

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.1374 of 2011

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

The sole accused in Sessions Case No.264 of 2009 on the file of XI Additional District and Sessions Judge, Krishna, Gudivadi, is the appellant. She was tried for the offences punishable under Sections 498A, 499 and 302 of IPC. Vide its judgment dated 22.09.2011, the learned Sessions Judge, while acquitting the accused for the offences punishable under Sections 498A and 449, convicted her for an offence under Section 302 of IPC and sentenced her to undergo imprisonment for life and also to pay a fine of Rs.5,000/-.

2. The gravamen of the charge against the accused is that on 02.04.2007, at the house of the deceased situated in Gongallamudi Village, Nandivada Mandal, the accused is alleged to have caused death of one Polukonda Padma (hereinafter referred to as deceased) by pouring kerosene on her.

3. The case of the prosecution as unveiled from the evidence of the prosecution witnesses are as under:

The deceased is the daughter-in-law of the accused. PW1 is the father of the deceased, PWs.2 and 3 are siblings to the deceased whereas PWs.4 and 5 are children of the deceased. All of them were living at Gongalamudi village. The marriage between the deceased

and LW8 (husband) took place about 15 years back to the date of incident. Out of the wedlock, they were blessed with two children. On 02.04.2007, while PWs.4 and 5 were watching T.V., the accused is alleged to have abused them, pursuant to which, a quarrel took place between the deceased and the accused and the situation was pacified by the husband of the deceased. Thereafter, when the husband left the place, the accused is said to have poured Kerosene, while she was near a gas stove, thereby causing burn injuries to the deceased. PW12 the Civil Assistant Surgeon, Government Hospital, Vijayawada, examined the injured, who was brought to the hospital by her father and brother, wherein the deceased was found to be suffering with 40% injuries. Immediately, PW12 sent a requisition to the Chief Metropolitan Magistrate, Vijayawada for recording the dying declaration. Ex.P12 is the hospital intimation sent to Chief Metropolitan Magistrate, Vijayawada (PW10). On the same day, PW14 the Head Constable of Out Post Police Station, Government Hospital, Vijayawada, received hospital intimation – Ex.P15, about the admission of the deceased. Basing on the said intimation, PW14 reached the hospital and recorded the statement of the injured in which the deceased is said to have signed. Ex.P17 is the statement of the patient, which was recorded by PW14. Though the doctor was present, PW14 did not obtain any endorsement of the doctor on the said statement. Immediately, thereafter, he sent the said statement along with the hospital intimation to PW16, who registered a case in Crime No.15 of 2007 for an offence punishable under Section 307 of IPC and issued Ex.P19 the FIR. Thereafter, he examined the

deceased including LWs.1 to 5. On 03.04.2007, PW10 the then III Addl.Chief Metropolitan Magistrate, Vijayawada, proceeded to the hospital and after being satisfied with the mental condition of the deceased, recorded the statements, which was placed on record as Ex.P13. On 04.04.2017, PW16 visited the scene of offence along with PW15 and prepared an observation report and rough sketch of the scene of offence, which are marked as Ex.P18 and P20 respectively. He also seized a plastic tin, kerosene stained earth and controlled earth, at the time of preparing panchanama of the scene of offence, apart from seizing saree, blouse, etc. He examined PWs.4 and 5 and on the next day, he recorded the statements of PWs.6 and 7. He arrested the accused on 07.04.2007 at 10.00 a.m. and produced him before the Court on 08.04.2007. PW16 received death intimation at 06.30 a.m., pursuant to which, he is said to have altered the Section of law from Section 307 of IPC to 302 of IPC. Ex.P21 is the altered FIR and Ex.P22 is the death intimation. On the same day, he proceeded to the Government hospital, conducted inquest over the body and prepared inquest proceedings in the presence of PWs.11, 15 and others. Ex.P14 is the inquest report. PW13 on receipt of requisition from SHO, Nandivada, conducted autopsy over the body of the deceased. Ex.P16 is the post mortem examination report. According to PW13, cause of death was due to burns and its complications.

After completing the investigation, PW16 filed a charge sheet, which was taken as PRC No.33 of 2007 on the file of Addl.Judicial Magistrate of First Class, Gudivada.

On appearance of the accused, copies of the documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal to the XI Additional District and Sessions Judge, Krishna, Gudivada, the case came to be numbered as S.C.No.264 of 2009.

On appearance, charges under Sections 498A, 449 and 302 of IPC came to be framed against the accused, which were read over and explained to the accused, to which she pleaded not guilty and claimed to be tried.

In support of its case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P24 and M.Os.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 her in the evidence of the prosecution witnesses, to which she denied. No oral or documentary evidence was adduced by the accused in support of her defence.

Basing on the material available on record and the dying declaration recorded by the Magistrate, the Sessions Judge convicted the accused for an offence under Section 302 of IPC, while acquitting the accused for the offences punishable under 498-A and 449 of IPC. Challenging the conviction and sentence, the present appeal came to be filed through legal aid counsel.

4. The learned counsel for the appellant/ accused mainly submits that except the dying declarations, there is no other evidence to connect the accused with the crime. According to him, even if the two dying declarations are taken to be true, still no offence under Section 302 of IPC is made out against the accused. He took us through the evidence of witnesses and also the two dying declarations, to show that the accused is innocent of the offence alleged against her.

5. The same is opposed by the learned public prosecutor stating that the two dying declarations recorded by the police and the Magistrate respectively are sufficient to place the accused under conviction.

6. As seen from the record, all the material witnesses including the children of the deceased did not support the case of the prosecution and were treated as hostile witnesses by the prosecution. Therefore, the case rests on the two dying declarations, one recorded by the Head Constable, Out Post Police Station, Government Hospital, Vijayawada and the second by the Magistrate, which are brought on record as Exs.P17 and P13 respectively. A reading of the two dying declarations would show that the incident was an outcome of the dispute in the family. The appellant is none other than the mother-in-law of the deceased. In the dying declaration, recorded by the Magistrate, it is stated by the deceased that her marriage with her husband took place about 15 years back. There used to be some quarrels between herself and mother-in-law. On the date of

incident, at about 03.00 p.m. children of the deceased were watching T.V. At that time, her mother-in-law came and screamed at the children as to who shall pay the electricity bill and warned them that she would bend their legs if they do not switch off the T.V. On listening the words of the mother-in-law, the deceased interfered and asked her not to abuse her children, for which, the accused is alleged to have abused the deceased stating as through whom she gave birth to the children and left the house. Then the husband of the deceased stopped her mother and he went out of the house. It is stated that while the deceased was in the kitchen near the stove, the accused is said to have poured kerosene on her, due to which the flames of the gas stove cleaved on the deceased causing serious burnt injuries. Further, the deceased stated that her brothers and brother-in-law brought her to the hospital. The said version corroborates with the statement recorded by the police. However, there is slight variation in the evidence of the Doctor-PW12 with regard to the manner in which the deceased caught fire.

7. In the dying declaration given before PW12 the deceased stated that her mother-in-law came and poured kerosene over her, she stayed at the gas stove and then flame of gas stove cleaved to her. She also stated that her mother-in-law poured kerosene on her.

8. In the statement recorded by the police – PW14, which is marked as Ex.P17, it is stated by the deceased that the accused picked up kerosene, which was in the can to pour on the deceased. Gas stove flames raised and she caught fire.

9. A reading of the two dying declarations disclose that the accused poured kerosene on the deceased. As stated earlier, the accused though poured kerosene on the deceased, did not set her on fire. It is not even the case of the prosecution that the accused was carrying match box to set the deceased on fire. The panchanama of the scene of offence, does not anywhere indicate the presence of match box nor any match box being seized from the scene of offence. Therefore a doubt arises whether really the accused intended to kill the deceased. If really, she intended to do so, definitely she would have set fire to the deceased after pouring kerosene either with a match stick or by pushing the deceased towards the stove. But she did not do so. Further, it is to be noted that as soon as kerosene was poured, the deceased stood near the stove without leaving kitchen and out of high flames the deceased caught with fire. Therefore, it appears to be a case where the accused was having knowledge that her act may lead to causing burn injuries leading to death, but definitely it cannot be said that her action was with an intention to cause death of the deceased.

10. Further, as seen from the record, none of the family members support the case of the prosecution and even the children of the deceased and parents of the deceased turned hostile. It is further brought to the notice of the Court that the accused was in jail since September, 2011.

11. Having regard to the facts in issue; the manner in which the incident took place and as there was intention to cause death, we feel

that the offence committed by the accused can be scaled down from Section 302 of IPC to Section 304 II of IPC.

12. Accordingly, the criminal appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in S.C.No.264 of 2009 on the file of the XI Additional District and Sessions Judge, Krishna, Gudivada, for an offence punishable under Section 302 IPC is altered to one under Section 304-II IPC. In view of the representation that the accused is in jail from September, 2011, the sentence of imprisonment is reduced to the period already undergone. Consequently, the appellant/ accused shall be set at liberty forthwith, if she is not required in connection with any other case.

13. Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

21.11.2017
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