

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.14 of 2013

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

The sole accused in Sessions Case No.242 of 2010 on the file of the IX Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar, Hyderabad, is the appellant. He was tried on two charges. The first charge was under Section 498-A IPC for harassing his wife, G.Vijaya and the second charge was under Section 302 IPC, for causing the death of his wife on 20.10.2009. By its judgment dated 27th August, 2012, the learned Sessions Judge found the accused guilty on both the charges and sentenced him to suffer 'imprisonment for two years' under Section 498-A IPC, and also to suffer 'imprisonment for life' and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for a period of two months under Section 302 IPC.

2. The facts, as seen from the evidence on record, are as under:

(i) The deceased was the wife of the accused. PW1 is the father of the deceased. PW2 is the uncle of the deceased. PW3 is also the uncle of the deceased and PW4 is the landlord in whose house the accused and deceased lived.

(ii) The marriage between the accused and deceased took place on 24.04.2008. At the time of marriage, PW1 is said to have paid cash of Rs.75,000/- and gifted 3 ½ tolas of gold as dowry to the accused. After marriage, the deceased joined the company of the accused and both of them lived happily for some time. It is stated that the accused, who was eking out his livelihood by driving an auto, treated his wife with love and affection for a period of two months. However, later, he started harassing the deceased for additional dowry, and the said fact was informed by the deceased to PW1. A panchayat was held before the mediators, wherein the accused promised to look after his wife with love and affection. The evidence on record shows that the accused pledged the ornaments of the deceased. About two months thereafter, the accused demanded PW1 to purchase an auto, and accordingly PW1 is said to have arranged auto by obtaining money from a finance company. It is stated that even thereafter, the accused used to harass the deceased, and PW1 tried to convince the deceased. On the date of incident, which was on the eve of Deepavali, the deceased demanded the accused to get discharged her gold ornaments which were pledged, but, the accused beat the deceased and told her that the said gold ornaments were presented to him. Thereafter, the accused is said to have set fire to the deceased, resulting in burn injuries.

(iii) The evidence on record discloses that immediately on receipt of injuries, the accused shifted the deceased to Osmania General Hospital. After her admission in the hospital, PW8-the

Head Constable received an intimation from the Inspector of Police about the admission of the injured in the hospital and for recording a statement from the injured/ deceased. Accordingly, he proceeded to the hospital and recorded the statement of the injured at 7.30 p.m., on 18.10.2009. Ex.P5 is the said statement. Basing on Ex.P5, PW9-the Sub Inspector of Police registered a case in Crime No.979 of 2009 under Section 498-A IPC and Section 307 IPC. Exhibit P6 is the original FIR. Thereafter, he proceeded to the scene of offence and conducted panchanama in the presence of PW5. Ex.P2 is the panchanama of the scene. He also drew a rough sketch, which is placed on record as Ex.P3. During the scene of offence panchanama, he seized M.Os. 1 to 3 under Ex.P2. Thereafter, he sent a requisition to the Magistrate for recording the statement of the injured/ deceased. On receipt of intimation, the Principal Senior Civil Judge, Ongole - PW10, visited the hospital, and after being satisfied with regard to the mental state of the injured, recorded her statement, which is placed on record as Ex.P9. On 20.10.2009, PW9 received intimation from the hospital about the death of the deceased. Immediately thereafter, he altered the section of law from 498-A and 307 IPC to 498-A and 302 IPC. Ex.P7 is the altered FIR. He then proceeded to the scene of offence and conducted inquest over the dead body, in the presence of Tahsildar, who was examined as PW7. Ex.P4 is the inquest report. Thereafter, he sent the body for post mortem examination.

(iv) PW12-the Assistant Professor, Forensic Science, Osmania Medical College, conducted autopsy over the body of the deceased and issued Exhibit P10-the Post Mortem Report. According to him, about 95% of the total body surface area was involved in burns, heat ruptures on the right groin and the cause of death was assessed as due to burns.

(v) After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No. 31 of 2009 on the file of III Metropolitan Magistrate, Cyberabad. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No. 242 of 2010 on the file of the IX Additional District and Sessions Judge (FTC), Ranga Reddy District at L.B.Nagar, Hyderabad. Basing on the material on record, charges for the offences punishable under Sections 498-A IPC and 302 IPC were framed, read over and explained to the accused, to which he denied and claimed to be tried.

(vi) To substantiate their case, the prosecution examined PWs. 1 to 12 and got marked Exs. P1 to P10 and M.Os 1 to 3.

(vii) 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.

(viii) Basing on the dying declarations of the deceased, the trial Court convicted the accused for the offences punishable under Sections 498-A and 302 IPC and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

3. The learned counsel for the appellant mainly submits that there are no eye witnesses to the incident and the two dying declarations which are said to be relied upon by the prosecution cannot be made a basis to convict the accused. According to him, the evidence of PW1 clearly discloses that there was strong motive for PW1 and her son to foist a false case against the accused. He would contend that on the basis of a report given by the accused, a case in Crime No. 720 of 2009 under Section 307 IPC was registered against the brother of the deceased, because of which, the accused has been implicated in the case. She contends that if really the accused had any intention to cause the death of the deceased, he would not have made any effort to put off the flames and shift the injured/ deceased to the hospital and be there by her side till the police arrived. It is urged that having regard to the conduct of the accused, there is any amount of doubt with regard to the version of the deceased in the dying declarations.

4. On the other hand, learned Public Prosecutor would contend that the dying declaration recorded by the Magistrate alone can be made the basis to convict the accused. He would further submit that even if there is no oral evidence connecting the accused with

the crime and even if the dying declaration recorded by the Head Constable is excluded from consideration, the dying declaration recorded by the Magistrate is sufficient to connect the accused with the crime.

5. The point that arises for consideration is: whether the accused is responsible for the death of the deceased, and if so, whether he can be convicted under Section 302 IPC?

6. In order to appreciate the same, it would be useful to refer to the evidence of PW1. In his evidence, PW1 deposed that the deceased was given in marriage to the accused on 24.04.2008 and that he paid Rs.75,000/- and gifted 3 ½ tolas of gold as dowry. He further deposed that the accused treated the deceased with love and affection for about two months and thereafter, he started harassing her for additional dowry. The said fact was informed to him by the deceased. PW1 further deposed that about two months after the accused pledged the ornaments of the deceased, the accused demanded him to purchase an auto, and accordingly, he arranged auto by raising money from a finance company. PW1 further deposed that during 2009, on the eve of Deepavali, the deceased demanded the accused to get her gold ornaments, but, the accused beat her and told her that the said gold was presented to him. He also deposed that the accused set fire to the deceased and thereby, she sustained burnt injuries.

7. In the cross-examination of PW1, it has been elicited that the accused brought the deceased to the house of PW1 for

Christmas in December, 2008 and she stayed in the house for about one week. It was also elicited that a panchayat was conducted at the house of one Jhansi at ECIL, wherein PW1 asked the elders to separate the accused and the deceased from his other family members. On the basis of the request made, the elders separated the accused and deceased from other family members, pursuant to which both of them set up a separate family. PW1 further admits that the accused refused to follow the directions of elders. It was also elicited that PW1, along with his sons beat the accused as he refused to put up a separate residence. The suggestion that the deceased made an attempt to commit suicide in February, 2009 on the ground that the accused sent money to his mother and sister, was denied.

8. From the evidence of PW1, it is clear that there were disputes between the accused and the deceased, pursuant to which a panchayat was held, in which the panchayatdars advised the accused and the deceased to live in a separate residence. Accordingly, both of them lived separately. The evidence of PW1 also discloses that the accused demanded PW1 to purchase an auto. The evidence of PW1 also makes it clear that on the date of incident, which was a Diwali day, the deceased demanded the accused to get back her ornaments that were pledged. Outraged by the same, the accused is said to have poured kerosene and set her on fire. The information about the manner in which the deceased sustained burns came to be furnished by the deceased to PW1. The evidence of the witnesses further show that there was

some enmity between the accused and his brother-in-law on one occasion, which lead to registration of a case in Crime No.720 of 2009 for the offence punishable under Section 307 IPC.

9. In view of the evidence of PW1 and others, learned counsel for the appellant would submit that dying declarations recorded by the Magistrate and also the Head Constable are tutored. Strangely, no suggestion was given either to the Head Constable or to the Magistrate that the dying declaration was recorded in the presence of her family members or that prior to recording of dying declaration any family member tutored her. Infact it was not even suggested to PW1 that she along with other family members tutored the witnesses to give statement in a particular manner.

10. Coming to the evidence of PWs.2 and 3, they are related to the deceased and they are not direct witnesses to the incident. PW2 in his evidence states that he came to know that on 18.10.2009, the accused poured kerosene on the deceased and set her on fire. He claims to have enquired with the deceased as to what happened to her, for which she told him that the accused set her on fire for money. Smilar is the version of PW3. Though both these witnesses were cross examined, nothing useful came to be elicited to discredit their entire testimony. However, PW2 failed to mention in his cross examination about the accused pouring kerosene and setting the deceased on fire in his earlier statement. Smilar is the admission, elicited from the evidence of PW3. It is to be noted here that as against the oral evidence of PWs.1 to 3,

there lies the dying declaration recorded by the Magistrate. It is well established principle that if the dying declaration recorded by the Magistrate inspires confidence in the mind of the Court, the same can be made the basis to hold the accused guilty. However, it is also to be noted here that though PW4, who was examined to speak to the incident, he did not support the prosecution case. On the other hand, his version is to the effect that while he was talking to the accused, they heard some noise in the first floor of the building, they ran towards the said floor and found the deceased on the ground with flames. It is his version that the accused tried to extinguish the fire and sustained burn injuries to his hands. Later, the victim was shifted to hospital. At this stage, PW4 was declared hostile by the prosecution.

11. Having regard to the above, it would be useful to refer to the dying declaration recorded by the Magistrate, which is placed on record as Ex.P9.

“...Today afternoon at 12.00 p.m., he again picked up quarrel with me and demanded to bring money from my parents. He mortgaged my gold ornaments without my knowledge. When I questioned him about the same he quarrel with me and beat me and poured kerosene on my body and set fire. When I cried he extinguished flames with bed sheet and admitted me to hospital”.

12. The evidence of PW10 the Magistrate who recorded the statement would show that on receipt of requisition from SHO, Uppal, he proceeded to the hospital, identified the deceased and on being satisfied with regard to the mental condition of the

deceased, recorded her statement. In the said statement she stated as under:

“What is your name? Vijaya.

What is the name of your husband? Rajesh.

What is your age? 24 years.

Where do you reside? Ramanthapur.

Do you know where are you now? I am in the hospital.

I am a Magistrate came to record your statement, understand? Understood.

With the above questions, and answers I am satisfied that the patient is capable of understanding questions and give answers. I also requested the duty doctor to certify her mental condition.

Patient is conscious, coherent and fit to give statement. Sd/- (Dr. Jaya Krishna)..."

13. The said statement contains the endorsement of the Doctor with regard to the mental condition of the deceased. A reading of the statement would also show that on the date of the incident the deceased questioned the accused about the gold ornaments, which he has pledged, for which, the accused poured kerosene on her body and set her on fire when she cried, he extinguished flames with bed sheet and admitted her in hospital.

14. From the above, it is clear that soon after pouring kerosene and setting her on fire, the accused realized the gravity of the situation and tried to extinguish the fire with bed sheet and got her admitted in the hospital. The evidence of PW9, the SI of

Police, who investigated the case, would show that when he visited the hospital and recorded the statement of the deceased (Ex.P5), the accused was very much present there. If really the accused had an intention to do away with the life of the deceased, his conduct would have been otherwise and would not have tried to extinguish the flames, nor would he take any steps to shift the deceased to the hospital. The conduct of the accused cannot be said to be suspicious from the totality of the circumstances. Probably he would not have been anticipated that his act would lead to such a consequence, that she might die.

15. Situation identical to the case came up for consideration before the Apex Court in *Kaluram Vs. State of Rajasthan*¹, wherein this Court held as under:

“7. But then, what is the nature of the offence proved against him. It is an admitted case that appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him. When she refused to oblige he poured kerosene on her and wanted her to lit the match-stick. When she failed to do so he collected the match box and ignited one match-stick but when flames were up he suddenly and frantically poured water to save her from the tongues of flames. This conduct cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all what the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore, we are persuaded to bring down the offence from the first degree murder to culpable homicide not amounting to murder.

¹ AIR 2000 SC 3630

8. We, therefore, alter the conviction from [Section 302, I.P.C.](#) to [Section 304](#), Part II of the [I.P.C.](#) Both sides conceded that appellant is continuing in jail. We impose a sentence of rigorous imprisonment for seven years on him. It is for the jail authorities to count whether the period he had already undergone would be sufficient to complete the period of sentence imposed by us and if so, the jail authorities shall release him from jail. Otherwise he will continue in jail until completion of the period of seven years of imprisonment. The appeal is disposed of accordingly.

16. In *Yomeshbhai Pranshankar Bhatt Vs. State of Gujarat*², the Apex Court held as under:

“When accused had no pre-meditation to kill deceased or cause any bodily harm or injury to deceased, everything happened on spur of moment, possibility of accused losing self control on some provocative utterances of deceased cannot be ruled out and in such case the accused is liable to be convicted under Sec.304 Part II instead of Section 302 of IPC.”

17. As observed by the Apex Court, if really the accused had intended to kill the deceased, he would not have altered his senses to bring a bed sheet, covered it up and then take her to the hospital. Apart from taking her to the hospital, he was also found in the hospital. Therefore, it is very clear that he never intended to inflict the injuries, which the deceased sustained, so as to kill her. In view of the judgments referred to above, we feel that it is a fit case where the offence can be brought down from murder to culpable homicide not amounting to murder.

18. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in the judgment, dated 27.08.2012, in Sessions Case No.242 of 2010,

² 2011(2) ALD (Cri.) 238 (SC)

on the file of the IX Additional District and Sessions Judge (FTC), Panga Reddy District at L.B.Nagar, for an offence punishable under Section 498 (A) of I.P.C., remains un-altered. The conviction and sentence recorded against the appellant in the judgment dated 27.08.2012 for an offence punishable under Section 302 IPC is altered to one under Section 304 Part II, and the appellant is sentenced to suffer rigorous imprisonment for a period of six years. Both the sentences are directed to run concurrently. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case, on completion of six years of rigorous imprisonment, including remissions, if he is entitled to.



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JUSTICE J. UMA DEVI

22.01.2018
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