

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHAVA RAO

CRIMINAL APPEAL No.455 of 2011

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

Assailing the judgment in S.C.No.68 of 2008 on the file of the I Additional Sessions Judge, Adilabad, wherein the sole accused was charged for the offences punishable under Sections 302 and 201 of IPC and sentenced to suffer imprisonment for life under Section 302 IPC and also to undergo simple imprisonment for a period of three years and to pay fine of Rs.1,000/-, under both the counts, the present appeal came to be filed.

2. The gravamen of the charge against the accused is that on 11.05.2007 at about 01.00 a.m., at Dhobigalli, Eadgaon, Nirmal, the accused is said to have caused death of his wife-Maharaju Sayavva @ Sayamma, by throttling her neck and thereafter caused disappearance of evidence by pouring kerosene and setting her on fire.

3. PW1 is the mother of the deceased, while PWs. 2 and 3 are brothers of PW1. PWs. 2 and 3 are residents of Kangutta Village of Boath Mandal. The accused is the husband of the deceased.

4. The case of the prosecution as culled out from the evidence is as under:

The marriage between the accused and the deceased took place about more than 8 years prior to the date of incident and out the wedlock they were blessed with two daughters. One of them died later. About two months prior to the death of the deceased, the accused is said to have developed illegal intimacy with another girl and since then started harassing the deceased. The same was informed by the deceased to PW 1 and her brothers. On the date of incident, the deceased informed PW4 - Dhobi to call her mother and maternal uncles, so as to decide the harassment caused to her, in the panchayath. On the said date, she went inside the house and thereafter the accused joined her in the house. All of them slept and during the night time, PW4 heard some noise, woke up and rushed to the house of the accused. He found the door was bolted from inside and as such, he returned back to his house. After some time, at around 01.00 a.m., when PW4 went to attend nature calls, he observed the house of the accused in flames. He rushed towards the house, but found the door bolted from inside. PW4 is said to have raised his voice, as such one Raju and Srinivas, who were examined as PWs. 9 and 8 respectively, came to the scene. All of them opened the door by force and noticed the deceased dead with burn injuries all over the body. They also noticed the accused in the house along with his daughter. Suspecting that the accused set fire to the deceased, PW1-the mother of the deceased lodged a report –Ex.P1 to the Inspector of Police –PW15. Basing on the said report, PW15 registered a case in Crime No.78 of 2007 under Section 174 of Cr.P.C., and issued FIR

– Ex.P8. After recording the statement of PW1, PW15 proceeded to the scene of offence and recorded the statements of PWs.2 to 5 and got photographed the scene and dead body with the help of PW 13. Thereafter, PW15 conducted inquest over the dead body in the presence of PW11 and other staff. Ex.P3 is the inquest report. During inquest, the burnt cloth pieces (MO1), belonging to the deceased were seized and also MOs. 2 to 5. Thereafter, he prepared a rough sketch at the scene of offence, which is brought on record as Ex.P9. The scene of offence panchanama was marked as Ex.P2. Thereafter, the body was sent for Post Mortem Examination to the Government Hospital at Nirmal. PW14 – the then Civil Assistant Surgeon conducted autopsy over the dead body. Ex.P7 is the Post Mortem Examination Report. According to PW 14, the cause of death was due to Asphyxia by throttling, followed by burns which are Antemortem in nature. PW 16, who was the Circle Inspector of Police, took up further investigation and recorded statements of PWs.6, 7, 8 and 9 on 12.05.2007 and also examined PW 10 on 15.05.2007. Later, he arrested the accused on 22.05.2007. After completing investigation, he filed charge sheet, which was taken on file as PRC No.1 of 2008 on the file of Judicial Magistrate of First Class, Nirmal. On receipt of summons, the accused appeared before the Court and thereafter the matter was committed to the Court of Sessions Judge, Adilabad, by following the procedure contemplated under Section 207 of Cr.P.C.

5. To the charges framed, the accused pleaded denial and claimed to be tried.

6. In support of its case, the prosecution examined PWs.1 to 16 and got marked Exs.P1 to P10. No oral or documentary evidence was adduced on behalf of the accused.

7. After considering the evidence available on record, the trial Court found the accused guilty of the charges leveled against him and sentenced him to imprisonments referred to above. Aggrieved by the same, the present appeal came to be filed.

8. Learned counsel for the appellant mainly submits that the incident did not happen in the manner spoken to by the prosecution witnesses. According to him, it was a case of accidental death, which stands established from the injuries sustained by the accused. He placed reliance on the evidence to show that if really it was a case of homicidal death, the accused would have not sustained any injuries on any part of his body. Insofar as the evidence of witnesses, more particularly, the evidence of PWs.2 to 7, he would submit that all of them are interested witnesses. The same is opposed by the learned public prosecutor, contending that if really it was a case of accidental death, the conduct of the accused would have been different. Infact, he submits that no suggestion was given to any of the witnesses, to show that it was a case of accidental death. Merely stating that it is was a case of accidental death would not suffice

the purpose, unless the same stands established at least by way of suggestions and some evidence showing the probability of deceased sustaining death due to accidental burns.

9. It is not in dispute that the accused was present at the spot at the time was incident. It is also not in dispute that the main door of the house was bolted from inside. Evidence of the Civil Assistant Surgeon establish that the deceased died due to burn injuries and also due to throttling.

10. The issue that arises for consideration is whether the accused is responsible for the incident?

11. As seen from the record, the case of the prosecution is that the accused initially throttled the deceased, thereafter poured kerosene and set her on fire causing burn injuries leading to death. The evidence of the doctor, who was examined as Pw14 categorically states that the cause of death was due to Asphyxial by throttling followed by burns which are Antemortem in nature. Though PW14 was cross examined, nothing useful was elicited to discredit his version with regard to the cause of death. Apart from that, it is also to be noted that the deceased sustained 100 % burn injuries. The doctor noticed that there were no fractures of hyoid and thyroid structures, but there were numerous blood clots present in the greater cornua. He also noticed fine black material present in trachea. Heart was normal sized and chambers were filled with blood clots and there were torn vessels on both sides of neck. In the cross examination, the PW14 clarified that in case of

throttling, the fracture of hyoid bone is possible after 40 years of age. In the instant case, the deceased is aged about 24 years which supports the case of prosecution that it was a case of throttling. The observations made by PW14 clearly suggest that the deceased was initially throttled and thereafter killed by pouring kerosene and setting her on fire. The same stands supported from the PME report, wherein it is stated that there is presence of blood clots and also appearance of torn vessels on both sides of the neck. It is also to be noted that if the death of the deceased was only due to burn injuries, there is no possibility of blood clots in greater cornua. Therefore, the evidence of PW4 that the death was due to strangulation and thereafter she was set on fire, cannot be brushed aside.

12. Coming to the plea of accidental death, a reading of evidence of the witnesses does not anywhere indicate giving of such a suggestion. Infact, learned counsel for the appellant clearly concedes that the such a suggestion was never given to any of the witnesses. Having regard to the fact that the accused sustained injury, he would submit that it was a case of accidental death. If really, it is a case of accidental death, the conduct of the accused should have been otherwise. As seen from the record, by the time PWs.4, 5, 6, 8 and 9 entered the house, they noticed the dead body lying on the floor with burn injuries and the accused was standing by the side of the deceased holding his daughter. If really, the deceased sustained accidental burn injuries, the accused would have taken some steps to put off the

flames and also tried to seek the help of neighbours, whose houses were adjacent to his house, for carrying the deceased to the hospital. Infact the evidence of the witness would show that they came to the scene on hearing the cries of the deceased and thereafter with the help of PW8 and 9 got opened the door and entered the house. The conduct of the accused in keeping quite, when the witnesses, who are his neighbours, tried to open the door, speaks volumes.

13. In order to appreciate the findings arrived at, it would be useful to refer to the evidence of PW4, which reads as under:

“.....Accused is having a daughter through Sayavva. The accused is habituated for drinking and beating his wife Sayavva. On one occasion the deceased informed that the accused loved another girl and he wanted to marry her.....At about 01.00 a.m., when I wake up to attend calls of nature, I observed flames in the house of the accused. I rushed to the house of the accused and pushed the door. It was found bolted from inside again. The accused was inside the house. I raised cries, on Raju and Srinivas reached the scene. We opened the door by force. We put of the flames with help of water and removed the electric wire. Sayavva suffered severe burn injuries and found dead.”

14. The removal of electrical wire from the body of deceased, suggests that initially he throttled the deceased with the wire and then set her on fire.

15. Further, when the body was burnt inside the house, the accused remained silent without making any effort to rescue her. This shows his intention to kill the deceased. All the witnesses in

one voice say that the accused is not only habituated to drinking but was also having an affair with another girl, with whom he intend to marry. There were quarrels between the accused and the deceased in that regard. Infact, PW. 4 states that on the date of incident, the deceased asked him to call her mother and her maternal uncle for conducting panchayath.

16. Though learned counsel for the appellant tried to make an attempt to show that it is a case of suicidal death, but, as stated above, in the absence of any suggestion being given to any of the witnesses and since the examination of accused under Section 313, is also silent on these aspects, we see no reason to interfere with the order passed by the trial Court.

17. Accordingly, the Criminal Appeal is dismissed confirming the conviction and sentence dated 20.08.2010, passed in Sessions Case No.68 of 2008 on the file of the I Additional Sessions Judge, Adilabad.

18. Miscellaneous Petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

P.KESHAHA RAO, J

04.10.2017
vhb