

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMA DEVI

CRIMINAL APPEAL No.53 of 2013

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

The sole accused in Sessions Case No.17 of 2012, on the file of the IV Additional Sessions Judge, Karimnagar, is the appellant. He was tried for an offence punishable under Section 302 IPC for causing the death of his wife Sumalatha on 26.05.2011 at her parents' house. Vide judgment dated 03.12.2012, the learned Sessions Judge convicted the appellant and sentenced him to suffer imprisonment for life and also to pay fine of Rs.3,000/-, in default to suffer simple imprisonment for three months for the offence punishable under Section 302 IPC. MOs.1 and 2 were directed to be destroyed after the expiry of appeal time.

2. The facts as unveiled from the evidence of the prosecution witnesses are as under:

(i) The accused is the husband of the deceased. PW1 is the daughter of the deceased, while PW2 is the neighbour, PW3 is the father of the deceased. PW4 is an advocate in whose office the deceased was working as Sweeper.

(ii) The marriage between the accused and the deceased took place seven years prior to the date of incident. It is stated that ever since the marriage, the accused used to consume alcohol and beat the deceased. The evidence on record would show that the accused demanded his wife to get money for the purpose of buying alcohol and everyday there used to be some quarrel between the accused and the

deceased. On 26.05.2011, while the deceased was cooking food, the accused came there and asked for money. There was a quarrel between both of them and in a fit of anger, the accused picked up a can containing kerosene, poured the same on the deceased and set her on fire. On hearing the cries of the victim, PW2 rushed to the said place, poured water and set off the fire. It is stated that on seeing PWs.2,3 and others, the accused ran away towards the wall and escaped. It is stated that the deceased tried to jump into the well, but however, PW2 caught hold of her tuft, pulled her back and made her to sit. Immediately, they secured an ambulance and shifted the injured to hospital. On the basis of telephonic message from out-post police station, civil hospital, Karimnagar on 26.05.2011, about the admission of the injured in the hospital, PW11 proceeded to the said hospital and recorded the statement of the injured, which is placed on record as Ex.P6. PW10 the Judicial Magistrate of First Class, Special mobile, Karimnagar, after receiving a requisition, for recording the dying declaration of the injured, rushed to the hospital on the same day i.e., on 26.05.2011 at about 06.00 p.m., made PW8 identify the patient and obtained the declaration from the doctor about the fitness of the injured to give statement and thereafter on being satisfied with regard to the mental condition of the deceased, recorded the statement of the injured. Ex.P5 is the said statement. Basing on the statement given by the deceased to PW11, a case in Crime No. 83 of 2011 was registered for an offence punishable under Section 307 IPC. Ex.P8 is the FIR. Subsequently, PW11 visited the scene of offence and prepared a Crime Details Form in the presence of LW10 and PW5. Ex.P1 is CDF. He got photographed the scene of offence - Ex.P3 and seized plastic empty tin and a matchbox vide MOs.1 and 2. On 13.06.2011 at about 09.30 a.m.,

he received the death information from the Government hospital at Karimnagar. Ex.P9 is the death intimation. Basing on the said intimation, he altered the Section of law to Section 302 IPC and issued Ex.P10 the altered FIR. Thereafter, he sent a requisition to the Tahsildar, Karimnagar, to conduct inquest over the body. On 13.06.2011, an inquest was conducted, in the presence of PW9, which came to be placed on record as Ex.P2. The statements of the family members were recorded at the time of inquest in which all of them opined that there was a quarrel between the accused and the deceased and in a fit of anger the accused poured kerosene and set her on fire. Thereafter, the body was sent for post mortem examination. PW8, the Civil Assistant Surgeon, Government hospital, Karimnagar, conducted autopsy over the dead body of the deceased and issued Ex.P4, the post mortem certificate. According to her, the cause of death was due to 100% burns. PW12, who took up further investigation in this matter, arrested the accused on 02.06.2011 and after completing the investigation, filed a charge sheet which was taken on file as PRC No. 92 of 2011 on the file of Additional Judicial Magistrate of First Class, Karimnagar.

(iii) 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.17 of 2012 on the file of the IV Additional Sessions Judge, Karimnagar. Basing on the material on record, a charge for the offence punishable under Section 302 IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried.

(iv) To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P10 and M.Os. 1 and 2.

(v) 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.

(vi) Basing on the evidence on record and the dying declaration, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that since the deceased has sustained 100% burns, she could not have been in a position to make the declaration. According to him, the two dying declarations recorded cannot be relied upon. Insofar as the dying declaration recorded by PW11 is concerned, he would contend that since there is no endorsement of the doctor with regard to the mental condition, the same cannot be acted upon. Coming to the statement recorded by the Magistrate, learned counsel would contend that it is an outcome of tutoring. He took us through the evidence of all the witnesses to show that there is no legal material connecting the accused with the crime.

4. On the other hand, learned public prosecutor would contend that there are no reasons to disbelieve the dying declaration recorded by the Magistrate, which gets amply corroborated from the evidence of PW1, who was present at the time of incident. It is her version that the evidence of PWs.2 and 3 corroborates the contents of the dying

declaration and as such the conviction and the sentence imposed by the trial Court warrants no interference. He further submits that even if the evidence of PWs.2 and 3 are excluded from consideration, the dying declaration referred by the Magistrate alone is sufficient to convict the accused.

5. The point that arises for consideration is whether the accused is responsible for the death of the deceased?

6. It is not in dispute that the accused is the husband of the deceased and their marriage was performed about eight years prior to the date of incident. It is also not in dispute that they were blessed with PW1 and two others and PW1 was present at the time of incident. The evidence of PWs.1, 2 and 3 and the contents of two dying declarations would show that from the date of marriage, the accused used to consume alcohol and harass the deceased. But no material has been placed before the Court to show lodging of any report against the accused. The evidence of PWs.2 and 3 would show that everyday the accused and the deceased used to quarrel and the accused was demanding the deceased to give money. It would be appropriate to extract the relevant portion in the evidence of PWs.2 and 3, which is as under:

“PW2 deposed as under:

..He was asking his wife money for his alcohol. He was using his small kid to beg to get some money to consume. On 26.05.2011, Sumalatha was cooking with fire wood in her house. Accused came there, asked money and developed quarrel. As their quarrel was common, I did not take it serious went outside her house and sat along with her father Mogilaiah and her younger brother Srinivas. We noticed after some time flames and observed that accused poured kerosene and set her ablaze. I saw it. PW1 called me loud as Attamma. Sumalatha was on flames. Silk saree enraged flames. My younger sister

Sounjanya sprinkled water, I too did it. On seeing all this, accused run away towards a well, jumped a wall and escaped. Sumalatha also tried to run towards well to jump into it. The well had water. I caught hold of her tuft from the backside and pulled her back and made her to sit. I scolded her for it. By that time flames were extinguished. So I did not receive injuries. Immediately, 108 ambulance was secured.”

In her cross examination, PW2 deposed as under:

“I did not state to police that I saw accused pouring kerosene and setting ablaze. Accused was staying with his family in a corner in the community hall in the village as watchman. They cook under nearby trees. Their stove is about 12 feet from function hall wall. Nine houses are in front of his hall. Road intervenes. This road has some traffic. Any galata, voice from the hall is audible to these houses. Office of DCMS is abating the hall. It remains open from 09.00 a.m. to 06.00 p.m. Loaded lorries halt before the hall for unloading. I did not go to hospital. Police recorded my statement at the time of conducting post mortem examination. She was burnt totally. It is not true to say that for this reason, she was unable to talk and did not talk to me, that accused did not pour kerosene and set ablaze, that PW1 did not call me or inform me or that injured did not even talk to me, that she caught fire accidentally while cooking with a fire wood stove and that I am deposing falsely.

PW3 deposed as under:

“...Ever since their marriage accused was consuming alcohol and beating her. They were never happy. We complained to police also. Accused demanded as usually my daughter money to drink. She did not give so he poured kerosene and set ablaze. I was in the same hall, I did not take their quarrel serious as it is common for all these seven years. Their marriage was arranged marriage. PW2 and my son sprinkled water to extinguish flames. A vehicle came and carried her to hospital, where she had taken treatment for 18 days. She talked to me and many others and informed that accused poured kerosene and set ablaze and save her. Police examined me and recorded my statement.”

In his cross examination, PW3 deposed as under:

“I did not state to police that the couple was quarrelling everyday and I lodged police complaint against accused, or that as it was common, I did not take their quarrel serious or that accused demanded my daughter money to drink or that I witnessed the incident or that PW2

and my son poured water. (Witness did not understand above questions properly. When I asked he said that he informed all these to police). I did not state to police that my daughter informed to me and others of the incident to save her or that accused poured kerosene and set ablaze.

My statement was recorded three days after the incident. She was completely burnt. It is not true to say that accused did not commit any offence or responsible for her death. She was cooking before the incident. It is not true to say that while cooking, she caught fire accidentally and that I did not see any incident. My daughter cooks under nearby trees, which are at some distance from community hall on right side. It is not true to say that I am deposing falsely as deceased is my daughter."

7. Though PWs.2 and 3 were cross examined at length, nothing useful was elicited to discredit their testimony. Relying upon the admissions made by PW2, learned counsel for the appellant would contend that it was a case of accidental death due to burn injuries and that the accused is not at all responsible for injuries on the body of the deceased. But, PW1, who was aged about 4 years at the time of giving evidence and who was present in the house at the time of incident, states that his mother died due to pouring of kerosene and setting her on fire by her father. The relevant portion in the evidence of PW1 relating to the accused setting the deceased on fire, is as under:

"My mother died. She died due to kerosene poured by my father. He set ablaze. I do not know why? So she died. Police asked me."

In the cross examination, PW1 deposed as under:

"Your father did not pour kerosene or ablaze? She answered negatively saying he set ablaze (with her body language and with sign of crying)."

"Examination by Court:

Where were you on that day, whether in the house or outside (silence, she is crying).

How do you come here?

I came to Karimnagar with Srinu uncle.

Whether anybody told you today to give this kind of evidence? – No. (She is crying whenever she is asked about thing happened on that day).

Were your father loving you? Yes.

Are you loving your father? Yes.

Were your parents quarreling and beating? No.”

8. From the above, it is clear that his father was loving his children. But the question as to whether his parents were quarrelling and beating was denied by her. Apart from that, the evidence of PW2, would show that on the date of incident, while the deceased was cooking with fire wood in the house, the accused came there and demanded for money. There was a quarrel between them and as it was a common issue, PW2 went out and sat with the father of the deceased. PW3 in his evidence also deposed that on the date of incident, the accused came home in a drunken condition and demanded for money. When she denied, he poured kerosene and set her ablaze. In the inquest report, it has been stated that on 26.05.2011 in the evening hours, at 04.00 p.m., the husband of the deceased Laxman @ Raju asked the deceased to give money for drinking liquor. When she refused to give money, he grew wild, took the kerosene tin which was available there, poured the same on the body of the deceased and set her ablaze. Therefore, the evidence on record, referred to above, clearly indicates that the accused came home picked up a quarrel with the deceased and when she refused to give money, poured kerosene and set her on fire.

9. In identical circumstance, this Court in *Kothala Srinu Vs. State of A.P.*¹ observed as under:

“19. The further question that remains to be considered is whether the appellant is liable to be convicted for the offence under Section 302 IPC or under Section 304 Part II IPC?

20. From the consistent evidence of the prosecution witnesses, it is clear that the appellant was not leading a disciplined life. He used to come

¹ 2016 SCC Online Hyd. 106

home after consuming alcohol after his marriage, every night and pick up quarrels with the deceased. Though he appeared to have been harassing the deceased, there is no evidence to show that he had ever attempted to do away with her life. Even according to the version of the deceased, as reflected from her both the dying declarations, even on the fateful day, a quarrel ensued between them, leading to her suffering burns. In the manner in which the occurrence has taken place, as reflected from the evidence on record, we have no doubt in our mind that the appellant had no intention of killing his wife. However, due to the serious quarrel between them, the appellant probably, in a fit of rage, would have set fire to the deceased. This conclusion of ours is firmed up by the fact that at the time of occurrence, the appellant was in a drunken condition and that he has brought kerosene from a bottle lamp and poured the same on the deceased which shows that he would not have had the premeditation of causing the death of the deceased. The further fact that the burns were only 55% and they have not caused immediate death - the deceased died five days after the occurrence - also shows that the appellant had no intension of causing the death of the deceased. Therefore, we feel that this is a fit case to convict the appellant for the offence under Section 304 Part-II I.P.C. and accordingly, we modify the judgment of the Court below to this effect. As regards the sentence, having regard to the nature of the offence, we feel that interests of justice would be met if the appellant is sentenced for a period of seven years, besides a fine of Rs.500/-.

10. Relying upon the above judgment, learned counsel for the appellant would contend that since there was a quarrel prior to the incident; as the accused never came home with kerosene and in the absence of any intention to kill the deceased, he would submit that offence at the most may be one under Section 304 II IPC.

11. It is to be noted here that though in the dying declaration recorded by the Magistrate, deceased does not refer to the quarrel between herself and her husband, but in the statement recorded by the SI of Police, it has been clearly stated that on 26.05.2011, at about 04.00 p.m., while she was cooking, the accused came there and asked her to give money. When she refused to do so on the ground that there is no money, the accused grew anger, poured kerosene and set her on fire.

12. Though there is no reference to any 'quarrel' in the said statements, but the role of the accused in pouring kerosene is said to be in a fit of anger. Though the evidence of PWs.2 and 3 clearly establish that a quarrel took place prior to the incident, but PW1 denied existence of a quarrel between his father and mother. The inquest report, which came to be prepared after examining the family members, clearly shows that in a fit of rage, the accused set fire on the deceased.

13. Further, in recording the dying declaration given by the deceased, PW10 read over the contents of the statement to the deceased, obtained left thumb impression and thereafter asked PW8 the Civil Assistant Surgeon to certify the mental condition of the injured, for which the doctor certified the same. This certificate of the doctor is sought to be challenged by the counsel for the appellant, on the ground that same is an outcome of tutoring, but no material has been placed before the Court to show that either the family members or the neighbours of the deceased were present by the side of the deceased, prior to recording of dying declaration. Hence, the dying declaration recorded cannot be said to be an outcome of tutoring. Therefore, we hold that the accused alone is responsible for the incident and the argument that it was a case of accidental death cannot be accepted.

14. But it is to be noted that the appellant has no intention to cause the death of the deceased. As observed earlier the evidence of PWs.2 and 3 clearly show that there was a quarrel prior to the incident and thereafter the accused is said to have set fire on the deceased. Further, the incident in question took place when the accused was in an inebriated condition.

15. In view of the above circumstances; having regard to judgment of this Court in *Kothala Srinu Vs. State of A.P (supra)*, referred to above and in view of the fact that the deceased survived for nearly 19 days after the incident, we feel that it is a fit case where the nature of offence can be scaled down and the accused can be convicted under Section 304 II IPC.

16. In the result, the Criminal Appeal is allowed in part. The conviction and sentence recorded against the appellant/ accused in the judgment, dated 03.12.2012, in Sessions Case No.17 of 2012, on the file of the IV Additional Sessions Judge, Karimnagar, 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 seven years. 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 seven years of rigorous imprisonment, including remissions, if he is entitled to.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMA DEVI

Date: 24.01.2018
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