of the entire evidence on record, there is evidence that the accused beat the deceased on 28.11.2010 morning in an intoxicated condition and directed her to go to her parents house; in the evening the accused found the deceased at his house, questioned her why she did not go to her parents house and beat the deceased in an intoxicated condition, poured kerosene on her and set fire to her which ultimately resulted in her death on 04.12.2010.

30. The trial Court while dealing with the subject matter of the Appeal had elaborately analyzed the entire evidence and held that the accused is guilty for the offence under Section 302 I.P.C. The findings of the trial Court are based on record; there is no force in the contentions raised on behalf of the accused. There is unimpeachable evidence on record to hold that the accused has caused the death of his wife K.Meena. Merely because of some of the witnesses did not support the case of prosecution, the entire prosecution case cannot be thrown out. There is nothing to take a different view; there is no infirmity in the impugned judgment. There is clear intention on the part of the accused in causing the death of the deceased. Therefore, the trial Court had rightly convicted and sentenced the accused for the offence under Section 302 I.P.C. The Appeal is devoid of merits and is liable to be dismissed.

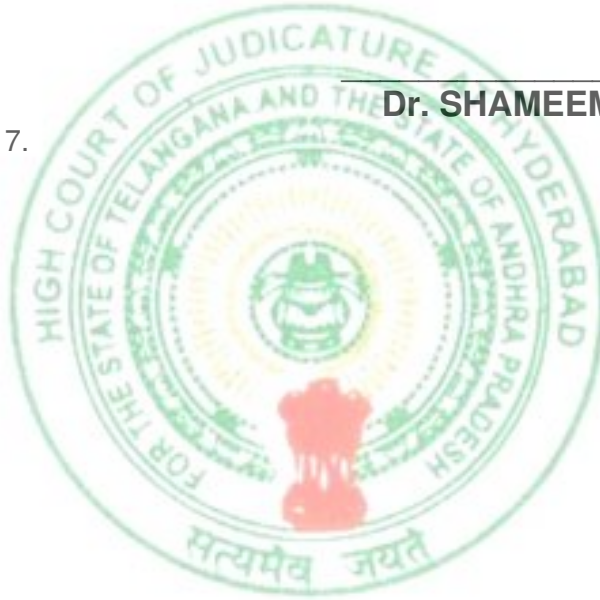
31. In the result, the Criminal Appeal is dismissed confirming the conviction and sentence recorded against the accused for the offence under Section 302 I.P.C. in Sessions Case No.215 of 2011 dated 21.10.2011.

32. In consequence, miscellaneous petitions, if any, pending in this Appeal, shall also stand dismissed.

A.RAJASHEKER REDDY, J

Dr. SHAMEEM AKTHER, J

Date: 28-10-2017.
DSH



HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

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HON'BLE Dr. JUSTICE SHAMEEM AKTHER

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CRIMINAL APPEAL No.470 OF 2012

(Judgment of the Division Bench delivered by
Hon'ble Dr. Justice Shameem Akther)

Date. 28-10-2017

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