

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.63 of 2013

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

1) The sole accused in Sessions Case No.36 of 2010 on the file of the I Additional District and Sessions Judge, West Godavari at Euru, is the appellant herein. He was tried on two charges. The first charge was for the offence punishable under Section 302 IPC, for causing the death of Rajolu Dhakshina Murthy (hereinafter referred to as "the deceased") by pouring petrol through the window and setting him on fire. The second charge was for the offence punishable under Section 307 IPC, for causing injuries to one Romali Krishna. Vide judgment dated 10.05.2012, the learned Sessions Judge, while acquitting the accused for the offence punishable under Section 307 IPC, convicted him under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of one month.

2) The facts as culled out from the evidence of prosecution witnesses are as under:

The accused is a resident of Devarapalli Village while the deceased was a resident of Ananthapalli Village. The accused and deceased were friends. PWs.1 and 2 are known to the deceased

while PWs.4 and 6 are neighbours of the deceased. PW.5 is the brother of the deceased. The deceased was working as an auto driver. The accused and another person by name Krishna, who came from Maharashtra, used to reside in a Zinc sheet shed, in the house of PW.3. The said Krishna used to work as a labourer in Polavaram canal, near Ananthapalli village. It is said that the accused developed illegal contacts with one Laxmi (PW.4). About 20 days prior to the date of incident, there was a quarrel between the accused and deceased, with regard to illegal contacts of the deceased with PW.4. The said incident is said to have taken place near the auto stand. In that quarrel, the accused threatened the deceased and demanded him to discontinue his illegal contacts with PW.4, failing which he threatened him with dire consequences. In that connection, the auto driver's union President is said to have reprimanded the accused. On 08.04.2009, PW.1 came to Euru for transporting the dance troop in an auto, in connection with Siramanavami festival. At about 2.00 a.m., he returned back to Ananthapalli village. His evidence is to the effect that he noticed the accused holding a jug near the shop of one Gedala Suramma in the centre. On the intervening night of 08.04.2009/ 09.04.2009 at about 2.00 a.m., PW.6, whose room is situated adjacent to the room of the deceased, heard cries from the room of the deceased. He came out and found smoke emanating from the room of the deceased. The door was said to have been bolted from outside and also from inside the room. He said to have opened the outside bolt and pushed it, but the same

did not open. He broke open the door, entered into the room of the deceased and found the deceased burning and one Krishna, who is roommate of the deceased, was also burning. On opening the door, both of them came out of the room PW.6 is said to have put off the flames, telephoned to the ambulance and shifted the injured to Area Hospital, Tadepalligudem. At about 5.00 a.m., PW.12, the Sub-Inspector of Police, received information about the admission of two persons in Area Hospital, Tadepalligudem with burn injuries. Immediately, he proceeded to the hospital and recorded the statement of the deceased in the presence of Medical officer. Ex.P9 is the intimation and Ex.P7 is the statement of the deceased. He read over the contents of the said statement to the deceased and after acknowledging the same to be correct, obtained the thumb impression of the deceased on the said statement. Basing on the said statement, he registered a case in Crime No.70 of 2009 of Ananthapalli Police Station and issued the first information report, which is placed on record as Ex.P8. Thereafter, PW.12 along with PW.9 visited the scene of offence, which is situated in the house of Pokala Narasimha Rao in Ananthapalli village and observed the scene in the presence of PW.9. Ex.P3 is the scene of offence panchanama. They seized burnt blanket, as M.O.1. He also prepared a rough sketch of the scene which is placed on record as Ex.P12. Later, they proceeded to the hospital at Tadepalligudem, examined the deceased and recorded his statement under Section 161 Cr.P.C., which is marked as Ex.P10. Subsequently, on the same day at 9.45 a.m., the

deceased died. On receipt of death intimation, PW.12 altered the Section of Law from 307 IPC to Section 302 and 307 IPC. Ex.P13 is the alteration memo. Further investigation was taken up by PW.15-the Inspect of Police, Tadepalligudem. On receipt of a copy of the altered F.I.R., he proceeded to the hospital, recorded the statement of the injured and thereafter conducted inquest over the dead body of the deceased in the presence of PW.9. During inquest, he examined PWs.1 and 2. Ex.P4 is the inquest report. Thereafter, he sent the body for postmortem examination. PW.10-the Deputy Civil Surgeon, Area Hospital, Tadepalligudem, conducted autopsy over the dead body of the deceased and issued Ex.P5-the postmortem Certificate. According to him, the deceased died of hypovolemic shock due to deep extensive burns on the entire body.

It is also to be noted here that PW.14-the Civil Assistant Surgeon, Area Hospital, Tadepalligudem, examined Romali Krishna(LW1) on 09.04.2009 and issued Ex.P14 the wound certificate. He noticed scars on both upper limbs; back of chest, and below the knee joint of right leg. PW.15 continued with the investigation, arrested the accused on 13.04.2010 at his residence. On interrogation, he is alleged to have confessed about the commission of offence. Pursuant to which, they recovered M.Os.4 and 5 which are his pant and shirt. After examining all the witnesses and after collecting all the documents, PW.15 filed a charge sheet, which was taken on file as P.R.C.No.52 of 2009 on the file of the I Additional Judicial Magistrate of First Class,

Tadepalligudem. On committal, the same came to be numbered as S.C.No.36 of 2010.

3) On appearance, charges under Sections 302 and 307 IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 15 and got marked Exs.P1 to P16 and Mbs.1 to 5. 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 his behalf, in support of his defence.

5) Relying upon the evidence of PW.2 coupled with the dying declaration recorded by PW.12 and Ex.P10 the statement of the deceased recorded during the course of investigation, the learned Sessions Judge, convicted the accused and sentenced him to suffer 'imprisonment for life". Challenging the same, the present appeal is filed.

6) Learned counsel for the appellant mainly submits that an adverse inference has to be drawn, against the prosecution as they failed to examine one Romali Krishna, who sustained burn injuries at the time of incident and who was present in the room along with the deceased. According to her, non-examination of said Krishna is fatal to the prosecution case. It is further stated that during the course of investigation the police examined said

Krishna, but suppression of the statement of Krishna throws any amount of doubt on the version set out by the prosecution. Relying upon the translated version of the dying declaration recorded by PW.12, the learned counsel for the appellant would submit that the name of Rahamatulla (accused) is not shown as the person, who poured petrol and set the deceased on fire. Therefore, it is her plea that in the absence of any other evidence connecting the accused with the crime the appellant is entitled for the benefit.

7) On the other hand, the learned Public Prosecutor would contend that if the dying declaration is read in the language it is recorded, it would clearly reveal that it was the accused alone was responsible for the death of the deceased. He took us through the dying declaration recorded by PW.12 and also the oral dying declaration made before PW.2 to show that the accused alone was responsible for the death of the deceased. Insofar as the non-examination of Krishna is concerned, it is stated that he could not be examined by the prosecution as his whereabouts were not known. According to him, the said Krishna was working as Driver on a Buldozer, employed for digging canals under Polavaram project. As his work was completed, he migrated to northern state and the police were not able to secure his presence. But however, the doctor, who examined Krishna, deposed about the injuries sustained by Krishna on that night. Insofar as the smell of kerosene is concerned, he contends that Ex.P3 refers to traces of petrol at the scene.

8) The point that arises for consideration is whether the accused is responsible for the death of the deceased.

9) As seen from the record, there are no eye witnesses to the incident and the entire case rests on the dying declaration recorded by the police and the oral dying declaration made before PW.2, coupled with the motive for the accused to cause the death of the deceased. The evidence of PW.1 would show that about 20 days prior to the incident, there was a quarrel between the deceased and accused with regard to illegal contacts with PW.4. In that quarrel the accused threatened the deceased and demanded him to discontinue his relationship with PW.4. As per the evidence of PW.1, the accused is said to have threatened the deceased with dire consequences if he continues his relationship with PW.4. In that connection, the Auto Drivers Union President Rambabu and others are alleged to have reprimanded the accused. PW.1 was cross-examined at length. In the cross-examination, it was elicited that about 20 days prior to the incident, the accused came to the centre, where the auto drivers were present and in the presence of all, he quarreled with the deceased. In the cross-examination it has been elicited that one Rambabu, who was the President of Auto drivers Union at the time of incident, won the election against one Pullaiah. The deceased is said to have supported Rambabu in the said election. However, it is not the case of the accused that the accused supported Pullaiah and because of which he has been implicated in this case. On the other hand, the suggestions given to the witnesses are that the rivals of Rambabu

killed the deceased and implicated the accused in this case by colluding with the police. We feel that there was absolutely no necessity for PWs.1 and 2 or Rambabu to implicate the accused in the instant case when he has nothing to do with the union elections or election of Rambabu, as President.

10) Further the evidence of PW.1 gets corroboration from the evidence of PW.2, who deposed about the quarrel between the accused and deceased, about 20 days prior to the incident. He deposed that the accused threatened the deceased stating that he would kill him if he interferes with the affairs of Laxmi. His evidence also show that himself, along with others reprimanded the accused and took him to Bharataiah, who is honourary President of Auto Drivers Association. His evidence also shows that the said Bharataiah also reprimanded the accused, but however the accused while leaving the office of Bharataiah, threatened the deceased with dire consequences. In the cross-examination it was elicited that the accused on his own accord accompanied PW.2 to the honourary President and that there was no connection between accused and Bharataiah. To a suggestion that the deceased committed suicide due to family disputes and that he was not killed by the accused by pouring kerosene was denied.

11) From the evidence of these two witnesses, it is clear that the stand of the accused is inconsistent. The plea that was taken when PW.1 was in box was that the rivals of Rambabu killed the deceased and that the accused has nothing to do with the

death of the deceased. The theory of suicide by the deceased was not even suggested to PW.1. While cross-examining PW.2 it was suggested to him that the deceased committed suicide due to family disputes. The theory of rivals of Rambabu killing the deceased was not put forward to PW.2. As seen from the above, on one hand he tries to say that the rivals of Rambabu killed the deceased as he supported Rambabu in the election and on the other hand, he tries to put forward the plea of deceased committing suicide due to family disputes. Therefore, this circumstance falsify the plea of innocence and show a strong motive for the accused to commit the offence because of earlier quarrel and the illicit relationship of both the accused and the deceased with PW.4. It may be true that PW.4 did not support the prosecution case but that by itself is not a ground to disbelieve the motive set up by the prosecution. No woman would come to the Court and say that she has illicit intimacy with X or Y or Z. Hence, we hold that the accused had a strong motive to kill the deceased and his inconsistent pleas suggested to PWs.1 and 2, add fuel to the same.

12) The second circumstance relied upon by the prosecution is the dying declaration of the deceased recorded by PW.12. As stated earlier, relying upon the translated version of the dying declaration done by the Court, learned counsel for the appellant would contend that the deceased failed to mention the name of the accused as the person, who poured petrol and lit fire.

But it would be appropriate to refer to the dying declaration in the words in which it was recorded.

13) As seen from the record, the first dying declaration was recorded by PW.12, which formed the basis for registering the first information report. PW.12-the Sub-Inspector of Police, on receipt of intimation from the hospital about the admission of the injured proceeded towards the hospital and recorded the statement of the injured. Ex.P7 is the said statement. His evidence is to the effect that he recorded the statement of the deceased in the presence of medical officer and after completing the said statement read over the contents of the statement to the deceased and obtained acknowledgment of the same. Apart from that he also obtained thumb impression of the deceased on the said statement. The doctor, who examined the deceased, also declared that the deceased was in a fit condition to make such statement. The same finds place in the original of Ex.P7. It would be appropriate to extract the relevant portions of dying declaration recorded by PW.12, which contain the thumb impression of the deceased, which is as under:

14) A reading of the dying declaration would show that the same refers to the quarrel which took place about 20 days prior to the date of incident and also the accused pouring petrol through the window on the intervening night of 08.04.2009/ 09.04.2009 and then set him on fire. This statement was recorded on the next day morning at 6.10 a.m. Though PW.12 was cross-examined at length, nothing useful came to be elicited to discard the same. On the other hand, it was elicited that the deceased was in conscious state when PW.12 recorded the statement. Ex.P7-statement contains the thumb impression and also the certification of the doctor, with regard to the mental state of the deceased which gets corroboration from the second statement of the deceased recorded by PW.12 during the course of investigation. It is true that the said statement does not contain the thumb impression or signature of the deceased, but the same was recorded during the course of investigation by PW.12. The version set out in the said statement which is placed on record as Ex.P10 corroborates in all respects the contents of Ex.P7, the dying declaration recorded by PW.12. Apart from that the dying declaration recorded by PW.12 gets corroboration from the oral dying declaration made by the deceased before PW.2, the neighbour of the deceased. According to him, on the date of incident he along with auto drivers went to the Government Hospital, at Tadepalligudem, on coming to know that the deceased was admitted in the hospital and enquired with the deceased, who told him and others that the accused poured petrol and set fire to him. He also told him that one Romali

Krishna, who was his roommate, also sustained burn injuries. In the cross-examination it was not even suggested to the witness that there was no oral dying declaration or that the dying declaration was an outcome of tutoring. Therefore, we see no reason to disbelieve the declaration made by the deceased with regard to the manner in which he sustained burn injuries.

15) Learned counsel for the appellant tried to contend that the statement of the deceased recorded by the police under Section 161 Cr.P.C. cannot be treated as dying declaration since it does not contain the signature or thumb impression of the deceased. Even if accepting for the sake of argument that such statement cannot be accepted, but still there lies the dying declaration of the deceased recorded by PW.12 and marked as Ex.P7, which not only contain the thumb impression of the deceased but also the certification of the doctor. No circumstances are made out to disbelieve the said dying declaration.

16) Taking advantage of the admissions made by PW.1 that the deceased was surrounded by 30 people when he visited the hospital, learned counsel for the appellant would contend that the dying declarations are an outcome of tutoring, but it is to be noted here that the statement of the deceased under Ex.P7 was recorded by 6.10 a.m. itself on 09.04.2009 and PW.1 came to know about the incident on 09.04.2009 at 7.00 a.m. and thereafter he claims to have gone to the hospital. Therefore, by the time PW.1 went to

the hospital and saw the deceased, Ex.P7 was already recorded by PW.12 and the oral statement to PW.2 was also made by then. Therefore, the argument of the learned counsel for the appellant that these dying declarations are an outcome of tutoring also cannot be accepted. As stated earlier absolutely there is no motive for any of the witnesses to implicate the accused in the case.

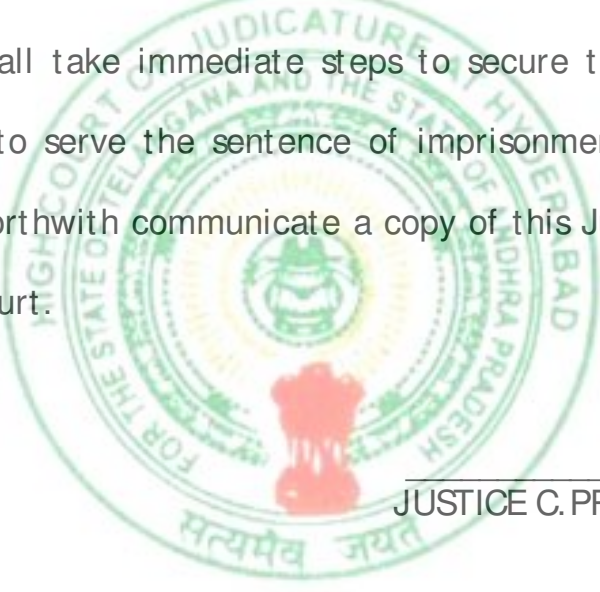
17) Coming to the last ground urged by the learned counsel for the appellant namely that an adverse inference has to be drawn for not examining the said Krishna, it is to be noticed that the material on record would show that the said Krishna was working as a driver in a Buldozer used to dig canals at Polavaram project. After completion of his work, he is said to have gone to the Northern States in pursuit of his employment. As his whereabouts are not known, the prosecution was not able to serve summons on him. But however, the evidence of doctor PW.14 would show that on 09.04.2009 at about 4.30 a.m. while he was on duty, he examined Krishna and noticed burn injuries on the body. Therefore, the explanation given by the prosecution for non-examining Krishna cannot be brushed aside and that cannot be made the basis to say that the entire prosecution case is false, more so, when the dying declaration-Ex.P7 inspires confidence in the Court to base a conviction.

18) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the

appellant/ accused beyond reasonable doubt and the trial Court has rightly convicted the appellant and sentenced him as stated supra.

19) Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

20) This Court, vide its order dated 03.07.2017 in CrI.A.M.P.No.1316 of 2017 directed release of the appellant/ accused on bail on the terms and conditions mentioned therein. In view of dismissal of the Criminal Appeal, the bail bonds of the appellant/ accused shall stand cancelled and the Magistrate concerned shall take immediate steps to secure the presence of the accused to serve the sentence of imprisonment. Registry is directed to forthwith communicate a copy of this Judgment to the concerned Court.



JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI

15.03.2018
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