

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.1247 OF 2011

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

1) The sole accused in Sessions Case No.39 of 2009 on the file of the VIII Additional Sessions Judge (FTC), Warangal, is the appellant herein. He was tried for the offences punishable under Sections 302 and 498-A IPC, for harassing his wife Sk. Yakub Bee (hereinafter referred to as "the deceased") by demanding money and also causing her death by pouring kerosene and setting her fire on 23.04.2008 at 2.00 p.m. at Chintal, Warangal. Vide judgment, dated 30.08.2011, 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 304 Part-I 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) PW.1 is the mother, PW.2 is the daughter, PW.3 is the sister of the deceased, where as PW.4 is the husband of PW.3. PWs.5 and 6 are their neighbours. 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 one son and daughter. It is said that the accused used to pick up quarrels with the deceased, in an intoxication condition and harass the deceased for additional dowry, which was informed to PW.1. On the demands made by the accused, PW.1 paid Rs.10,000/- and Rs.6,000/- on two different occasions. On the date of incident, PW.3 informed PW.1 that the deceased sustained burn injuries. Immediately, PW.1 went to the house of the deceased and enquired with the deceased as to how she sustained burn injuries. The deceased is said to have informed her that the accused poured kerosene and set her ablaze. Immediately, thereafter, the deceased was taken to M.G.M. Hospital. PW.2, who is the daughter of the deceased, deposed that on the date of incident there was a quarrel between the deceased and accused for money. The deceased gave money to the accused. The accused took the amount and went away. Within five minutes thereafter, the accused returned to the house and asked the deceased again for money, when the deceased told him that she gave the entire amount, the accused lost temper, torn the new saree, poured kerosene on the body of the deceased and set her ablaze. PW.3 in her evidence deposed that on the date of incident at about 3.00 or 4.00 p.m., PW.2 came to her

house and informed about the incident. On hearing the same she went to the house of the accused. By the time she reached there, her sister Yakubbee was burning. Similar is the version of PW.4, who is the husband of PW.3. PW.5, who is the house owner of the deceased, deposed that at about 4.00 p.m., on hearing the deck sound from the house of the accused, she went there and disconnected the deck. She noticed a quarrel between accused and his wife with regard to money. While she was returning to her house, PW.2 and the son of the accused came to her and informed that their mother was burning. Again she returned to their house and found the deceased in flames and the accused was covering her body with bed sheet so as to extinguish the fire. The evidence of PW.6, who is the daughter-in-law of PW.5, would show that on the date of incident at about 4.00 p.m., she heard cries from the house of accused and she went there along with PW.5 and made Yakub bee wear a petty coat. In their evidence, they deposed about the quarrels between accused and his wife for money.

ii) Immediately after admission of the injured in the hospital, the Duty Medical Officer at M.G.M. Hospital, sent an intimation to PS Mills Colony, pursuant to which, PW.14-the Head Constable proceeded towards the hospital and recorded the statement of the injured, which is placed on record as Ex.P5. Basing on the said statement, a case in Crime No.92 of 2009 came to be registered, for the offences punishable under Sections 498-A IPC and issued the first information report, which is placed on record as Ex.P6. On receipt of the first information report, PW.15-the Inspector of

Police, visited the hospital and recorded the statements of PWs.1 to 6 and 8 to 10. Thereafter, PW.15 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.11 and another. Ex.P7 is the scene of offence panchanama along with rough sketch. He also got photographed the scene of offence.

iii) While things stood thus, on receipt of the requisition from the M.G.M. Hospital, Warangal, PW.16-the IV Additional Junior Civil Judge, Warangal, proceeded to the hospital on 23.04.2008 at 6.10 p.m., to record the dying declaration of the injured. After being satisfied with regard to the mental condition of the patient, by putting preliminary questions, he recorded the statement of the injured. Ex.P11 is the requisition and Ex.P12 is the dying declaration. On 27.04.2008 the deceased died. On receipt of death intimation PW.15 altered the section of law from Sections 498-A and 307 IPC to Sections 302 and 498-A IPC. Ex.P9 is the alteration memo.

iv) Thereafter, PW.15 proceeded to the hospital and conducted inquest over the dead body of the deceased in the presence of PW.12. Ex.P1 is the Inquest report. Later, the dead body was sent for postmortem examination.

v) PW12-the Assistant Professor, Forensic Medicine, Kakatiya Medical College, Warangal, conducted autopsy over the dead body of deceased and issued Ex.P4-the postmortem certificate. According to him, the cause of death was "due to burn injuries".

On 05.05.2008 PW.15 arrested the accused and produced him before the Court for judicial custody. After completing the investigation, he filed a charge sheet, which was taken on file as P.R.C.No.44 of 2008 on the file of the I Additional Judicial Magistrate of First Class, Warangal, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.39 of 2009.

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 16 and got marked Exs.P1 to P12 and MOs.1 to 4. 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 an outcome of tutoring. He would further submit that the oral evidence adduced by the

prosecution amply establish that the incident took place at the time when the accused was in drunken condition and due to a quarrel.

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 point that arises for consideration is whether the accused is responsible for the death of the deceased and if so whether the accused is liable for the offence punishable under Section 304 Part-I IPC.

9) The fact remains that at the time of incident, the accused was present in the house. The same is evident from the evidence of the PW.2, who is the daughter of the deceased and accused.

10) The first dying declaration came to be recorded by the Head Constable which is placed on record as Ex.P5. In the said dying declaration, the deceased stated that on the date of incident in the afternoon the accused beat her and quarreled with her for additional money. He also uttered bad words and hence she decided to go to police station, the accused took her buraka forcefully and gave kerosene tin to her stating that if she died he

would marry another lady. Immediately, the deceased herself poured kerosene on her body. The accused gave match box and said lit fire, then she is said to have lit the match stick and herself ablaze.

11) Coming to the dying declaration recorded by the Magistrate, which is placed on record as Ex.P12, it reveals that on the date of incident in the morning, the accused quarreled with her and beat her severely and demanded money for repair of the vehicle. It is said that her husband used to quarrel with her since day one of their marriage and beat her. While she was in house, the accused poured kerosene and lit fire. The fact that the accused picked up a quarrel before pouring kerosene and setting her on fire is inconsistent in both the dying declarations. In the first dying declaration she stated that she poured kerosene on herself and set herself on fire when the accused gave the kerosene tin and match box. In the second dying declaration which was recorded by the Magistrate, she stated that the accused poured kerosene and set her fire.

12) Coming to the oral evidence of PW.2, who was present in the house at the time of incident, it discloses that there was a quarrel between the deceased and accused when the accused demanded for money. Thereafter accused, who was in drunken condition, is said to have poured kerosene on the body of the deceased and set her ablaze. From the evidence of PW.2, it is clear that the accused was in drunken condition and present in the

house at the time of incident. Not only the two dying declarations but also the oral statement of the deceased made before PW.1 show that the accused was present in the house even at the time of the incident. If the two dying declarations and the oral statement are read together, 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.

13) 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 held that the element of inebriation ought to be taken in to 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.

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

“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

¹ (2015) 7 SCC 641

² (2000) 10 SCC 324

³ (2009) 14 SCC 532

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.”

15) 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.

16) In the instant case also, as observed earlier, a quarrel ensued between the deceased and the accused with regard to money, then, the accused poured kerosene on the deceased and set her on fire.

17) 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. Hence, the convictions recorded by the learned VIII Additional Sessions Judge (FTC), Warangal in the judgment, dated 30.08.2011 in

⁴ AIR 2017 SCW 612

Sessions Case No.39 of 2009 for the offences punishable under Sections 498-A and 304 Part-I IPC are confirmed. The sentence of imprisonment and fine imposed by the learned Sessions Judge for the offence punishable under Section 498-A IPC is confirmed. However, the sentence of imprisonment imposed by the learned Sessions Judge for the offence punishable under Section 304 Part-I IPC is modified to that of the sentence of imprisonment already undergone by the accused in this case, while confirming the fine and default sentence. Both the sentences are ordered to run concurrently. The order passed by the learned Sessions Judge with regard to the case property holds good. The appellant/ accused shall be released forthwith, if he is not required in any other case and if the fine amounts are paid.

18) With the above modification, the Criminal Appeal is partly allowed.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

04.12.2017
DRK/ gkv