

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

CRIMINAL APPEAL NO.571 OF 2012

DATE: 20.12.2017

Between:

Aitha Chandraiah S/o. Ramaiah, Aged 45 years,
Occu: Auto rickshaw r/o. H.No.16-7-207,
Rameshnagar, Godavarikhani.

..... Appellant/
Accused

and

The State of Andhra Pradesh, rep.by its
Public Prosecutor, High Court of A.P.,
Hyderabad.

.....Respondent/
Complainant



The Court made the following:

**HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

CRIMINAL APPEAL NO.571 OF 2012

ORDER:

Sole accused in Sessions Case No.353 of 2011 on the file of III Additional District and Sessions Judge at Karimnagar, preferred this appeal under Section 374 (2) of Cr.P.C., aggrieved by the conviction and sentence awarded by the Sessions Court, by the judgment, dated 26.04.2012. Sessions Court found the appellant guilty for the charge under Section 302 of IPC, convicted him under Section 235(2) of Cr.P.C. and sentenced him to suffer Rigorous Imprisonment for life and also to pay a fine of 500/-, in default of payment of fine, he should suffer Rigorous Imprisonment for further period of six months.

2. The case of the prosecution as culled out from the material on record as under:

On 24.01.2011 at about 9.40 p.m., accused came home in drunken condition, abused his wife – Susheela (deceased), aged about 42 years, in filthy language, dragged her out of the house, poured kerosene on her and lit fire. The deceased sustained 90% to 95% burns. At that time, P.W.2-Aitha Ramyakrishna, younger daughter of the deceased and accused were inside the room and P.W.2 saw pouring of kerosene and lighting fire on her mother. On hearing her cries, her younger brother-Venkatesh (P.W.3), who was sleeping inside the room, woke up. Meantime, PW.4-Saroja, who is a neighbor, came to their house and on seeing her accused opened the doors and fled away. P.W.2-Ramyakrishna and

P.W.3- Venkatesh came out of the house. While P.W.2 and P.W.4 sought to douse the flames, P.W.8-Bakki Kishan called for 108-Ambulance. Thereafter, the injured was moved to Area Hospital accompanied by P.Ws.2, 3 and 4. At about 0010 hours on 25.01.2011, P.W.1-Sumalatha, elder daughter of the accused and deceased, lodged a written report with P.W.11-Sub-Inspector of Police narrating the incident. Basing on the said report, the Sub-Inspector of Police registered a case in Crime No.24 of 2011 and issued FIR for the offence punishable under Section 307 of IPC, which is marked as Ex.P7. On having found that burns were severe, P.W.11 sent requisition to the Hon'ble Judicial Magistrate of First Class, Godhavani Khani (P.W.10) with a request to visit the hospital and record the statement of the injured. P.W.10-JFCM immediately rushed to the Government Area Hospital to record the statement of the injured/victim, but she was unable to speak. Though Hon'ble JFCM also sought to record her statement or note down the gestures, the deceased was unable to speak or even give gestures. Thereafter, P.W.11-Sub-Inspector of Police recorded the statements of PWs.1 to 4 and 8 under Section 161 of Cr.P.C., visited the scene of offence, observed the scene of offence in the presence of two panchas - LW.8-Gaddam Srinivas and P.W.5-Panja Srinivas, seized the burnt pieces of polyester saree, semi burnt plastic flexi, plastic container with remnant kerosene, match-box, which are produced on record as material objects. He then drew a rough sketch of scene of offence (Ex.P2) and also took photographs of the scene of offence with the help of P.W.7-photographer. On the same day night, accused appeared before P.W.11 - Sub-Inspector of Police. On noticing burn injuries on the face and

hands of the accused, he referred him to the Government Area Hospital for treatment. At about 1350 hours, Susheela succumbed to the injuries. In view of the same, the Investigating Officer altered the Section of law to Section 302 IPC from that of Section 307 IPC.

3. P.W.14-Inspector of Police held inquest over the dead body of the deceased in the presence of panch witnesses, got the dead body photographed at the time of inquest. P.W.14 examined P.Ws.1 to 4, 7, 8 and 12 and recorded their statements. Thereafter, the dead body was sent for autopsy. P.w.9-Dr.V.Prabhakar Rao, Civil Assistant Surgeon, Govt. Area Hospital, Godavarikhani, conducted autopsy over the dead body of the deceased and issued Postmortem Examination Report under Ex.P5 opining that death occurred due to 'multi organ failure due to severe burns, caused total loss of fluids from the body'. On 07.02.2011, at about 1430 hours, accused was arrested and sent him for judicial remand. On completion of investigation, P.W.14 - Inspector of Police filed charge sheet before the Judicial Magistrate of First Class, Godavarikhani.

4. The Judicial Magistrate of First Class, Godavarikhani, took the case on file for the offence under Section 302 IPC and registered the same as PRC No.26 of 2011. After compliance of Section 207 Cr.P.C., and as the offence was exclusively triable by the Court of Sessions, the Case was committed to the Sessions Division at Karimnagar as per Section 209 of Cr.P.C. The District and Sessions Judge registered the same as Sessions Case No.353 of 2011 and made over to III Additional District and Sessions Judge.

5. To substantiate their case, prosecution has examined P.Ws.1 to 14 and Exhibits P1 to P10 were marked on behalf of prosecution. Four Material Objects were marked i.e., MO.1-match box with few match sticks, MO.2- flexi of Sidhartha High School (half/partly burnt), MO.3-Five liters plastic can and MO.4-Burnt brinjal colour saree pieces (3 in number).

6. After closure of prosecution evidence, accused was examined under Section 313 Cr.P.C, explained the incriminating material that appeared against him in testimony of prosecution witnesses and he denied the same.

7. On appreciation of entire evidence and more particularly the evidence of P.Ws.1 to 4, the trial Court held the accused guilty of murder of his wife and imposed the punishment of life imprisonment and to pay fine of 500/-, with default sentence to suffer Rigorous Imprisonment for six months.

8. Heard Smt.A.Gayathri Reddy, learned counsel (Legal Aid Counsel) for appellant/accused and learned Public Prosecutor for the State.

9. Learned counsel for appellant/accused would submit that appellant/accused was not responsible for burn injuries on his wife resulting in her death; in fact the deceased-Susheela was suffering from severe stomach pain since long time and as pain is unbearable she committed suicide. Deceased also attempted to commit suicide earlier. She further submitted that the accused just came to the house, at that time having seen the deceased in flames sought to douse flames and in the process, he himself

sustained burn injuries. Learned counsel would submit that if accused was responsible for lighting fire on the deceased, he would not have resorted to save the life of his wife. According to the learned counsel, there was no occasion for the accused to make any attempt to kill his wife and that a false story was created only with an animosity. She would submit that trial Court erred in relying on the evidence of PWs.2 and 3; that they were not the eye witnesses to the alleged incident. The incident occurred outside the house. Therefore, the evidence is not credible to hold the accused guilty and to impose such grave punishment. As there is no direct evidence to the alleged incident, the trial Court ought to have given benefit of doubt. The evidence of child witnesses is not credible and cannot be relied in the absence of any corroboration. As there was no corroboration to establish that appellant/accused caused burn injuries on the deceased-Susheela, resulted in her death and even those children were not eye witnesses to the incident, merely relying on their statements, accused cannot be held guilty.

10. Learned Public Prosecutor supports the appreciation of evidence by trial Court and conclusions arrived by the trial Court. He contended that evidence produced on behalf of prosecution is credible. Accused alone was responsible for causing death of his wife. There was no other person available, who could have caused death. Deposition of P.Ws.2 and 3 was clear and categorical. They were in the house when the incident occurred. According to deposition of P.W.2, she saw the accused pouring kerosene on her mother and setting fire, her testimony is consistent; the testimony of P.Ws.3 and 4 would support the said version of P.W.2. The prosecution witnesses 1 to 3, who are children of accused and the

deceased, though cross-examined extensively, stood to their version that mother did not have history of suffering from stomach pain and it is a lame excuse to escape from the gruesome murder. He, therefore, submitted that on evaluation of evidence on record, trial Court has come to correct conclusion and does not call for interference by this Court.

11. The issue for consideration is:

Whether the accused/appellant caused burn injuries which lead his wife to death?

12. The basic facts are not in dispute. On 24.1.2011 at about 9.40 p.m., accused/appellant returned home. At that time, son of the accused-P.W.3, and the deceased were inside the single room house. The younger daughter-P.W.2 and P.W.3 were sleeping in the room. Accused dragged his wife out of the room and when his daughter followed him, he asked his daughter to bring water and when she went inside the house, he bolted the door of the house from outside and locked his son and daughter inside the house. According to the consistent evidence of P.W.2-Aitha Ramyakrishna, she witnessed the incident through the window of the house when her father was pouring kerosene on her mother and put her to flames. Accused did not care to heed to her shouting. On hearing PW.2 crying, her brother woke up and after hearing cries of two children, P.W.4-Saroja, a neighbour, came to their house, on seeing her, accused ran away. The deceased-Susheela suffered extensive burns. According to the testimony of P.W.11-Sub-Inspector of Police, who investigated into the crime, deceased could not speak nor even give her gestures and the Judicial

Magistrate of First Class could not record her dying declaration. Even according to the evidence of children, i.e., P.Ws.1 to 3, their mother was not able to recognize them. On 25.1.2011, the injured- Susheela succumbed to the burn injuries.

13. Learned counsel appearing for appellant/accused sought to contend that accused is no way responsible for the death of his wife and his wife committed suicide as she was unable to bear severe stomach pain.

14. To appreciate this contention, it is necessary to assess the evidence of P.Ws.1 to 3. As per the oral evidence of P.Ws.1 to 3, who are the children of accused and the deceased, accused was in the habit of consuming liquor regularly and come home in a drunken state. There were disputes between the accused and his wife and they were not in cordial terms. According to the evidence of P.W.2, accused, her mother and brother and herself were living in the house; that accused used to pickup quarrel with her mother. On three earlier occasions, she and deceased approached the Police complaining against the accused, but no case was registered against the accused. According to her deposition, accused suspected fidelity of her mother. The deposition of children is consistent on the issue. They have denied the suggestion of defence that their mother was suffering from severe stomach pain for long time, that unable to bear the pain earlier also she attempted to commit suicide; that the relationship between the father and the mother was cordial. They have denied categorically the suggestions that their father never harassed their mother and that their father never suspected fidelity of deceased. According to

the evidence of P.Ws.1 to 3, in the cross-examination, father did not suffer burn injuries on the night of 24.01.2011 as sought to be contended by the accused, but those burn injuries occurred earlier when in drunken state he poured kerosene on himself and set himself on fire and that incident occurred two years prior to the death of their mother. According to the evidence of P.W.1, at that time, her mother took the accused to hospital to provide treatment. This consistent statement of P.Ws.1 to 3 is not dislodged by the defence, though they were extensively cross examined. Thus, the contention of appellant counsel that appellant was, in fact, trying to save the deceased and in the process, he sustained burn injuries is not acceptable. Furthermore, according to the deposition of P.W.4, who is a neighbor, she rushed to the scene of offence after hearing the cries of P.Ws.2 and 3. She did not notice the availability of accused at the scene of offence. There was no material on record to show that accused was trying to save the life of the deceased; in fact, he ran away from the scene of offence. The deceased was taken to hospital in the Ambulance called by P.W.5 and P.Ws.2 to 4 accompanied the deceased to the hospital.

15. It is not the case of the accused that he was not present at the scene of offence. No explanation is forthcoming as to why he ran away from the scene of offence if it was his intention to save the life of deceased. Though the Investigating Officer i.e., P.W.11 stated that burn injuries were noticed on the accused, the consistent evidence of P.Ws.1 to 3 would show that those burn injuries were not caused on 24.01.2011 when the deceased was in flames.

16. As the consistent evidence of P.Ws.1 to 3, who are the children of the accused and deceased would clinchingly establish that there was no good relationship between the deceased and the accused and they were always quarrelling and the accused would return home in drunken state and as the accused suspected the fidelity of the deceased, he decided to end the life of the deceased; brought the kerosene, abused her in filthy language and when she went inside the house stating to P.W.2 that she was unable to bear the abuses of the accused, accused entered inside the house, caught hold of tuft of deceased, dragged her outside the house; poured kerosene and put her on fire. Incidents narrated by prosecution witnesses 1 to 3 would establish that there was a clear motive for the appellant/accused to kill his wife and it was a premeditated plan to kill Susheela.

17. Coming to the incident proper, P.Ws.2 and 3 are the eye witnesses to the incident. Both of them were minors at the age of 12 and 11 respectively at the time of incident and when they gave depositions. Their evidence was recorded after being satisfied by the Court below with the mental capability, maturity and understanding, more particularly that of P.W.3.

18. The issue as to when the evidence of child witness can be accepted was considered by the Hon'ble Supreme Court in **Radhey Shyam v. State of Rajasthan**¹. Hon'ble apex Court categorically held that the evidence of a child witness must be subjected to close scrutiny to rule out possibility of tutoring and can be relied upon, if Court finds that the child witness has sufficient intelligence in

¹ 2014 (5) SCC 389

understanding obligation of oath. The Supreme Court cautioned that trial Court must find adequate corroboration to child witness' evidence with other evidence on record, on which the same can be accepted without hesitation.

19. In the case on hand, P.W.3 was aged 11 years when his evidence was recorded. Having regard to age of the witness, trial Court put some preliminary questions to the witness to assess capabilities and also as to whether the witness understands the questions. The trial Court was satisfied with the demeanor of child when P.W.3 answered the questions put by the learned Judge and observed that child is capable of understanding questions and give proper answers. P.W.3 deposed that deceased is his mother and accused is his father and P.Ws.1 and 2 are his elder sisters. He has stated that he was sleeping at the relevant point of time inside the house and he woke up on hearing the cries of his sister-P.w.2. By then door was opened. According to the evidence, he and his sister went out side, found his father already left the scene, that he and his sister, P.W.4 took their mother in 108-Ambulance to the hospital. He stated that his mother died on the next day. According to his deposition, Police examined him and he also gave statement before the Magistrate at Mantheni. He categorically denied the suggestion given by his father that his mother committed suicide due to unbearable stomach pain and stated in the cross-examination that his father burnt his mother. This statement of P.W.3 is consistent with the statement of P.W.2. In view of consistency in the testimony of P.W.3, we find that he is wholly reliable and his endeavour is corroborated by other evidence on record. Coming to probative value of testimony of P.Ws.1 to 3,

they being children of deceased-Susheela and accused, naturally live with them, their presence during night is most probable and no suggestion was put to them disputing their presence.

20. In view of the evidence of P.Ws.2 and 3, who were physically present at the scene of offence, the stand of the accused that he did not cause death and that deceased committed suicide is unbelievable for the simple reason that and defence counsel could not elicit anything in the cross-examination of P.Ws.1 to 3 that Susheela was suffering from stomach ache. If really she was suffering from severe stomach ache since long time, she would not be left untreated by any Doctor but no medical evidence was produced.

21. According to the deposition of P.w.9-V.Prabhakar Rao, Civil Assistant Surgeon, death occurred due to 'multi organ failure due to severe burns and total loss of fluid on the body'. Thus, there is no dispute that death occurred due to severe burn injuries. The Material Objects, recovered from the scene of offence i.e., the flexi and saree pieces, would point out that body was subjected to burns. Death occurred due to severe burn injuries caused to the body.

22. As discussed above, the prosecution case was based on direct and circumstantial evidence. Direct evidence of P.Ws.1 to 4 totally supported the prosecution case and nothing was elicited to discredit their testimony. The prosecution also proved differences between deceased-Susheela and accused and vices of accused. Those differences might be a cause to prompt the accused to kill the deceased.

23. Scene of offence is outside the house. If really Susheela wanted to commit suicide, she need not come out of the house, after her husband's arrival, during midnight to commit suicide. The accused raised a specific defence that he also sustained burn injuries to his both hands when he attempted to save his wife extinguishing flames, but the witnesses - P.Ws.1 to 3 flatly denied the suggestion put to them, while explaining that the accused sustained burn injuries two years prior to death of Susheela. The defence of accused is not believable for the reason that he fled away from the scene of offence on hearing cries of injured-Susheela and children. He also did not produce any medical evidence to prove that he sustained injuries in the incident as contended. The normal conduct of a husband is that he would make every endeavor to save the life of wife, but he conveniently fled away from the scene of offence, thus, his immediate conduct after the incident is most improbable.

24. Yet, the medical evidence of P.W.9, who conducted postmortem, clinchingly established that the cause of death was homicidal burn injuries. P.w.9 found the following injuries on the body of deceased Susheela:

“Fore head, cheek, superficial burns first degree,

Chest and both hands:-

Superficial to deep burns were present all most all the chest and both hands, first degree to 2nd degree burns.

Abdomen and back of abdomen

Superficial to deep burns first degree to 2nd degree and 3rd degree present over abdomen and back of abdomen

Pelvis and both legs:-

First degree to 3rd degree superficial deep burns on buttocks, upper part of thigh on both legs present and only both lower legs spared partially, totally burns area is about

85 to 95%. All the burns injuries are ante-mortem in nature.”

25. Considering extensive burns noted by P.w.9, the trial Court accepted the prosecution case. In view of specific plea setup by defence counsel, it is necessary to reappraise the evidence, being appellate Court to find out the cause for death, whether homicidal or suicidal burns. If a woman really intends to commit suicide by fire, she can as well commit inside the house to avoid witnessing the incident by anyone. If kerosene is poured to commit suicide, normally it would be on head, to spread over the body, but no injury was found on the scalp and 1st grade burns on the face and cheeks i.e., upper parts of body like face, cheeks, were found. Further, first degree to third degree superficial deep burn on buttocks, upper part of thigh of both legs is also another strong reason to conclude that the cause of death was homicidal burns. If it was suicidal by pouring kerosene, it would not spread to inaccessible parts, like thighs, abdomen and back of abdomen, because of structure of female. Therefore, causing 1st to 3rd grade superficial and deep burn injuries on inaccessible parts of female body is suffice to conclude that cause of death was homicidal burns. It is not the case of accused that any other person caused burn injuries. Seat of burn injuries on the body of deceased, conduct of accused subsequent to incident, family disputes, differences between accused and deceased-Susheela, scene of offence clinchingly established that the accused poured kerosene and lit fire to body of Susheela, who succumbed to injuries within 24 hours.

26. In view of our foregoing discussion, we find no ground to interfere with findings recorded by Court below and conviction and sentence passed against the appellant/accused.

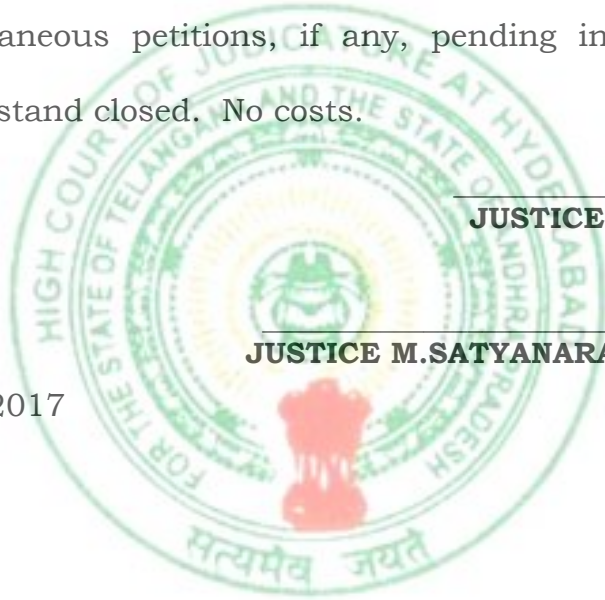
27. Having regard to the above circumstances, we are of the opinion that trial Court has come to correct conclusion in holding the appellant guilty of committing murder of his wife. The prosecution not only established the motive to kill the deceased, but also the incidents proper. Accordingly, the Criminal Appeal is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Appeal shall stand closed. No costs.

JUSTICE P.NAVEEN RAO

JUSTICE M.SATYANARAYANA MURTHY

Date: 20.12.2017
kkm/tvk



HON'BLE SRI JUSTICE P.NAVEEN RAO
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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