

THE HON' BLE SRI JUSTICE C. V. NAGARJUNA REDDY
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No. 385 of 2011

Date: 9th February, 2018

Between:

Kyama Eswaraiah

... Appellant

And

State of A.P., rep. by Public Prosecutor

... Respondent

COUNSEL FOR APPELLANT : Smt. A. Gayatri Reddy

COUNSEL FOR RESPONDENT : Public Prosecutor



THE COURT MADE THE FOLLOWING:

JUDGMENT: (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

This appeal is arising out of the judgment dated 17.03.2011 passed in Sessions Case No.71 of 2008 by the IV Additional Sessions Judge, Ranga Reddy, convicting the appellant-accused, Kyama Eswaraiah, for the offence punishable under Section 302 IPC, and sentencing him to undergo imprisonment for life, and also to pay fine of Rs.500/-; in default, to undergo simple imprisonment for a period of one month.

2. It is the case of the prosecution that on 20.05.2007, on receipt of medical intimation that Smt. Kyama Kala @ Kamma (hereinafter referred to as "the deceased") was admitted in Osmania General Hospital, with burn injuries, the Head Constable (LW.16) visited the hospital and found the victim undergoing treatment for burn injuries. At 11.00 hrs, LW.16 recorded the statement of the deceased wherein she stated that her marriage was performed by her parents with the accused about 20 years ago, and she is blessed with three children i.e., one daughter and two sons, that her husband got addicted to alcohol and used to drink daily and pick up quarrel with her and also used to beat her, that on 20.05.2007, at about 00.30 hrs, the accused came home in a drunken condition and picked up quarrel and abused her in filthy language, poured kerosene on her body and set fire to her due to

which she sustained burn injuries and that she was immediately shifted to Osmania General Hospital, Hyderabad, for treatment. The Medical Officer of the Osmania General Hospital informed that the victim suffered 92% burns and advised recording of her dying declaration. On receiving requisition, the III Additional Chief Metropolitan Magistrate (LW.14) visited the Hospital on 20.05.2007 and recorded the dying declaration of the deceased. Basing on the contents of the dying declaration recorded by the learned Magistrate, the Assistant Sub-Inspector of Police (LW.17), Pahadishareef Police Station, registered a case against the accused in Crime No.208 of 2007 for the offence punishable under Section 307 IPC. The deceased succumbed to death on 20.05.2007 at 5.00 PM while undergoing treatment in Osmania General Hospital. On receipt of intimation of death of the deceased, the police altered the provision of Law in Crime No.208 of 2007 from Section 307 IPC to Section 302 IPC, and took up investigation. After completion of the investigation, charge sheet was filed. The learned Magistrate, after taking cognisance of the case for the offence punishable under Section 302 IPC in P.R.C. No.71 of 2007, committed the case to the Sessions Division as the case involved an offence exclusively triable by the Court of Sessions. After registering the case as Sessions Case No.71 of 2007, the learned Chief Metropolitan Sessions Judge made over the case to the Additional Metropolitan

Sessions Judge, and subsequently the case was transferred to IV Additional Sessions Judge (for short, 'the trial Court').

3. On appearance of the accused, the trial Court framed charge against the accused for the offence punishable under Section 302 IPC, read over and explained the charge to the accused. The accused pleaded not guilty and claimed to be tried. After completion of the trial, the accused was examined under Section 313 Cr.P.C., and he denied committing the offence alleged.

4. On behalf of the prosecution, PWs.1 to 12 were examined, and Exs.P1 to P16 were marked on its behalf. No oral or documentary evidence was adduced on behalf of the accused.

5. The trial Court, on considering the evidence, held the accused guilty of the offence punishable under Section 302 IPC, and sentenced him as mentioned supra. Challenging the conviction and sentence passed by the trial Court, the accused preferred this appeal.

6. The point for consideration is whether the prosecution proved the guilt of the accused beyond reasonable doubt for the offence punishable under Section 302 IPC ?

7. Heard Smt. A. Gayatri Reddy, learned counsel for the appellant, and the learned Public Prosecutor representing the respondent-State.

8. Learned counsel for the appellant submitted that the case is based on circumstantial evidence, and there are no witnesses to the incident of the accused pouring kerosene on the deceased and setting fire to her, that the material witnesses PWs.1 to 7 did not support the case of the prosecution, that the dying declaration is not supported by any other material witnesses and that therefore, the conviction and sentence passed by the trial Court cannot be sustained.

9. Learned Public Prosecutor referred to the evidence of the witnesses PWs.8 to 12 and submitted that the prosecution has proved the guilt of the accused beyond reasonable doubt for the offence punishable under Section 302 IPC.

10. PW.8 is Syed Rafi was Head Constable of P.S. Pahadi Shareef during the relevant period. Upon receiving the intimation from Osmania General Hospital that the deceased was admitted into the Hospital with burn injuries, he immediately rushed to the Hospital and recorded the statement (Ex.P8) of the deceased.

11. PW.9 is K. Satyanarayana, who worked as the Assistant Sub-Inspector of Police, Pahadi Shareef Police Station, during the relevant period. On 20.05.2007, PW.8 handed over Ex.P8 to him for necessary action, and basing on the contents of Ex.P8, he

registered a case in Crime No.308 of 2007 for the offence punishable under Section 307 IPC, and issued Ex.P9-FIR. He sent Exs.P8 and P9 to the Court. On receipt of message from the Osmania General hospital about the death of the deceased, he issued a Memo (Ex.P10) altering the provision of Law from Section 307 IPC to Section 302 IPC and submitted the alteration memo to the Court. He visited the place of offence and got prepared the scene observation report (Ex.P11) in the presence of LW.10-Laxmaiah and LW.11-Yadaiah. Ex.P12 is a rough sketch. He conducted inquest over the dead body of the deceased in the presence of LW.13-Laxmaiah and LW.12-Anjamma, and the inquest report is Ex.P13. Thereafter, he handed over the C.D. file to the Inspector of Police - PW.18 for further investigation.

12. Learned Public Prosecutor referred to the evidence of PW.10, the then III Additional Chief Metropolitan Magistrate who received requisition (Ex.P14) from S.H.O., Pahadi Shareef to record the dying declaration of the deceased. Upon receiving Ex.P14-requisition, PW-10 immediately went to the Osmania General Hospital, Women Burns Ward and identified the deceased through the duty doctor. He put some preliminary questions and having satisfied that the deceased was conscious, coherent and in a fit condition to give the statement, he obtained endorsement of the

duty doctor. It would be appropriate to refer to the contents of the dying declaration for appreciation of the facts of this case. The dying declaration was recorded in Telugu language which is the mother-tongue of the deceased, and the translated version of the dying declaration is at Ex.P15 which reads as under:

Dying Declaration.

Q.No.1. How you received Burns.

Ans: During night my husband poured kerosene and set fire as I refused to have sex with him as our children were present and he quarrelled with me. When I cried he ran away. My son came and shifted me to the Hospital.

Q.No.2. Is there any reason for this?

Ans: Yesterday at 4-00 PM my husband came in drunken state and quarrelled with me and beat me. He asked me to sleep by side and I refused to have sex with him as our children were present and he quarrelled with me and beat me. I informed to my brother Yadayya by phone. My brother Yadayya came and pacified the matter not to quarrel. Afterwards my son Balakrishna also came and he abused my husband. Then my husband beat my son Balakrishna.

Q.No.3 What happened afterwards?

Ans: During night we are all slept. My husband asked match box. I asked him why. He told for beedi purpose. Then my aunt Balamani also there. After some time I slept. My husband poured kerosene on me and I wakened and found that my husband Eswaraiah poured kerosene on me and lit fire. I cried biggerly. My husband ran away. My son came and shifted me to Santoshnagar Hospital and afterwards shifted to this hospital. This is happened.

(Right leg toe of Smt. K. Kala)

Patient is conscious, coherent and in full state of mind through out the recording of the D.D.

Sd. Xxx.

The statement read over to delinquent Smt. K. Kala and same is admitted to be true and correct.

Sd. Xxx
Dt.20-5-2007
1-55 PM

S.C.71/2008

Ex. P15 by P.W.10
Id. Xxx
IV A.D.S.J.
R.R. Dist.
Dt. 5-1-2011.

13. PW-10 deposed that after recording the dying declaration, he read over the contents to the deceased and the same were admitted by her as true and correct and then he obtained thumb impression of her great toe, and also obtained the endorsement from the duty doctor that the declarant was conscious, coherent and was in a fit state of mind throughout the recording of her statement.

14. Learned Public Prosecutor mainly placed reliance on the contents of the dying declaration and the testimony of the medical officer PW.12 which reveals that the deceased died due to ante-mortem burns injuries on face, neck, upper extremities, chest wall and lower extremities. As the medical officer who conducted autopsy was not available, his colleague has deposed about the autopsy. Ex.P-16 is the Post-mortem Examination report. Nothing is elicited in the cross examination to disbelieve the testimony of this witness.

15. Learned Public Prosecutor submitted that though the investigation officers have conducted the investigation on proper lines, the witnesses PWs.1 to 7 did not support the version of prosecution but, however, in the light of the dying declaration

recorded by the learned Magistrate PW.10, and the Post-mortem examination report (Ex.P16), the trial Court has rightly convicted the accused for the offence under Section 302 IPC, and, therefore, there are no grounds to interfere with the judgment of the trial Court.

16. It is pertinent to note that this is a case of death of a married woman, wherein her husband is alleged to have killed her by pouring kerosene and setting fire to her. She stated the events leading to her receiving the burn injuries.

17. As per the contents of the Dying Declaration, it is obvious that the deceased is the wife of the accused and he poured kerosene on her and lit fire to her. On the previous day, at 4.00 PM, he came in a drunken condition, quarrelled with the deceased, beat her, asked her to sleep by his side and when she refused to have sex with him as children were around, he quarrelled with her and beat her, that she informed the same to her brother Yadayya over phone and thereafter her son Balakrishna also came there, that her son abused the accused and that the accused beat her son. It is also clear from the dying declaration that during that night when all were asleep, the accused asked for match box and on questioning the purpose of asking for the match box, he replied that he want to light a beedi, that after some time when the

deceased slept, the accused poured kerosene on her, that on smelling kerosene, she woke up and then again he poured kerosene and lit fire to her, that when she was up in flames and she started crying loudly, he ran away from that place and that her son came and shifted her to Santoshnagar Hospital.

18. The dying declaration of the deceased is natural and it is scribed in the language of the deceased which is Telugu. The recitals in the dying declaration clearly prove the involvement of the accused in the commission of the offence. No doubt, the witnesses PWs.1 to 7 did not support the version of the prosecution. But, the deceased had clearly stated in her dying declaration what all has happened on the fateful night. The medical officer has endorsed on the dying declaration that the deceased was conscious, coherent and in a fit condition to give statement.

19. In **Vimla Devi v. State of U.P.**¹, it was observed that “*the law attaches sanctity to the dying declaration on the principle that it is a statement made in extremity, when every motive to falsehood is silenced and the mind of the maker of the declaration is induced by the most powerful consideration of only to speak the truth*”.

¹ 2000 All LJ 1801

20. The Hon'ble Supreme Court in **State of Madhya Pradesh v.**

Mohan Lal² observed that *"A dying declaration can form the sole basis of conviction though courts look for corroboration from different circumstances since the same cannot be tested by cross examination. Such declaration being made under solemn sense of impending death, the deceased is usually not likely to commit any mistake, and therefore the same is given great weight. But at the same time a court has the duty to scrutinise the same since the accused has no right of getting the statement tested by cross-examination."*

21. In **Ramesh v. State of M.P.**³, it is held that conviction can be based on a dying declaration even if there is no corroboration.

22. In a catena of decisions, the Apex Court has, time and again, held that a dying declaration can form the sole basis for conviction if it is properly recorded and inspires confidence. In the instant case, the dying declaration recorded by the learned Magistrate inspires confidence and there are no procedural lapses in recording the same. Therefore, there are no reasons to interfere with the impugned judgment.

23. In the result, the appeal is dismissed, confirming the judgment dated 17.03.2011 in Sessions Case No.71 of 2008 passed by the trial Court. The bail bond executed by the accused,

² 1996 (2) Crimes 206, 209 (SC)

³ 1996 CrLJ 2656, 2658 (MP)

pursuant to the order of this Court in Crl.A.M.P.No.1995 of 2016, dated 26.12.2016, shall stand cancelled, and the accused shall forthwith surrender before the trial Court for serving the sentence imposed by the trial Court in the Sessions Case No.71 of 2008.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

9th February, 2018.

KSM



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AND
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CRIMINAL APPEAL No. 385 of 2011

(Order of the Division Bench delivered by
Hon'ble Sri Justice Gudiseva Shyam Prasad)

09th February, 2018

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