

**THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

CRIMINAL APPEAL No.1613 OF 2010

JUDGMENT: *(Per the Hon'ble Sri Justice Suresh Kumar Kait)*

Vide the present appeal, the appellant-accused has assailed the judgment dated 03.09.2010 passed in S.C No.62 of 2010 by the VII Additional Sessions Judge (FTC), Nizamabad at Bodhan, whereby the appellant was found guilty for the offences punishable under Sections 498-A and 302 IPC and sentenced to undergo life imprisonment and also to pay fine of Rs.5,000/- and in default to undergo Simple Imprisonment of six months, for the offence under Section 302 IPC and imprisonment for a period of 3 years and fine of Rs.3,000/- for offence under Section 498-A IPC and in default to undergo Simple Imprisonment of 4 months. Both the punishments were directed to run concurrently. Benefit of Section 428 of Cr.P.C has been given to the appellant.

2. The brief facts of the case are that :

On 25.10.2009 at 8.00 hours the *de facto* complainant Sri Avuti Veeranna @ Earanna presented a complaint mentioning therein that he is having four daughters and two sons. His third daughter Gangavva @ Gangamani was married to Maruthi of same village about 12 years back and she is having two children. The son-in-law of the complainant used to harass his daughter Gangamani

daily for want of money for the purpose of drinking of liquor etc., and he requested him not to harass his daughter. However, as usually on 23.10.2009 at about 8.00 p.m., his son-in-law i.e., appellant herein picked up a quarrel with his daughter and poured kerosene on her and set her ablaze. On the information, he visited his daughter's house and called 108 Ambulance and shifted his daughter to Banswada and from there to Nizamabad Government hospital and from there to Gandhi Hospital, Hyderabad and admitted her for treatment and came to police station for making a complaint.

3. On receipt of the said complaint, PW.17 J. Hanmanthu, S.I of Police, Jukkal registered a case in Crime No.67 of 2009 under Sections 498-A and 307 IPC and took up the investigation and examined the complainant, Sri Avuti Veeranna @ Earanna and the younger brother of the victim Sri Avuti Laxman and recorded their detailed statements in part-II CD. The said S.I visited the scene of offence and examined and conducted the scene of offence, panchanama and seized 5 liters Kerosene tin from the scene before the mediators i.e., Sri Sk.Hyder and Sri Narender Singh and on the same day S.I visited Gandhi Hospital, Hyderabad and examined the victim and recorded her detailed statement at the hospital. Prior to 24.10.2009, on the request of S.I. of Police, P.S. town-I, Nizamabad, the dying declaration of the victim was also recorded by Sri Ch. Panchakshari, Judicial

First Class Magistrate, Special Mobile Court, Nizamabad at District Headquarters Hospital, Nizamabad.

4. While the case was under investigation, on 29.10.2009 at about 10.15 hours, the S.I. received the information from Sri Avuti Veeranna that the victim was brought to his house from Gandhi hospital, Hyderabad with burn injuries on 26.10.2009 and she died on 29.10.2009 at about 10.00 hours at her house. Immediately, the S.I. rushed to Kandeballur village and found that the victim Smt. Machkuri Gangamani dead at her house with burn injuries.

5. After identifying the dead body of the deceased, the S.I. of Police altered the section of law in the case from Section 307 IPC to 302 IPC in addition to Section 498-A IPC and issued express section alteration memo and informed to all concerned.

6. On receipt of the information from the above named S.I., through Cell phone on 29.10.2009 at 10.15 hours regarding the death of the injured, Sri A.V.R. Narasimha Rao, C.I of Police Banswada, who is in-charge to Bichkunda circle rushed to the scene of offence and took up the further investigation from the S.I. Thereafter, the said C.I. verified the CD file and found it is on proper lines. The C.I. also examined the scene and conducted the scene panchanama in the presence of Smt Avuti Laxmibai and Sri Madapathi Shivaraju and he held inquest over the dead body of the deceased before the same mediators and sent the dead body

of the deceased to Government Hospital, Banswada for P.M.E under the escort of PC-868 of P.S. Jukkal. The Medical Officer Dr Ch.Ashwani Babu, who conducted autopsy over the dead body of the deceased opined that the cause of death is hypovolemic shock and septicemia due to sustained burn injuries. After the P.M.E., the dead body of the deceased was handed over to her blood relatives for conducting final rites.

7. On 04.11.2009, on reliable information, Sri J.Hanmanthu, S.I. of Police, Jukkal P.S. apprehended the accused at 7.00 hours at Khandeballur village and brought him to the office of C.I. of Police, Bichkunda Circle and produced him at 9.30 hours for interrogation. The said C.I. interrogated the appellant/accused, who confessed the offence; the said C.I. summoned the panchas i.e, PW.3 and PW.4 and recorded the confessional statement of the appellant/accused in the presence of the said panchas. The appellant/accused voluntarily confessed the offence by stating that due to a petty quarrel with his wife, he poured kerosene on her and set fire with an intention to kill her on 23.10.2009 at about 17.00 hours. However, she came out side from the house and survived till 29.10.2009.

8. The case of the prosecution is that the appellant and the deceased led their marital life happily for a period of two years. During their wedlock, they were blessed with one female and one male child. After two years of marriage, the appellant started harassing the deceased mentally and

physically by quarrelling daily for want of money for the purpose of drinking liquor etc. This fact was informed to her father Sri Avuti Veeranna and his relatives by the deceased. Accordingly, they counseled and requested him not to harass the deceased and to lead happy life. But the appellant/accused did not change his attitude and continued to harass his deceased wife. While so, on 23.10.2009 at about 5.00 p.m., the appellant picked up quarrel with the deceased in drunken condition for want of money and started beating her. On noticing the quarrel between the wife and husband, Sri Avuti Veeranna, father of the deceased and Sri Avuti Laxman, brother of the deceased came to the house of the deceased and tried to pacify the same. At about 7.45 p.m. on the same day, Sri Avuti Veeranna and Sri Avuti Laxman left the deceased house with a hope that they will decide their matter on the next day. Thereafter, the appellant/accused again picked up quarrel with his wife Gangamani by saying that she intentionally called her relatives and abused him. After that, the appellant decided to kill her and brought kerosene tin from back room and sent the children outside and poured kerosene on the deceased and set her ablaze. After receiving the flames, the deceased caught the appellant in flames in which the appellant also received the burn injuries and the deceased came out from her house and raised hues and cries. On that, Sri Avuti Veeranna and Sri Avuti Laxman rushed there and extinguished the flames.

Meanwhile, the appellant escaped from the scene, and the deceased received severe burn injuries. Sri Are Manik, who was present in his house, witnessed the incident. Sri Avuti Veeranna and his relatives shifted the deceased to Government Area Hospital, Banswada and from there to Government Headquarters Hospital, Nizamabad. On the requisition of police booth at said hospital, the Judicial First Class Magistrate of Special Mobile Court, Nizamabad recorded the dying declaration of the deceased on 24.10.2009 at 3.15 a.m., in hospital and copy of the same was collected from the J.F.C.M, Banswada Court. After that the injured shifted to Gandhi Hospital, Hyderabad on 24.10.2009 for treatment. Meanwhile, the complainant Sri Avuti Veeranna came to Jukkal P.S. on 25.10.2009 and lodged a complaint against his son-in-law. Accordingly, a case was registered against the appellant as noted above. After investigation, a charge sheet was filed and framed charges under Sections 498-A and 302 of IPC. The charges were read over and explained to the appellant/accused and he pleaded not guilty and claimed to be trial.

9. During trial, prosecution examined 19 witnesses and got marked Ex.P1 to Ex.P22. On behalf of the accused, no witness was examined, but Ex.D1 to Ex.D4 were marked. After the prosecution evidence was closed, the appellant was examined under Section 313 Cr.P.C., who denied incriminating evidence against him and deposed that he has

no witness to examine on his behalf. Relying prosecution case, the trial Court convicted him.

10. Learned counsel appearing on behalf of the appellant/accused submits that the trial Court convicted the appellant only on presumptions, surmises and conjectures, which are not relevant to the circumstances of the case and, the trial Court failed to notice that the deceased is the wife of the appellant and they had minor family disputes regarding his drinking habit and there was no intention or motive for accused to kill his wife. Moreover, the trial Court failed to notice that there was inordinate delay in reporting the case before the police. So also, there was delay in sending FIR to the Magistrate by the police.

11. He would further argue, the trial Court has not taken note that the confession panchas turned hostile and remaining witnesses all were interested witnesses and the prosecution failed to prove the allegations beyond reasonable doubt. The trial Court has also erred in treating the statement of the deceased as dying declaration, as injuries were not that grievous to cause imminent death. Statement of deceased was taken on 24.10.2009, whereas she died on 29.10.2009. The trial Court ought to have considered that there was no previous complaint of harassment of the deceased in the hands of the appellant. If the appellant poured 5 liters of kerosene on the deceased, there must be

smell on the body of the deceased. However, such a thing has not been recorded by the doctor in postmortem report.

12. Learned counsel further argued that in the present case except hearsay witnesses, there are no eye witnesses. Even if the story of the prosecution is believed, it would only show, there was a dispute between the appellant and his wife regarding his bad habits, but that was not serious enough for appellant to cause death of the deceased.

13. Learned counsel for the appellant further argued, as per the prosecution story, the deceased was burnt at 7.45 p.m. on 23.10.2009 and her statement i.e., her dying declaration was recorded at 3.18 a.m. and closed at 3.45 a.m. on 24.10.2009.

14. Admittedly, vide Ex.P17, the deceased was admitted in the hospital on 24.10.2009 at 2.40 a.m. in Burns ward with 85 to 90% burns. Therefore, it is highly doubtful, whether deceased gave statement in a coherent state of mind with 90% burn injuries. Moreover, due to extensive burns, sedatives and pain killers would be normally administered to the deceased and thereby also, she must not be in a conscious state of mind to give statement. Therefore, there is a doubt whether the deceased has narrated the actual story or not and even if she made the statement, it must be a tutored one.

15. Learned counsel for the appellant submits that if the deceased was 90% in burnt condition, there was no

occasion to shift the deceased to the house of the appellant and the story of the prosecution is totally doubtful. However, someone has committed the offence, but the appellant is impleaded falsely in the present case.

16. He argued, PW.7, has not deposed in the statement that when the appellant poured kerosene to lit fire on the deceased, in first attempt, he locked the doors and came out. He simply stated that he came out from the house by closing the doors. If this was the situation, the deceased would have opened the door easily and came out from the house. Thus, the story of the prosecution is totally doubtful and cannot be believed.

17. Learned counsel further submits that the appellant and deceased belonged to Tribal community. In their community, the men and women consume Toddy everyday in the evening. After 8.00 p.m. when she was in such situation cooking food, her polyester saree caught fire and the appellant tried to save his wife, and thereby, the appellant has also received injuries, which is on record. However, the prosecution has concocted story and implicated this appellant for the reason that the appellant owns 2 acres of land in his name and after the accidental death of the deceased, her family members demanded to transfer those lands in their favour, but, he did not yield to the demand of the family members or the police, but later, as stated by PW.1, the appellant transferred one acre each in the name of his son

and daughter. However, PW.1 got annoyed, and made the appellant scapegoat of the circumstances. PW.6 has also admitted the fact that two acres of land was transferred in the name of children of the appellant.

18. Per contra, while supporting the judgment, learned Additional Public Prosecutor would argue that admittedly the deceased died of burn injuries and in her dying declaration she clearly stated that the accused poured kerosene on her body and lit fire stick and set her ablaze. All the above facts could not be shattered by the defence side. Moreover, PWs.1, 2, 5 and 10 deposed about the disputes between the deceased and accused and about accused setting fire to her and their evidence is admissible under the principle of *res gestae*. Their evidence also could not be shattered.

19. Learned Public Prosecutor would further submit that PW.9, the Medical Officer, conducted postmortem on 29.10.2009, whereas the deceased received burnt injuries on 23.10.2009, and therefore, it cannot be expected that the smell of kerosene will remain for such a long time. PWs.1, 2, 5 to 7, 10 and 11 have deposed that the appellant accustomed to bad habits and he used to quarrel with his wife very frequently. The prosecution has proved its case beyond reasonable doubt. Therefore, the present appeal deserves to be dismissed.

20. Heard the learned counsel appearing on behalf of the appellant and the learned Public Prosecutor appearing on behalf of the respondent-State.

21. Point for determination is whether conviction & sentence recorded by trial Court are factually and legally sustainable?

POINT :

22. PW.1 is the complainant and father of the deceased. PW.2 and PW.5 are the younger brothers of the deceased. PW.3 and PW.4 are the panchas for confessional statement of the appellant. PW.6 and PW.7 are uncle and sister respectively of the deceased. PW.8 is the Dr D.Santhosh, who treated the appellant and issued M.L.C. PW.9 is Dr Ashwani Babu, who held autopsy over the dead body of the deceased and issued P.M.E report. PW.10 is brother of the deceased. PW.11 is neighbourer of the deceased. PW.12 and PW.13 are the panchas of inquest and scene panchanama. PWs.14 and 15 are the panchas of first scene of offence panchanama. PW.16 is the Judicial First Class Magistrate, Special Mobile Court, Nizamabad, who recorded dying declaration of the deceased at Government Headquarters Hospital, Nizamabad. PW.17 is the S.I of police, who issued FIR and investigation officer, PW.18 is the C.I of Police, Bichkunda circle who filed the charge sheet. PW.19 is

the C.I of police, Banswada, who has investigated the case and arrested the appellant/accused.

23. As per the evidence, the allegation against the appellant is that after two years of the marriage, the appellant started harassing the deceased mentally and physically by quarreling daily for money for the purpose of drinking liquor etc. This was informed to Sri Avuti Veeranna and his relatives by the deceased, and on receiving the said information, Sri Avuti Veeranna and other relatives counseled and requested appellant not to harass the deceased and to live happy life. But the appellant/accused did not change his attitude and continued to harass the deceased. On 23.10.2009 at about 5.00 p.m., the appellant picked up quarrel with the deceased in a drunken condition for money and started beating her. On noticing the quarrel between the deceased and appellant, PW.1-Avuti Veeranna, the father of the deceased and PW.2-Avuti Laxman, brother of the deceased came to the house of the deceased and tried to pacify the same and at about 7.45 p.m. they left the deceased house with a hope that they will decide their matter on the next day. Thereafter, the appellant/accused again picked up a quarrel with deceased by saying that she intentionally called her relatives just to humiliate him. After that, the appellant decided to kill her and brought kerosene tin from back room and sent the children outside the house. Thereafter, poured kerosene on the deceased and set her

ablaze. After receiving the flames, the deceased tried to catch the appellant with flames in which the appellant also received the burn injuries. Meanwhile, deceased came out from her house and raised hues and cries. After hearing the same, PW.1 and P.W.2 rushed there and extinguished the flames. Meanwhile, the appellant escaped from the scene. Thereafter, the deceased was shifted to Government Area Hospital, Banswada and from there to Government Headquarters Hospital, Nizamabad.

24. On the requisition of the police booth, at Headquarters Hospital, Nizamabad, the Judicial First Class Magistrate of Special Mobile court, Nizamabad recorded the dying declaration of the deceased on 24.10.2009 at 3.15 a.m. Thereafter, the injured was shifted to Gandhi Hospital, Hyderabad on 24.10.2009 for treatment. Meanwhile, PW.1, the complainant came to Jukkal Police Station and lodged a complaint against appellant, which culminated into Crime No.67 of 2009 under Section 498-A of IPC and 307 IPC. After the death of the deceased, the section of law in FIR was altered from Section 307 IPC to 302 IPC. After investigation, a charge sheet was filed under Section 498-A and 302 IPC.

25. PWs.3 and 4 though were the panchayatidars and witnesses of the confessional statement made by the appellant admitting killing his wife, however they turned hostile but admitted their signatures in all the pages of Ex.P3-confessional panchanama.

26. PW.1 deposed in his chief examination that after noticing the serious condition of deceased, they had taken her to Banswada Government Hospital and later from there to Nizamabad Government Hospital and finally to Gandhi Hospital, Hyderabad for treatment. PW.1 further stated that subsequently, his deceased daughter was brought back to the house of the appellant, after getting treatment for 4 days in Gandhi hospital, Hyderabad. However, his daughter succumbed to injuries. In view of the above evidence and contents of Ex.P1, he established that he was attending the treatment of the deceased, and therefore, presented Ex.P1 with delay. Hence, there is proper explanation given for the delay in presenting Ex.P1 complaint to PW.7.

27. Learned counsel for the accused/appellant has relied on a decision of Division Bench of this Court reported in **Dhanpat v. State of U.P.**¹, whereby it was held that when the FIR is not lodged promptly, then it becomes the duty of the prosecution to explain the delay. However, in the instant case, since there is proper explanation, it can be safely held that Ex.P1 was presented by PW.1 with delay due to valid reasons and hence above decision is not relevant in such situation. Moreover, PW.1 and his relatives were busy in shifting the deceased to the hospitals mentioned above. They were residing in rural area. As the Government hospitals

¹ 1989 (2) page 154 (D.B)

were not so equipped, therefore they have taken the deceased to one hospital to another, due to that, FIR got delayed.

28. PW.17 deposed that at 10.00 a.m. on that day he visited scene of offence which is the house of appellant and conducted panchanama of scene of offence in the presence of PW.14 and PW.15 and seized 5 liters kerosene tin from the scene of offence before those mediators. He also stated that he got affixed a slip signed by the mediators PW.14 and PW.15 on the kerosene tin, marked as M.O.1, which was seized from the time of scene of offence. He got drafted scene of offence panchanama and rough sketch of the scene of offence, which are marked as Ex.P14 and Ex.P15 respectively. He had taken all other necessary steps required under the law. However, in his cross-examination, nothing could be elicited to help the appellant.

29. The most important witness in this case is PW.16-Ch. Panchakshari, who was working as Judicial First Class Magistrate, Special Mobile Court, Nizamabad. He received requisition from police booth at Government Hospital, Nizamabad through PC No.189 of P.S.- I town, Nizamabad on 24.10.2009 at 3 hours 5 a.m., at his residence to record the statement of the injured. He proceeded to the hospital along with his attender Mohammed Younus and reached the hospital at 3.15 a.m. and he proceeded to the burns ward and identified the patient with the help of the duty doctor in burns ward. Then, he commenced the proceedings at 3.18 a.m.

P.W.16, deposed that before putting simple questions to the injured, he obtained certificate from the duty doctor about the consciousness and state of mind of the injured. Thereafter he put simple questions to the injured about her name, marital status, name of the husband, age, village etc., to know the mental condition, consciousness and state of mind of the injured. After recording her statement, he was satisfied that the injured was in fit state of mind, conscious and coherent to give her statement. When he questioned the injured as to how her body was burnt, she replied that on the day of incident she came to her house after cutting the Soya and took her dinner along with children. Thereafter, appellant came to the house in a fully drunken condition, and questioned her about "Goda" (word used by her, she replied that it means the drink in the bottles). Thereafter, the appellant bet and abused her on one pretext or the other. She further stated that her husband told to her that he will not allow her to live and will kill her. By saying so, he poured kerosene on her, lit fire with match stick. When her husband was beating her, their children due to fear, went out. She also stated that she and her husband were only present in the house. After fire was lit to her, she came out of the house, and on hearing her hues and cries, the neighbours gathered and poured water on her. Immediately, the father of the injured brought an auto and shifted to the hospital.

30. It is pertinent to mention here that PW.16 put a question about why her husband Maruti lit fire to her, on that, she replied that her husband always used to come home under the influence of liquor and used to beat her by stating that he would kill her. Said conduct of appellant was going on since her marriage. The deceased specifically deposed before the Magistrate that her husband was alone responsible for the incident.

31. If the argument of the appellant that the deceased was wearing polyester saree, and while cooking food, her saree caught fire and the appellant tried to save her and so he also received injuries, is true, then why he did not take her to hospital is a big question. No explanation was given in 313 Cr.P.C. statement and he did not examine any witness. Hence, defence plea is unsustainable.

32. As rightly argued by learned Additional Public Prosecutor, the evidence of PWs.1, 2 to 5 would shed light that the accused has addicted to consuming alcohol, playing cards and spending money earned by deceased by doing coolie work and picking up quarrel with her now and then. Their evidence would show that on the night of incident also he picked up quarrel with her and poured kerosene on her and set her ablaze and those witnesses were residing within short distance from the house of accused and deceased and they rushed to the spot immediately after the incident and came to know that the accused set her fire. PWs.1, 2 and 5

are no doubt father and brothers of deceased, but on that count their evidence cannot be brushed aside, as they are residing at a short distance from the house of the accused and rushed to the spot immediately after the incident. Nothing useful could be extracted in the cross-examination to impeach the credibility of their evidence. Thus, their evidence coupled with the evidence of PW16 and Ex.P16—dying declaration would all cumulatively show that the accused killed the deceased by pouring kerosene on her and setting her ablaze.

33. In view of the above discussion, we hold that the conviction and sentence recorded by the trial Court are factually and legally sustainable and there are no merits in this appeal. Accordingly, this Criminal Appeal is dismissed by confirming the judgment of the trial Court.

Miscellaneous petitions, if any pending, shall stand closed.

JUSTICE SURESH KUMAR KAIT.

JUSTICE U. DURGA PRASAD RAO.

Date : -0 -2017

Note: L.R. Copy be marked

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