

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.1186 of 2011

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

1) The sole accused in Sessions Case No.68 of 2011 on the file of the I Additional Sessions Judge, Vizianagaram, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife Smt Panda Jagadamba (hereinafter referred to as "deceased") by pouring kerosene and setting her fire. By its judgment, dated 19.07.2011, the learned Sessions Judge convicted and sentenced the appellant to suffer "imprisonment for life" and to pay fine of Rs.25,000/-, in default to suffer simple imprisonment for six months, for the offence punishable under Section 302 IPC.

2) The facts in issue are as under:

The accused is the husband of the deceased. Both of them were living in Konki Veedhi, since long prior to the date of incident. Out of wedlock, they are blessed with one son and daughter. PW.5 is the mother of the deceased. It is stated that the accused developed bad vices, got addicted to Alcohol and was demanding the deceased to get money. On the date of incident i.e. on 17.09.2010 at about 12 noon, while PW.1 was coming on to the road from his house, he noticed the deceased coming out on to

the road in flames. On that PW.1 along with PW.2 covered the body of the deceased with a saree and put off flames. When the PW.1 questioned the deceased as to how she sustained burns, she told them that her husband demanded Rs.100/-, but she could not give the amount as she was not having; then her husband pushed her on to the cot, poured kerosene and set her on fire. Immediately, they called for an ambulance and shifted the deceased to the Government Hospital, Salur. The witness further states that at the time of incident, the accused was present in the house and he was in a drunken state. At about 01.00 p.m. when the deceased reached the hospital with burn injuries, PW.3 the Civil Assistant Surgeon, who was present in casualty ward sent a requisition to the S.I. of Police, Salur. According to PW.3, the deceased sustained 50% burn injuries and was conscious. He also sent a requisition to the Magistrate for recording the dying declaration of the injured. Pursuant to the requisition received from PW.3, the S.I. of police proceeded to the community health centre, Salur, recorded the statement of the injured in the presence of Medical Officer. After recording the statement, he read over the contents of the said statement to the deceased and obtained her thumb impression on the said statement. After obtaining the thumb mark, PW.3 certified that the injured was in a fit condition to give the statement. Ex.P.1 is the said statement. Basing on the said statement, PW.8 registered a case in Crime No.121 of 2010 for the offences punishable under Sections 307 and

498-A IPC. Ex.P.7 is the original FIR. After registering the FIR, he again proceeded to the Community Health Centre, Salur and recorded the statement of injured. Thereafter, he proceeded to the house of the injured and conducted a panchanama of the scene, in the presence of LWs.6-Kannajoshula Seethapathi and 7-Manyabattula Baskara Rao. Ex.P.8 is the observation report prepared at the scene of offence. At the scene, he seized MO.1, an empty kerosene plastic bottle. He also prepared a rough sketch of the scene of offence, which was marked as Ex.P.9. After examining PWs.1, 2 and another, he shifted the injured to the Headquarters Hospital, Vizianagaram. On 20.09.2010, while he was at Circle Office, received information about the death of the deceased. He altered Section of law from 498-A, 307 IPC to 302 and 498-A IPC and issued Ex.P.10-the altered FIR. PW.9-the Inspector of Police took up further investigation in the matter. On receipt of the altered FIR, PW.9 visited the Government Head Quarters Hospital and conducted inquest over the dead body of the deceased in the presence of PW.6 and others. Ex.P.5 is the inquest report. Thereafter, he forwarded the body to PW.7 for conducting autopsy over the body on 20.09.2010. On the same day at about 03.00 p.m, PW.7, the Civil Assistant Surgeon, conducted autopsy over the dead body and issued Ex.P.6, the postmortem certificate. According to him, the cause of death was due to hypovolemic and septicemic shock caused by 50% deep ante mortem burns. On 26.09.2010, he arrested the accused and recorded his confession in

the presence of PW.6 and LW.11. Pursuant to the confession made, M.O.1 was recovered from the house of the accused.

5) The evidence of investigating officer discloses that pursuant to his request, 164 Cr.P.C. Statements of PWs.1 and 2 came to be recorded by the Judicial Magistrate of First Class, Saluru. After receiving F.S.L. report, PW.10 filed the charge sheet, which was taken on file as P.R.C.No.55 of 2008 on the file of the Judicial Magistrate of First Class, Jangareddygudem. After compliance of Section 207 of Cr.P.C., the case was committed to the Court of Sessions, which came to be numbered as S.C.No.233 of 2009.

6) Charges for the offences punishable under Sections 302 and 498-A IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

3) In support of their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P.10 and M.O.1. 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 or documentary evidence was adduced on behalf of the accused, in support of his defence.

7) On appreciation of the entire evidence on record more particularly basing on the two dying declarations, the Sessions

Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

8) Learned counsel for the appellant mainly submits that the dying declarations recorded by the police officer and Deputy Tahsildar are silent as to how the deceased was set on fire. In other words, it is her case that since the dying declaration is silent as to how the deceased was set fire and since the match box which was seized was not produced before the Court, a doubt arises as to whether it was the accused, who set fire to the deceased. It was further stated that the first dying declaration cannot be looked into, as the thumb mark of the deceased was not obtained on the said dying declaration. In so far as second dying declaration, it is urged that in view of the English words mentioned therein, with a different hand writing, no sanctity can be given to the said dying declaration. She further submits that though the deceased sustained burn injuries, no effective medical treatment was provided to the deceased, in both the hospitals. According to her, the doctor, who treated the deceased does not say that she was administered any sedative, which, if administered could have saved the life of the injured. Since the death was due to improper treatment, the accused cannot be made liable for causing the death of the deceased.

9) Learned Public Prosecutor would contend that since both the dying declarations are not only consistent with each other, but are

also found to be consistent with the oral dying declarations made before PWs.1 and 2 the same can be relied upon to convict the accused. He would further submit that the issue as to whether the accused did not set fire to the deceased was not even suggested to the witness and further no suggestion was given to the doctor to show that the deceased died because of improper treatment. In the absence of any such suggestions being given to the witnesses, the accused cannot develop a case to state that the death was due to negligence of the doctors.

10) As seen from the record, the incident in question took place in the house of the accused. It is also not in dispute that the accused was present at the time of incident in the house. PWs.1 and 2 are the two witnesses, who claimed to have seen the deceased coming out of the house with burn injuries. On seeing the same, the people in the locality ran towards the deceased and tried to put off flames. When PWs.1 and 2 questioned as to how she sustained burn injuries, she told them that when she failed to meet the demand of the accused to pay money, the accused poured kerosene and set her on fire. It would be proper to extract the relevant portions of evidence of PWs.1 and 2, which is as under:

“PW.1: At that time I noticed that the deceased was coming on to the road with fire burning on her body. Then myself and LW.2 Adamma covered the bare body of the deceased with a saree to put off flames. When we questioned the deceased as to what happened, she told us that her husband demanded her to give Rs. 100/- as she is not having money

she could not give it on that her husband pushed her on the cot and poured kerosene on her and lit fire to her.”

PW.2: “ I was present at Kirana shop which is situated very near to the house of the accused. At that time, I saw that the deceased was coming on to the road with fire burning on her body. People in that locality all rushing towards her. I too went there. We covered the bear body of the deceased with saree and put off flames. When we questioned the deceased as to how she sustained the burn injuries, she told that the accused demanded her to give Rs. 100/- as she is not having any money, she could not give it. And told the same fact to the accused, then the accused pushed her on the cot and poured kerosene on her and lit fire to her.”

11) Though PWs.1 and 2 were cross examined at length, nothing useful was elicited to discredit their testimony. To a suggestion that both of them were not present at the scene of offence was denied. The suggestion that the deceased accidentally sustained burn injuries was also denied. But however, PW.8, the Investigating Officer in his evidence admitted that PW.1 did not state before him about the accused and deceased residing in the same area for the last one year and that while she was out of the house, saw the deceased in flames. PW.1 did not also state before him that herself and PW.2 put off flames. Further PW.2 did not state before him that she was present at the kirana shop by the time the deceased was coming out of the house with burn injuries and that on seeking the same people gathered there. Therefore, from the above, it is clear that in the earlier statement PWs.1 and 2 failed to mention about deceased coming out of the house with burn

injuries. But however, the fact of deceased making a oral dying declaration before them, when they questioned her as to how she sustained injuries, was mentioned in the earlier statement. Therefore, the argument of the learned counsel for the appellant that no credence can be given to the evidence of PWs.1 and 2 with regard to the oral dying declaration may not carry much weight.

12) The fact that the incident happened in the house cannot be disputed for the reason that it is the case of the deceased that her husband pushed her on to the cot, poured kerosene and set her on fire. PW.8 in the cross-examination admits that he observed smell of kerosene on the cot. He also stated that the material objects were lying at the scene viz. saree, match box etc. but the same were not seized. It was also elicited from PW.8 that he has not shown the house of the deceased and also the kirana shop where PW.2 was said to be present in the rough sketch. The non seizure of the match box and the bed sheet from the cot, may not go to the root of the matter, in a case of this nature where the presence of the accused in the house is not in dispute. In the first dying declaration, which was produced on record as Ex.P.1, PW.8 in his evidence stated that on receipt of intimation from the hospital, he proceeded to the Community Health Centre, Salur and recorded the dying declaration. Before recording the statement of the injured, he put simple questions to find out the mental fitness and thereafter questioned her about the incident. The deceased stated that on the said date at about 12.15 p.m. her husband came

to the house in drunken condition and demanded for money. When she refused, there was a quarrel. Thereafter, he beat her, threw her on to the cot, poured kerosene and set her on fire.

13) The second dying declaration recorded by the Deputy Tahsildar, who was examined as PW.4, would show that as the Judicial Magistrate and the Mandal Revenue Officer were not available in the station, and as he was the incharge MRO, he proceeded to the hospital, pursuant to the requisition received from PW.3 and recorded the dying declaration of the deceased in the Government Hospital, Salur, in the presence of PW.3, the doctor. According to him, this was the first time, he was recording the dying declaration. A reading of the dying declaration shows that he put simple questions to find out the mental condition of the deceased and after being satisfied about the mental condition, recorded the statement of the deceased in the presence of PW.3. His evidence also discloses that he read over the contents of the statement and then obtained thumb impression of the deceased on the statement. He took an endorsement from the doctor, with regard to the mental condition of the deceased. Ex.P.2 is the said statement. From the said statement recorded by the Deputy Tahsildar, it is clear that on the date of incident, it was the accused, who poured kerosene and set her on fire. He admits that he did not take the certification of the doctor prior to recording the dying declarations. But however, he recorded the dying declarations only after being satisfied with regard to the mental

condition of the injured, by putting preliminary questions. In fact, after recording the dying declaration, he read over the contents of the statement, obtained the thumb impression and then took the endorsement of the doctor with regard to the mental condition of the deceased. Definitely, it cannot be said that there was any violation of Rule 33 of the Criminal Rules of Practice.

14) In fact, learned counsel for the appellant also did not contend that there was any violation of Rule 33 of the Criminal Rules of Practice. Her argument was that the dying declaration is silent as to how the deceased was set fire. It is her case that the deceased did not state that the accused lit the match stick and threw it on her. It is true that the dying declaration is silent as to how the deceased was set on fire and it is also true that the match box and kerosene tin were not seized, but the statement of the deceased would categorically show that it was the accused, who pushed her on the cot, poured kerosene and set fire. The fact as to how she was set fire, either with match stick or otherwise is a minor omission, which in our view, do not go to the root of the matter, so as to throw out the entire case, more so when the dying declarations given by the deceased are found to be truthful and convincing.

15) At this stage, it would be useful to refer to the evidence of PW.5, who is the mother of the deceased. In her evidence, she deposed about the harassment in the hands of the accused. She

further deposed that on receipt of information, she proceeded to the hospital and was there for a period of three days with her daughter, during which period, the deceased told her as to how the incident happened on 17.09.2010. Though PW.3 was cross examined, nothing was elicited to discredit her testimony, except suggesting that it was an accidental death. Even in his 313 Cr.P.C statement the accused neither stated nor took any specific plea. No explanation was given as to how the deceased sustained accidental burn injuries.

16) Having regard to the above, there are no grounds to disbelieve the dying declaration recorded by PW.4, which gets corroboration in all respects from all quarters.

17) Coming to the arguments of the learned counsel for the appellant that the cause of death was due to non providing of proper treatment, more particularly not giving a sedative when the deceased sustained burn injuries, it is to be noted that no such suggestion was given to the postmortem doctor about the medication that was given to the deceased. The Medical certificate would show that the deceased was provided with proper treatment. In the absence of any suggestion to the witness and in the absence of any material being produced to show that there was negligence on the part of the doctor, the argument of the learned counsel for the appellant cannot be accepted.

18) Hence, we see no ground to interfere with the conviction and sentence imposed by the Sessions Judge.

19) According, the Criminal Appeal is dismissed.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

15.11.2017

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