

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR  
AND  
HON'BLE SMT JUSTICE T.RAJANI**

**CRIMINAL APPEAL No.290 of 2012**

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

1) The sole accused in Sessions Case No.284 of 2009 on the file of the VI Additional District and Sessions Judge (F.T.C.) Krishna, Machilipatnam, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of one Shaik Salma on 18.04.2009. Vide its judgment, dated 24.12.2011, the learned Sessions Judge convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay a fine of Rs.2,000/- in default to suffer simple imprisonment for a period of six months.

2) The case of the prosecution is as under:-

The accused was having artificial-gold covering works business at Buttaipet, Machilipatnam and one Shaik Salma (hereinafter referred to as "the deceased") was working under him since 8 years. The deceased used to attend the said work in the house of the accused. In routine course, on 18.04.2009 at 12.00 noon the deceased is said to have gone to the house of accused to attend the work. At that time the accused, with an intention to kill the deceased, poured kerosene and set her on fire. The deceased

raised hue and cry which attracted the attention of P.W.2, who is neighbour. He rushed towards the house and noticed the accused at the closed door of the kitchen. When P.W.2 questioned the accused, he left the place hurriedly. Then P.W.2 opened the door of the kitchen and found the deceased burning in flames. Immediately, P.W.2 along with others shifted the deceased in 108 Ambulance to Government Head Quarters Hospital, Machilipatnam, for treatment. P.W.1, who is father of the deceased, rushed to the Hospital, on receipt of the information. On receipt of the hospital intimation at 1.30 p.m., P.W.13-the then Head Constable went to the Government Hospital and recorded the statement of P.W.1, but the deceased was unconscious at that time. Then he handedover the statement of P.W.1 to P.W.14-A.S.I. of Police, basing on which, he registered a case in Cr.No.70 of 2009 under Section 307 IPC. He then visited the Government Hospital and from there to the scene of offence, prepared rough sketch and also got photographed the scene of offence. On the same day at about 10.10 p.m., he received the death intimation of the deceased and as such he altered the Section of law from 307 IPC to 302 IPC and handedover the CD file to P.W.15- the C.I. of Police, who proceeded to the hospital and conducted inquest over the dead body. Ex.P-7 is the inquest report. Then he sent the dead body for Post Mortem examination. P.W.7- Dr.P.R.Tyagi, conducted autopsy over the dead body of the

deceased. On 25.04.2009 the accused was arrested and sent for remand. After completion of investigation, and on receipt of Post Mortem report and FSL reports, police filed the charge-sheet, which was taken on file as P.R.C.No.09 of 2009 by the II Additional Judicial Magistrate of I Class, Machilipatnam, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C. On committal, the same came to be numbered as S.C.No.284 of 2009.

3) Basing on the material available on record, charge under Section 302 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 its case, the prosecution examined PWs.1 to 15 and got marked Exs.P-1 to P-21 and MOs.1 and 2. 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 marked on behalf of the accused.

5) Considering the Dying Declaration of the deceased as true and voluntary and free from any embellishment, the trial court convicted the accused. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that there are no direct witnesses to the occurrence and the entire case rests on the dying declaration. He further submits that in the absence of any motive, the trial court erred in convicting the appellant under Section 302 IPC.

7) As seen from the record, all the witnesses turned hostile and the entire case is based on the Dying Declaration recorded by the Magistrate, who was examined as P.W.9. Before proceeding further, it would be useful to refer to the contents of the Dying Declaration. As per the Dying Declaration recorded by the Magistrate, "the deceased was aged about 18 years at the time of the incident, she was doing gold covering works under the accused and on that day the accused poured kerosene and set her on fire. She states that she does not know the reason for doing the same and there is nothing more to say." The statement of the deceased though reveals that the accused poured kerosene on the deceased, but does not indicate any reason for doing the same. Therefore, the deceased is either not giving the true version as to why the accused poured kerosene on her, or she is under some kind of depression, which must have made her to speak false against the accused. To test the same, it would be appropriate to refer to the other evidence on record and also the documents marked.

8) P.W.12, who was working as a Technical Assistant in 108 Services of EMRI since 2008, states that on 18.04.2009 at 12.20 p.m., he received a telephone call from one Prasad, who informed him that about a suicide attempt case. On receipt of the said intimation, he went to the scene of offence in 108 Ambulance. He noticed that it was a kerosene burning case, shifted the deceased-Shaik Salma into 108 Ambulance and then took her to Government General Hospital, Machilipatnam. Though the information received by P.W.12 was not direct but through one Prasad, but the earlier version of the case, which P.W.12 received is that it is a case of suicide.

9) The second circumstance, which is sought to be relied upon by both the counsel, is evidence of P.W.10-the Doctor, who is said to have conducted Post Mortem examination. In the cross-examination he admits that if the death of the person is a normal one, the dead body would be handed over to his/her relatives. He further admits that whatever transpires with the patient, while she is in the hospital must necessarily find place in the case sheet maintained by hospital pertaining to that patient. Whenever a patient is examined by either Doctor or a Nurse, that fact must find place in the case sheet with date, time and signature of the person examining the patient along with the result of the examination. He further admits that if it is a medico legal case, it is incumbent upon the casualty



Doctor to elicit information pertaining to the incident, in which the injuries were caused and make a note of the same in the Accident Register. He admits that in the Accident Register which was shown to him and which was sent by the Medical Superintendent, District Hospital, Machilipatnam to the Court, nothing is mentioned as to how the deceased received burn injuries. It was also not mentioned as to whether the injured was in conscious or unconscious. Though the case sheet indicates that two Doctors have examined the deceased until the time of her demise, but he does not find the signature of Dr.Badarinath in the case-sheet. In Ex.X-1-Accident Register at the column "declaration required or not" is kept blank. Even in Ex.P-9-police intimation, at column 9 "Whether Dying Declaration is necessary" is kept blank. To a question posed by the Court as to whether in the present case, is it possible to express any opinion as to the burns found on the body of the deceased are suicidal, accidental or homicidal in nature, the Doctor states that it is not possible. While answering the said question, the Doctor further says that in case a patient is in depression, suicidal tendency is more. To a question that Ex.X-2 case sheet does not contain the name of the surgeon who examined the patient-Salma, as no signature of surgeon is found on Ex.X-2, he accepts that the same to be true. From the evidence of the Doctor, it is clear that the columns in the Accident Register, which the Doctors are supposed

to fillup, are blank. No effort was made to elicit any information from the injured as to how she sustained injuries and indicate the same in the Accident Register, which according to P.W.10 is a pre-requisite. For reasons best known, even the Doctors, who attended on the patient till her death, did not sign in the Accident Register. It is also elicited that the Doctor cannot say as to whether these injuries are suicidal, accidental or homicidal, but at the same time he admits that in case a person is in depression, there would be a tendency to commit suicide.

10) P.W.15, who investigated into the case, admits that his Case Diary discloses that the deceased was in depression condition for some time. He admits that P.W.1 neither revealed the same nor was questioned the reason for the said depression. It would be useful to extract the relevant portion in the evidence of P.W.15, which is as under:

"My CD discloses that the deceased was in depression condition for some time but not that the deceased was suffering from DIGULU for sometime. It is true my case diary does not disclose that P.W.1 ever revealed that the deceased was in a depressed stage or that he ever questioned her the reason for the said depression."

11) He also admits that there is no evidence on record to show that the deceased entered into kitchen and the accused accompanied her into kitchen. To a suggestion that his investigation does not disclose as to how the deceased received burn injuries, was

denied by him, but admits that nobody saw the accused pouring kerosene on the deceased. At this stage, it would be very much relevant to again refer to the evidence of P.W.9-the Magistrate, who recorded the Dying Declaration of the deceased.

12) In his evidence, P.W.9 deposed that after being satisfied that the deceased was conscious, coherent and in the fit state of mind, he recorded her statement. He completed recording the statement of the victim at 1.40 p.m., and obtained her left toe impression beneath her statement. In the cross-examination he admits that the column as to, whether Dying Declaration is necessary was kept vacant. He admits that the patient Salma, on his enquiry, stated that she did not know as to why the accused poured kerosene on her and lit her on fire. From the contents of Dying Declaration and the evidence of P.W.9-the Magistrate, who recorded the Dying Declaration, it is very clear that there was no motive for the accused to pour kerosene and set her on fire, moreso, when the deceased and her sister were working under him since last 7 years.

13) On the other hand, as observed by us earlier, the evidence of P.W.12-Technical Assistant in 108 Services, though hearsay coupled with the evidence of the Investigating Officer would show that deceased was under depression and the deceased committed suicide, which in our view cannot be ruled out. It is to be made clear that we are not disbelieving the recording of the statement by the



Magistrate and the contents of the said statement, but having regard to the circumstances stated by us earlier, a doubt arises as to whether really the deceased is stating the truth, more so when there was no motive for the accused to cause the death, no enmity between the families, no evidence on record to show that the accused misbehaved with her. In the given set of circumstances, we feel that though there is Dying Declaration but having regard to the factors referred to above, we are inclined to acquit the accused, by extending the benefit of doubt.

14) In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment, dated 24.12.2011 passed in S.C.No.284 of 2009 on the file of the VI Additional District and Sessions Judge (FTC), Krishna, Machilipatnam, for the offence punishable under Section 302 IPC is set aside. Consequently, the accused shall be set at liberty forthwith, if he is not required in any other case or crime.

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**JUSTICE C.PRAVEEN KUMAR**

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**JUSTICE T.RAJANI**

Dt:01.08.2018

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