

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
THE HONOURABLE SMT. JUSTICE T. RAJANI**

CRIMINAL APPEAL No.662 of 2013

JUDGMENT (per MSR, J):

This appeal is preferred by the sole accused challenging the judgment dt.04.04.2013 in S.C.No.379 of 2011 on the file of the VI Additional District and Sessions Judge(Fast Track Court), Tirupati, convicting the appellant for the offences punishable under Sections 498-A and 302 I.P.C and sentencing him to life imprisonment apart from paying fine of Rs.2,000/- for the charge under Section 302 I.P.C and to undergo Rigorous Imprisonment for three years and to pay fine of Rs.1,000/- for the charge under Section 498-A I.P.C.

2. The deceased is wife of the accused. They did not have children.
3. The case of prosecution is that on 23.01.2011 at about 10.00 p.m the accused caused the death of his wife, the deceased, by pouring kerosene and by lighting the fire and thus committed the offence under Section 302 I.P.C and also subjected her to cruelty by way of harassment within seven years of marriage and thereby committing the offence under Section 498-A I.P.C.
4. It is alleged by the prosecution that on 23.1.2011, the accused, while under the influence of alcohol, picked up quarrel with the deceased

while they were residing in the house with the deceased's mother that she was not bearing any children and that he wanted to kill her so that he can re-marry and attempted to squeeze her neck with his hands; that she ran towards the bathroom in the house, and the accused then poured kerosene on her and set her afire.

5. It is the further case of the prosecution that on hearing the cries of the deceased, PWs.1 and 2 went to the bathroom and found the deceased on fire, that they tried to douse the fire by pouring water on the deceased, that she was immediately taken to SVRRGG (Ruia) Hospital; that PW.12 was informed by a phone message about the admission of the deceased at 4.30 a.m. on 24.01.2011, that he visited the casualty of Ruia Hospital and was informed by the deceased about the incident, that he recorded her statement (Ex.P7) and returned to the Police Station and registered Ex.P8-FIR initially as Crime No.12 of 2011 under Sections 498-A and 307 I.P.C.

6. PW.12 recorded the statement of PWs.1 to 3 and LWs. 4 and 5 under Section 161 Cr.P.C. He visited the scene of offence, which is the house of PW.1 and conducted scene observation mahazarnama in the presence of PW.6 and LW.9 and seized a plastic kerosene can (MO.1) apart from preparing of rough sketch of the scene of offence. He recorded the statements of PWs.4 and 5, who were neighbours of the deceased and accused.

7. As the accused also suffered some burn injuries, he could not be immediately arrested but was subsequently arrested on 24.05.2011 by PW.13. The deceased succumbed to her injuries on 28.01.2011 at 5.30 p.m. and PW.13 then altered Sections of law to S.498-A and S.302 I.P.C.

8. Prior to the death of the deceased, a requisition was given by the Chief Medical Officer of the Hospital at 5.20 a.m. on 25.01.2011 to record the dying declaration of the deceased, who was undergoing the treatment with burn injuries in the presence of PW8, the Civil Assistant Surgeon of the said Hospital. PW.9, who was then working as V Additional Junior Civil Judge, Tirupati recorded her dying declaration (Ex.P4) starting at 5.30 a.m. and concluded it at 6.15 a.m. After the deceased died, post mortem was performed by PW.11-Assistant Professor, who opined that her death occurred consequent to the burns suffered by her. He issued Post Mortem Certificate (Ex.P6). PW14 then conducted inquest and filed inquest report (Ex.P2).

9. Subsequently, PW13 filed charge sheet against the accused alleging that he committed the offences under Sections 498-A and 302 I.P.C. The charges were read over and explained to the accused, who denied the charges and claimed to be tried.

10. The III Additional Judicial First Class Magistrate, Tirupati, who took the cognizance under Sections 498-A and 302 I.P.C, committed the case to the Court of Sessions at Chittoor and the Sessions Judge

numbered the same as S.C.No.379 of 2011 and made it over to the VI Additional District and Sessions Judge(Fast Track Court), Tirupati.

11. The prosecution examined PWs.1 to 14 and marked Exs.P.1 to P.10 and MO.1. The defence did not examine any witnesses or mark any exhibits.

12. After closure of prosecution evidence, the accused was examined under Section 313 Cr.P.C. and the incriminating material in evidence of prosecution witnesses was put to him but he denied the same.

13. By judgment dt.04.04.2013, the trial Court found the appellant/accused guilty of both the charges under Sections 498-A and 302 I.P.C.

14. After considering the evidence on record, the trial Court held that the evidence of PWs.1 to 5 proved that the accused used to pick up quarrel with the deceased by doubting her conduct and also for the reason she did not give birth to children and wished that if she died, he would re-marry and this proved the motive of the accused to cause death of the deceased. It further relied upon the evidence given by the deceased herself in the dying declaration (Ex.P4), to the effect that her husband poured kerosene and set her afire and also the evidence of PWs.8 to 10 regarding the cause of burns on the body of the deceased. PW.9's evidence about the state of mind of the de facto complainant at the time of recording dying declaration was also taken note of and the trial Court found that there was no infirmity in the dying declaration. It rejected the

plea of the defence that it was a case of a suicidal death and held that the accused, with an intention to cause her death, poured kerosene on her and set her afire and caused her death and it is a case of homicide. It also held that there are no contradictions in the evidence of any of the prosecution witnesses and therefore, the charges levelled against the accused that he physically and mentally tortured the deceased and then caused her death by pouring kerosene on her and setting her afire were proved and he is therefore guilty of committing of offences both under Sections 498-A and 302 I.P.C.

15. Assailing the same, Sri Dr.K.Satyanarayana Rao, learned counsel for the appellant, sought to contend that the evidence on record does not supporting the finding of the trial Court that the appellant committed the offence under Sections 498-A and 302 I.P.C; that merely because there was a quarrel, it cannot be said that the accused would cause the death of the deceased; there were no eye witnesses to the actual pouring of kerosene on the deceased by the accused; and in fact the evidence of the prosecution witnesses showed that the accused also tried to put off the flames on the deceased and suffered serious injuries, which required his hospitalization for four months; and that solely on the basis of Dying Declaration (Ex.P4), the trial Court could not have convicted the accused. He also contended that the accused had no intention to kill his wife and therefore the accused is entitled to clean acquittal or in alternative at least for reduction of sentence by invoking Section 304 Part II I.P.C. He also

cited **Origala Adam v. State of A.P. rep. by Public Prosecutor, High court of A.P., Hyderabad¹**, un-reported judgment in **Polukonda Satyavathi v. State of A.P. rep. by Public Prosecutor, High court of A.P., Hyderabad²** and **K.Ravi Kumar v. State of Karnataka³** and **Kalu Ram v. State of Rajasthan⁴**.

16. The learned Public Prosecutor appearing for the prosecution, however, supported the order passed by the trial Court. He contended that the evidence of the prosecution witnesses is consistent and in fact, the deceased herself stated immediately after the incident to PWs.1 and 2 that the accused was responsible for pouring kerosene on her and setting her afire after he failed to kill her after squeezing her neck. He further contended that the deceased stated the same facts to PW.8, the Doctor in Ruia Hospital, who initially examined her and who sent requisition to PW.9 and reiterated the same in the Dying Declaration (EX.P4) given by her to PW.9. He further contended that no circumstances throwing any doubt or suspicion about this dying declaration have been established by the defence for it to be disbelieved. He also stated that with a motive to do away the deceased so that he can re-marry because she was not bearing any children and because he also suspected her character, the accused killed the deceased and he had clear intention to kill her when he poured kerosene on her and set her on fire and therefore, this Court ought not to interfere with the judgment of the trial Court.

¹ 2011(1) ALT (Crl.) 298 (DB) (AP)

² Criminal Appeal No.1374 of 2011 dt. 21.11.2017

³ 2015(1) ALD Crl. 609 (SC)

⁴ 2000(10)SCC 324

17. We have considered the submissions of both sides.

18. Admittedly the accused and the deceased were not blessed with children. PW.1, who is mother of the deceased, PW.2, sister of the deceased and PW.3, cousin of the deceased stated that the accused was addicted to alcohol and he used to pick up quarrels with the deceased frequently. It is also stated by them that the accused doubted the character of the deceased. Thus, there is ample evidence on record to indicate that the accused had an intention to kill the deceased and this is, in fact also reflected in the statements given by the deceased herself to PW.8 and in Dying Declaration (EX.P4).

19. That the death of the deceased was not a natural death and was homicide is established by the Post Mortem Certificate(Ex.P6) as well as the evidence of PW.11, who conducted post mortem after the death of the deceased.

20. After the deceased was shifted to Ruia Hospital in a 108 ambulance by her mother and sister, she had stated clearly to PW.8 that she sustained burn injuries as her husband poured kerosene and set her on fire. PW.8 informed the same to PW.9, who came and recorded Dying Declaration (EX.P4) and both PWs.8 and 9 certified that the deceased, at the time of recording Dying Declaration (EX.P4), was conscious and coherent. Both of them denied that any relatives were present when said Dying Declaration (EX.P4) was recorded.

21. The learned counsel for the appellant has not been able to point out any valid reason to doubt the genuineness of the Dying Declaration (EX.P4). Once the Dying Declaration (EX.P4) is voluntary and is not tainted by tutoring or animosity it would be a very strong piece of evidence.

22. The Supreme Court in **Ashabai v. State of Maharashtra**⁵ has held that in appropriate cases, satisfaction of person recording statement regarding state of mind of the deceased would be sufficient to hold that the deceased was in a position to make a statement and there is no rule of law which exists on corroboration of declaration before it can be accepted. It held that if the Court is satisfied that dying declaration is voluntary, not tainted by tutoring or animosity, and is not a product of imagination of declarant, there is no impediment in convicting accused on the basis of such dying declaration. The Court also observed that it has been seeing increase in cases of bride burning, cruelty, sexual harassment, rape, abetment of suicide by married women etc., and the criminal justice system must be overhauled and the punishment be made deterrent for the offenders.

23. In **Origala Adam** (1 supra), a dying declaration given by the deceased implicating the accused with whom she had an extra marital relationship was doubted by the Court on the ground that the reason for quarrel between them was a demand by the deceased to the accused to return ear studs given by her to him for pledging the same and her threat

⁵ 2013(2) SCC 224

that he if did not return the same, she would discontinue her relationship with him. The Court opined that the prosecution did not investigate whether the gold ear studs were in fact pledged by the accused and the money was utilized by the accused. The Court doubted the motive for the offence and consequently the dying declaration also on the ground that the Head Constable who recorded it was not satisfied with the mental condition and capacity of the deceased. The facts in the instant case are entirely different and there are no circumstances to doubt the dying declaration of the deceased. So, the said decision has no application.

24. In **Polukonda Satyavathi** (2 supra) cited by the learned counsel for the defence, there were two dying declarations. The evidence on record showed that the accused poured kerosene on the deceased but it was found by the Court that the accused did not set the deceased on fire and there was a possibility of the deceased catching fire because she stood near the stove. In those circumstances, a finding was given that there was no intention to cause the death of the deceased. Also in that case, none of the family members supported the prosecution case and even the children of the deceased and parents of the deceased became hostile. In those facts and circumstances, the Court found that the conviction under Section 302 I.P.C can be scaled down to Section 304 (II) I.P.C. In the instant case the deceased herself stated that she was set fire by the accused and there is only one dying declaration which is not tainted. So the said judgment cannot help the accused in the present case.

25. Likewise, in **Kalu Ram** (4 supra), the accused in a highly inebriated condition demanded ornaments from the deceased wife and on her refusal, he got infuriated, doused her with kerosene and wanted her to die and gave her a match box. When she failed to strike the match stick, he took the matchbox and ignited one matchstick and set her ablaze. The fact that subsequently, he tried to save her by pouring water was interpreted by the Supreme Court to mean that he had not intended to cause the injuries to the deceased which would result in her death. Therefore, conviction altered from Section 302 to Section 304 Part II I.P.C. That was not a case where there was a dying declaration like the present one. Also in the instant case the intention of the accused to kill the deceased was clearly spoken to by the deceased and is corroborated by her relatives. Therefore, the said decision has also no application.

26. In **Chippa Mallesh v. State of A.P.**⁶, in a dying declaration, the deceased stated that the accused reached home in drunken condition and his wife asked why he was not giving money to meet the house hold expenses, a quarrel initiated between them and the accused then poured kerosene and set fire to her. The Court, therefore, accepted the dying declaration but found that there was accidental quarrel and in a heat of passion, the crime was committed and therefore altered the conviction from one under Section 302 I.P.C to Part I of Section 304 I.P.C.

27. In the present case, there has been a consistent conduct of the accused ill-treating the deceased for not having children and doubting her

⁶ 2018(1) ALD Criminal 1051

fidelity spoken to by PWs.1, 2 and even the deceased. Therefore, it cannot be said that there was an accident quarrel and in the heat of passion, the accused committed the offence. Therefore, the said decision also cannot be made any assistance to the accused.

28. It is, no doubt true that the witnesses stated that the accused also received injuries in the incident and that he also tried to put out the fire but such conduct cannot alone be seen in isolation ignoring other conduct of the accused referred to above. May be the accused wanted to give an impression that the deceased attempted to commit suicide.

29. As stated above, once Dying Declaration (Ex.P4) of the deceased is believed, then the only inference possible is that the accused not only had an intention to kill the deceased, but also achieved it by pouring kerosene on her and by setting her ablaze.

30. A contention was raised by the learned counsel for the appellant that fingerprints of the accused on the kerosene tin (MO.1) were not taken and the match box used in the incident was not found. These circumstances do not really matter when Dying Declaration (Ex.P4) and the other evidence of PWs.1, 2, 3 and PWs.8 and 9 is taken into account and considered.

31. We are satisfied that there are no inconsistencies in the prosecution case and that prosecution has proved the guilt of the accused beyond reasonable doubt. In this view of the matter, we see no reasons to interfere with the decision of the trial Court.

32. Accordingly, the Criminal Appeal is dismissed.

33. Miscellaneous applications, pending if any in this Appeal, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

JUSTICE SMT.T.RAJANI

Date: 18-08-2018
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