

*** THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**

AND

*** THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

+CRIMINAL APPEAL No.475 of 2011

% DATED: 23.09.2017

Pallapu Veerabhadram S/o Pullaiah,
36 years, C.T.No.4342,
Central Prison, Cherlapalli,
Ranga Reddy District.

...APPELLANT/ACCUSED

Vs.

\$ The State of A.P.
Rep. by the Public Prosecutor,
Hyderabad.

...RESPONDENT/COMPLAINANT

! COUNSEL FOR THE PETITIONER: SRI B.PARAMESWARA RAO

^ COUNSEL FOR THE RESPONDENT: PUBLIC PROSECUTOR

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>Head Note

? Cases referred

1.2016 (2) ALD (CrI) 392 (SC)

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

CRIMINAL APPEAL No.475 of 2011

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

1. Assailing the judgment dated 24.01.2011, in S.C.No.163 of 2010 on the file of the III Additional Sessions Judge, Nalgonda, wherein the trial Court, while acquitting the accused under Section 498-A IPC, found him guilty under Section 302 IPC, the present Criminal Appeal came to be filed by the accused.

2. The substance of the charge against the accused is that, on 18.09.2009, at about 18.30 hours, he is alleged to have poured kerosene on his wife Pallapu Dhanalaxmi (hereinafter referred to as "the deceased") and set her on fire. He was found guilty for the offence punishable under Section 302 IPC for causing the death of one Pallapu Dhanalaxmi and was sentenced to suffer imprisonment for Life and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for six months.

3. The facts as culled out from the evidence are as under:

P.Ws.1 to 3 are the neighbours, P.W.4 is the mother-in-law, P.W.5 is the mother and P.Ws.6 and 8 are the sisters of the deceased. The marriage of the accused with the deceased was performed about eleven years back and out of wedlock

they were blessed with one daughter by name Sudha Rani, who was aged about eight years at the time of the incident. Thereafter, the accused got addicted to vices and started harassing the deceased mentally and physically, suspecting her fidelity. Unable to bear the torture, the deceased went to her parents' house and informed the same to her parents. On hearing the same, the mother of the accused went to the house of the deceased, convinced her and took her back to their house. While so, on 18.09.2009, at about 6.30 p.m., in the absence of the family members, the accused tied the deceased to a chair, poured kerosene over her body, set fire to her and then managed to escape from there. On hearing the cries of the deceased, P.Ws.1 to 3 rushed there and shifted her to the Community Health Center, Kodad, but she succumbed to burn injuries on the way to Area Hospital, Suryapet.

On receiving information, P.W.13-the Sub-Inspector of Police, Nadigudem Police Station, rushed to the Community Health Center, Kodad, recorded the statement of P.W.1-mother of the deceased. Ex.P1 is the statement of P.W.1. He sent Ex.P1, through P.C.1209 to Nandigama Police Station for registration of a crime. Basing on Ex.P1, a case in Cr.No.109/2009 under Section 498-A and 307 IPC was registered and sent the C.D. file to P.W.13.

On 18.09.2009 at about 8.00 p.m., P.W.13-the Sub-Inspector of Police filed a requisition to record the dying declaration of the deceased-Pallapu Dhanalaxmi. Accordingly, P.W.12, the Tahsildar, Kodad, proceeded to the hospital and recorded the dying declaration of the deceased and immediately forwarded it to the Judicial First Class Magistrate, Kodad. Ex.P6 is the dying declaration recorded by P.W.12. During the course of investigation, P.W.12 visited the scene of offence and conducted panchanama in the presence of P.W.10 and L.W.15. Ex.P2 is the scene of offence panchanama and Ex.P3 is the rough sketch of the scene of offence. At the scene of offence, he seized M.Os.1 to 5. On receiving the death intimation, P.W.13 altered the Section of law from 498-A, 307 IPC to 498-A, 302 IPC on 19.09.2009. Ex.P8 is the altered F.I.R. Subsequently P.W.14, the Circle Inspector of Police, who took up further investigation, examined L.Ws.2 to 10 and in the presence of P.W.10 held inquest over the dead body. Ex.P4 is the inquest report. Later the body was sent for postmortem examination. Dr.S.Swarnalatha, Civil Assistant Surgeon, Community Health Center, Kodad-L.W.20, held autopsy over the body and issued postmortem report opining that the cause of death is due to burns and hemorrhagic shock. Ex.P12 is the postmortem certificate.

4. After filing the charge sheet, the learned Judicial First Class Magistrate, Kodad, took cognizance of the case against

the accused for the offences punishable under Sections 302 and 498-A IPC and numbered the same as P.R.C.No.11 of 2010.

5. After appearance, as the alleged offences committed by the accused are exclusively triable by the Court of Sessions, the learned Magistrate committed the case under Section 209 (a) Cr.P.C. to the Court of Sessions, Nalgonda Division, and the Sessions Court, after receipt of committal order along with the records, took cognizance of the case against the accused for the offences punishable under Sections 498-A and 302 IPC and registered the case as S.C.No.163 of 2010.

6. On appearance, charges under Sections 498-A and 302 IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

7. To substantiate their case, the prosecution examined PWs.1 to 14 and got marked Exs.P1 to P13 and M.Os.1 to 5. After closure of the 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 by the accused in support of his defence.

8. After considering the entire evidence on record, the trial Court believed the evidence of P.Ws.2 and 3 and convicted the

accused in the manner referred to above. Challenging the same, the present appeal is filed.

9. Sri B.Parameswara Rao, learned counsel for the appellant/accused, would submit that the learned Sessions Judge ought not to have convicted the appellant under Section 302 IPC basing on the oral evidence of P.Ws.1 to 4. He would submit that there was no justification for the prosecution to take a plea before the trial Court that the dying declaration recorded by P.W.12, under Ex.P.6, is inadmissible, as it was they who brought the said document on record. Such being the position, when there are two inconsistent versions with regard to the cause of death of the deceased, he pleads that benefit should be extended to the accused.

10. However, the learned Public Prosecutor opposed the same contending that in view of the oral dying declarations made before P.Ws.1 to 3, the judgment under challenge warrants no interference.

11. In order to appreciate the rival arguments, it would be relevant to refer to the observations made by the learned Sessions Judge, in paragraph 35 of the judgment, which reads as follows:

“I already stated above, the prosecution in this case is not relying on the dying declaration statement of the deceased Dhanalaxmi recorded by P.W.12 during her lifetime while she was struggling for life under Ex.P.6 because, on Ex.P6 the doctor

who was present at that time has not certified that at the time of giving statement by the victim Dhanalaxmi she was in conscious, coherent and her mental condition was fit to give statement. The prosecution is relying on the oral dying declaration of the deceased Dhanalaxmi before P.Ws.1 to 3 when they were came to her house on the incident day after extinguished the flames on her body when they were enquired she has revealed that she has not committed suicide by pouring kerosene on her body and her husband by asking her to sit in a chair by tying her hands and legs to a chair by pouring kerosene set fire and increased the television volume in order that the neighbours should not hear her cries”.

12. In view of the above, it is pleaded by the learned Public Prosecutor that oral dying declaration made before P.Ws.1 to 3 is sufficient to sustain the conviction.

13. It is not in dispute that a requisition was sent to P.W.12-Tahsildar to record the dying declaration of the deceased. Pursuant thereto, P.W.12 visited the Area hospital at Kodad and recorded the dying declaration of the deceased between 8.15 and 8.30 p.m., wherein the deceased stated that due to quarrel with her husband, she poured kerosene and set herself on fire. In the said dying declaration, she categorically states that there was no involvement of any of the family members, including her husband. After reading out the contents of the statements to the victim, P.W.12-Tahsildar took the left toe impression, at the bottom of the statement. The said dying declaration also contains the signature & endorsement of the doctor at the bottom of the statement.

14. The prosecution has neither cross-examined P.W.12-the Tahsildar with regard to the contents of the dying declaration

nor did they treat P.W.12 as hostile. Therefore, the prosecution cannot now plead that they are not relying on the dying declaration. Things would have been different, had they declared the person who recorded the dying declaration hostile or cross-examined the person who recorded the dying declaration, to disprove the same as contrary to law or to show that the same was not in accordance with Rule 33 of Criminal Rules of Practice. But without making such an effort, the prosecution cannot say that they are not relying upon the dying declaration, moreso, when it was marked through their own witness.

15. It is true that oral dying declaration made before P.Ws.1 to 3 give a different version. All the three witnesses, in one voice, depose about the oral dying declaration made by the deceased to them, wherein she is alleged to have stated that the accused poured kerosene and set her on fire. It may be true that the mother-in-law of the victim might have been present by the side of deceased, before she made the statement before the Tahsildar. But, that itself cannot be a circumstance to throw out the dying declaration on the ground of tutoring, when the evidence of P.W.12, would reveal that by the time he reached the hospital, the mother and also the mother-in-law of the victim were present by her side.

16. Therefore the plea of the learned Public Prosecutor that Ex.P6 is an outcome of tutoring, cannot be accepted. As things stand thus, two versions are put forth by the deceased, one in favour of the accused i.e. statement recorded by the Tahsildar, wherein the deceased stated that she committed suicide on her own and that no one is responsible for the same and the other against the accused i.e. the oral dying declaration made before P.Ws.1 to 3, wherein she is alleged to have stated that the accused poured kerosene and set her on fire.

17. In ***State of Gujarat v. Jayrajbhai Punjabhai Varu***¹, the Honourable Apex Court dealt with an identical situation, where there were three dying declarations. One recorded by the Sub-Inspector of Police, second by the learned Executive Magistrate and the third being the oral dying declaration made before the father of the deceased. In the two dying declarations, recorded by the Sub-Inspector of Police and the Executive Magistrate, the deceased stated that some unknown person poured kerosene and set her on fire, whereas in the oral dying declaration made before the father of the deceased, she stated that the accused tortured her for whole night, poured kerosene and set her on fire. Under the said circumstances, the Honourable Apex Court, while giving benefit to the accused, observed as under:

¹ 2016 (2) ALD (Cri) 392 (SC)

“The Court has to be on guard that the statement of deceased was not as a result of tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence”.

18. As stated earlier, the case on hand is somewhat identical to one referred to above. Having regard to the two inconsistent versions, put forth by the prosecution themselves, we intend to extend the benefit of doubt to the accused and acquit him of the said charge, under Section 302 IPC.

13. In the result, the Criminal Appeal is allowed. The conviction and sentences recorded against the appellant/accused in the judgment, dated 24.01.2011, in Sessions Case No.163 of 2010, on the file of the learned II Additional Sessions Judge, Nalgonda at Suryapet, for the offence punishable under Section 302 IPC is set aside and he is acquitted for the said offence. Consequently, the appellant/accused shall be at liberty forthwith, if he is not required in any other case or crime.

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

C.PRAVEEN KUMAR,J

A.V.SESHA SAI,J

23rd September, 2017

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