

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE P. KESHA RAO

CRIMINAL APPEAL No.396 of 2011

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

1) Assailing the judgment dated 18.02.2011, passed in S.C.No.108 of 2009 on the file of the Principal Sessions Judge, Nalgonda, wherein the accused was found guilty for the offences punishable under Sections 302 and 498-A IPC, the present Criminal Appeal is filed.

2) The facts as culled out from the evidence adduced by the prosecution are as under:

3) Appellant/ Accused is the husband of the deceased. PWs.5 and 1 are the brother and daughter of the deceased respectively. The marriage of the accused with the deceased took place about 25 years back and out of wedlock, they were blessed with PW.5. After the birth of PW.5, the accused got addicted to alcohol and used to harass and beat the deceased. Several panchayats were held in the presence of elders, but to no avail. On the fateful day i.e. on 14.08.2008, PW.5, who was studying sixth class, the deceased and the accused were present in the house. At about 10.00 a.m., PWs.2, 3, 6 and 7, who were the neighbours, on noticing smoke coming out from the house of the accused, rushed towards the house, unbolted the door and extinguished the flames on the deceased, with the help of a blanket. When they asked the deceased as to how she caught fire, she informed to them that the

accused who was in a drunken condition, poured kerosene and set her on fire. The same was informed to PW.1 and thereafter the husband of the Sarpanch, who was examined as PW.6, called the ambulance and took the deceased to Gandhi Hospital. On receipt of the information about the injuries sustained by the deceased, PW.1 and the relatives of the deceased proceeded to Gandhi Hospital, but the deceased was dead by then. PW.1 proceeded to the police station and lodged a report, which is marked as Ex.P1. PW.11, S.I. of Police, registered a case in Crime No.161 of 2008 for the offences punishable under Sections 498-A and 302 IPC and issued FIR, which is marked as Ex.P4.

4) Subsequent investigation was taken over by PW.13, the Inspector of Police. After receiving the copy of FIR, PW.13 proceeded to scene of offence, which is situated at Venkirayala village, and in the presence of PW.9, who is the panch witness, conducted a panchanama of the scene of offence, and also prepared a rough sketch of the scene. Ex.P2 is the scene of offence panchanama and Ex.P6 is the rough sketch of the scene of offence. On the next day, he proceeded to the Gandhi Hospital and conducted inquest over the deadbody in the presence of PW.10. Ex.P3 is the inquest report. At the time of inquest, PW.13 examined PWs.2, 3, 4 and 6. After conducting inquest, the body of the deceased was sent for postmortem examination.

5) PW.14, the Associate Professor, Forensic Science Laboratory, Gandhi Medical College, Secunderabad, conducted autopsy on the

body of the deceased and issued Ex.P7, the postmortem report. According to PW.14, the cause of death was “shock due to burns”.

6) After getting the Section 164 Cr.P.C., statement of PWs.2, 3 and 4 recorded through JFCM, Narkekal, and arresting the accused, PW.13 filed the charge sheet, which was taken on file as P.R.C.No.71 of 2008 on the file of the Addl. Judicial Magistrate of First Class, Bhongir. On committal, the same came to be numbered as S.C.No.108 of 2009.

7) On appearance, the accused was furnished with all the papers as required under Section 207 Cr.P.C. Thereafter, charges under Sections 302 and 498-A IPC came to be framed, and explained to the accused, to which he denied and claimed to be tried.

8) To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P7 and M.Os.1 to 4. 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 in support of his defence. But, however, he got marked Exs.D1 and D2.

9) On appreciation of the entire evidence on record, the learned Sessions Judge convicted the accused as referred to above. Challenging the same, the present appeal is filed.

10) Sri Y. Koteswara Rao, learned counsel for the appellant/accused, would contend that there is no evidence to convict the accused, as the entire case rests on the circumstantial evidence. According to him, the circumstances relied upon by the prosecution do not form a chain of events so as to connect the accused with the crime. He further submits that even the evidence of PWs.2 to 7, which is sought to be relied upon by the prosecution, will not connect the accused. He took us through the evidence of PWs.2 and 3 to show that the trial Court erred in convicting the accused basing on their evidence.

11) The same is opposed by the learned Public Prosecutor. According to him, even if the evidence of PWs.4 to 7 is excluded from consideration, the evidence of PWs.2 and 3 is sufficient to base a conviction. It is urged that neither any material has been placed on record nor any suggestions are given to the witnesses to establish as to why the evidence of PWs.2 and 3 should be excluded from consideration. He submits that the oral dying declaration made by the deceased to PWs.2 and 3, coupled with the evidence of PW.5, is sufficient to convict the accused, since the accused failed to establish as to how the deceased died in his house more so when his presence in the house at the time of incident stands established through the evidence of PW2.

12) In order to appreciate the rival contentions, it would be useful to refer to the evidence of PWs.2 and 3. Before referring to the evidence of PWs.2 and 3, it is to be noted that though the

deceased claims to have been made an oral dying declaration before PWs.4, 6 and 7, but for the reasons best known, they failed to mention about it before the Investigating Officer, in their earlier statements recorded by the police during the investigation. The said fact is not disputed, as it is clear from the evidence of investigating officer. However, merely because PWs.4, 6 and 7 failed to mention in their earlier statements about the oral dying declaration made by the deceased, informing them about the cause of death, by itself may not be a ground to reject the evidence of PWs.2 and 3.

13) A perusal of the evidence of PWs.2 and 3 would show that on the date of incident both of them ran towards the house of the deceased, on seeing the flames coming out of the house. PW.2 rushed to the house of the accused and found the deceased in flames. Immediately, she extinguished the flames, and questioned the deceased as to how she sustained the burn injuries. The deceased said to have been informed PW.2 that it was the accused, who, in a drunken condition, poured kerosene and set her on fire. The said version of PW.2 gets ample corroboration from the evidence of PW.7. Apart from that, the evidence of PW.2 itself discloses that at the time of making the oral dying declaration, PW. 3 was present along with PW.2. Though in the cross-examination of PW.3, it was elicited that the accused, who works in Hyderabad, used to leave the village at 9.00 a.m. and return back late in the night, but no material has been placed to show that he was not present in the house on the date of incident. In

fact, the evidence of PW-5, who is the daughter of the accused, establish his presence in the house on that day.

14) It is further to be noticed that though the accused tried to elicit from PW.2 that she did not enter into the room of the accused, but the subsequent questions put to PW.2 would totally destroy the earlier answer elicited from PW.2. In order to appreciate the same, it is useful to extract the relevant portion of the evidence of PW.2, which is as under:

“On the date of occurrence at about 10.00 a.m., while I was going to my agricultural lands, I found some smoke from the house of accused and I also found public gathering there. Then I rushed there and myself and others who assembled there pushed the door. We found the deceased Vamma was in the flames. Then we extinguished the flames. We covered the body with a blanket. Then I asked the deceased why she set fire to herself, on that she replied that she did not set fire to herself and that her husband in a drunken condition poured kerosene and set fire to her body. At that time one Javaji Mahankali and Beera Paramesh were there along with me. After that I went away from that place. The accused used to come to his house in a drunken condition and used to quarrel with the deceased. I also stated these facts before the Judicial First Class Magistrate, Nakrekal.”

15) Coming to the evidence of PW.3, she deposed that on the date of incident, on seeing the flames coming out from the house of the deceased, they pushed the main door of the house, went inside the house and noticed the deceased in flames. Immediately they extinguished the same by covering her body with a blanket. When PW.2 asked the deceased about the incident, the deceased

replied stating that her husband, in drunken condition, poured kerosene and set fire to her body.

16) Though, PW.3 was subjected to cross-examination, nothing useful was elicited to discredit her testimony. On the other hand, when it was suggested to her that the deceased caught fire accidentally and that the accused never poured kerosene on her and set fire, she denied the same. From the suggestion put to PW.3, the plea of the accused appears to be that it was a case of accidental death. But except suggesting to the witnesses, no material has been elicited to show that it was an accidental death. The suggestion remained a suggestion.

17) Apart from that, the evidence of PW.5 (daughter of the deceased) establish the presence of the accused in the house on the date of the incident. According to her, within half-an-hour after she left the house, PW.3 came and informed her that her father poured kerosene and set fire to her mother. She further stated that immediately thereafter, she rushed to the house and found her mother lying with burn injuries.

18) In her chief-examination, PW.5 stated that on the date of occurrence at about 8.00 or 9.00 a.m. she went to the school. During that time, she was studying sixth class. When she left the house for school, her father and her deceased mother were present in the house. After about half an hour or so, after she went to the school, PW.3 came to her school and informed her that her father poured kerosene and set fire to her mother. She came back to the

house, where she found her mother lying with burn injuries and also found a big gathering of public. According to her, she did not talk to her mother, but some people were talking to her. Thereafter, an ambulance came there and people shifted her mother into the said ambulance, which took her to the hospital. She further stated that her father, the accused, used to consume liquor during nights and used to quarrel with her mother. The accused also used to abuse her. The accused used to beat the deceased in a drunken state demanding her to give money. Though PW.5 was cross-examined at length, nothing useful material was elicited to discredit her evidence.

19) The learned counsel for the appellant relied upon the decision of the Apex Court in Jose Alias Pappachan v. Sub-Inspector of Police, Koyilandy¹ and the judgment of this Court in Gaddameedhi Venkateswarlu v. State of Andhra Pradesh² to show as to how the Court should deal with a case arising out of circumstantial evidence. There is no dispute with regard to the proposition of law laid down in judgments relied on by the learned counsel for the appellant. But, the case on hand stands on a different footing in view of the oral dying declaration made by the deceased before PWs.2 and 3.

20) Hence, the argument of the learned counsel for the appellant that the circumstances do not indicate involvement of the accused in the crime cannot be accepted. Therefore, we see

¹ 2017 (1) ALD (Cr.) 1 SC

² 2017 (1) ALD (Cr.) 616

no reason to interfere with the conviction and sentence recorded by the Trial Court and accordingly, the criminal appeal is dismissed.

Miscellaneous petitions, if any, shall also stand dismissed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

Date: 03.10.2017.
ES/ CCM

