

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No. 319 OF 2012

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

A1 to A4 in S.C.No. 131 of 2011 on the file of Special Judge for Trial of Cases under SCs/STs (POA) Act, Nizamabad, were tried for two charges. The first charge was against A1 for an offence punishable under Section 302 IPC, for causing death of one Smt.Konakkolla Narsavva, by beating her with axe, while the second charge was against A2 to A4 for an offence punishable under Section 302 IPC read with Section 201 IPC. Vide judgment dated, 31.01.2012, learned Sessions Judge, while acquitting A2 to A4, convicted A1 for the offence punishable under Section 302 IPC and sentenced her to suffer imprisonment for life and to pay fine of Rs.1,000/-, in default to undergo simple imprisonment for three months. Challenging the same, the present appeal came to be filed by A1.

2. The substance of the charge against the accused is that on 14.02.2010 at about 03.00 p.m., A1, who is the daughter-in-law of the deceased is said to have beat the deceased with the handle of the axe and when the deceased raised cries and

entered into her house, A1 followed her, poured kerosene and set her on fire.

3. The facts as culled out from the evidence of prosecution witness are as under:

(i) PWs.1, 2, 4 to 6 are the residents of Gollapally village, while PWs.3 and 7 are the residents of Amruthapur village. Since all the witnesses except PW2 turned hostile, the averments in the charge sheet may be necessary to know as to what the case is all about.

(ii) It is stated that there were petty quarrels between A1 and her mother-in-law (deceased), due to which she beat her with the handle of the axe on her back and when the deceased entered her house, A1 followed the deceased, poured kerosene and set her on fire. As a result of the burn injuries received by her, the deceased was shifted to Government Headquarters Hospital, Nizamabad for treatment. While undergoing treatment on 18.02.2010 at 04.30 p.m., A2, A3 and A4 who are the sons and husband of the deceased shifted the deceased from the hospital to their house at Gollapally, without any prior permission from the hospital authorities. While shifting to Gollapally, the deceased died. Later, they conducted funeral rites by burning the dead body, without intimating to the police. It is on record that in the evening hours of 14.02.2010, PW15, the Inspector of Police, Dichpally Police Station, received a

telephonic message from the outpost police, Government hospital, Nizamabad, about the admission of the injured in the hospital. He went to the said hospital and received a report from A2. He endorsed on the said report, requesting the SHO, Dichpally, to register a case and accordingly sent it through PC for registering a case, basing on which a case in Crime No.32 of 2010, came to be registered under Women Burns. He examined and recorded the statements of A2 and PW1. On 15.02.2010, he visited Gollapally Village, examined PW2 and in the presence of mediators, PW11 and others, conducted a panchanama of the scene and also prepared a rough sketch of the scene of offence, which are placed on record as Exs.P18 and P19. At the scene of offence, PW15 seized empty plastic kerosene can, which is marked as MO.1. He also took photograph of the scene of offence through PW9. Exs.P7 to P10 are the photographs of the scene of offence. On 14.02.2010 at about 06.15 p.m., PW13, the Judicial Magistrate of First Class, Nizamabad, received a requisition from the police out-post Government hospital, Nizamabad, for recording the dying declaration of the injured Smt.Narsavva. On receipt of such requisition, he proceeded to the Government hospital, Nizamabad, commenced recording the statement at 06.50 p.m., after obtaining certificate from the Doctor, with regard to the mental condition of the injured. Ex.P24 is the requisition received by PW13 and Ex.P25 is the dying declaration of the deceased. On 18.02.2010 at about

06.30 a.m., the ward boy of the Government hospital, Nizamabad informed PW10 who is a Constable in I Town Police Station, Nizamabad, about missing of injured from the hospital bed. PW8, who is the Civil Assistant Surgeon in Government Head Quarters Hospital, Nizamabad, was also informed by the duty nurse on 18.02.2010, about missing of the injured from the ward, which was informed to the police through the ward boy to PW10 (police booth constable) on 19.02.2010. PW15 who received information about the cremation of the body in the village, examined and recorded the statements of PW3 and another. Further investigation in this matter was taken up by PW16, the Inspector of Police, who arrested the accused on 06.03.2010. He recorded the confessional statement of A2 to A4, in the presence of PW12 and others, which are marked as Exs.P28 to 30. Pursuant thereto, he proceeded to the burial ground, where the body was burnt and seized burnt ash and burnt bones i.e., MOs.2 and 3 under Ex.P23. He then sent MOs.2 and 3 for examination and the FSL report is marked as Ex.P31. After collecting necessary documents, a charge sheet came to be filed, which was taken on file as PRC No.16 of 2011, on the file of II Additional Judicial Magistrate of First Class, Nizamabad.

(iii) On appearance of the accused, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal under Section 209 Cr.P.C.,

the same came to be numbered as S.C.No.131 of 2011 on the Special Judge for Trial of Cases under SCs/STs (POA) Act, Nizamabad.

(iv) On the basis of the material on record, charge as mentioned above came to be framed, read over and explained to the accused, to which she pleaded not guilty and claimed to be tried.

(v) In support of its case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P31. Out of 17 witnesses examined by the prosecution, PWs.1,3,4,5,6,7 and 12 did not support the prosecution case and were treated hostile by the prosecution.

(vi) After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against her in the evidence of the prosecution witnesses, to which she denied. No oral or documentary evidence was adduced on behalf of the defence.

(vii) Relying upon the dying declaration of the deceased to the Magistrate, coupled with the circumstances relied upon by the prosecution, the learned Judge convicted the accused.

Challenging the same, the present appeal came to be filed.

4. Learned counsel for the appellant mainly submits that there are number of circumstances to indicate that the dying declaration which is placed on record as Ex.P25 cannot be relied upon. He submits that though all the witnesses turned hostile, the evidence of PW2, who was not treated hostile by the prosecution, demolishes the prosecution case. According to him, the prosecution failed to prove that the death was due to burns alleged to have been caused by A1 on 14.02.2010. Even the Forensic Science Lab report does not anywhere indicate that the bones burnt were that of the deceased, as the report only states that 'the charged bone appears to be of human vertebra'.

5. On the other hand, learned additional public prosecutor would contend that the dying declaration can be made the basis to convict the accused, since there is no reason for the Magistrate to speak false with regard to the contents of the dying declaration.

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

7. As stated earlier, out of four accused, who were tried for the offences punishable under Sections 302 and 201 IPC, A2 to A4 were acquitted for the offences punishable under Sections 302 read with Section 201 IPC and A1 alone was convicted for the offence punishable under Section 302 IPC. It is also to be noted here that except PW2, no other material

witnesses supported the prosecution case. Hence, we are now left with the evidence of PW2.

8. The evidence of the Magistrate (PW13), who recorded the dying declaration of the deceased, the evidence of PWs.10 and 11, who speak about missing of the deceased from the hospital and the report of the Forensic Science Lab, prove that it was the case of homicidal death.

9. Coming to the evidence of PW2, who is none other than the neighbour and who knows the accused and PW1, deposed that about a year prior to the date of incident, at about 05.00 or 05.30 p.m., while he was having conversation with PW1, he heard some noise from the house of the deceased and rushed to the house of the deceased along with PW1. With the help of an iron rod, opened the door and found the deceased in flames. Thereupon, PW2 and PW1 put off the fire and shifted the injured to the hospital in 108 ambulance. His evidence is to the effect that at the time of incident, no person was present in the house and the deceased was alone in the house. It is stated that PWs.1 and 2 accompanied the deceased to the hospital in ambulance and after some time, they came to know that the deceased died due to burn injuries.

10. Strangely, the prosecution neither treated the witness hostile, nor was he cross examined PW2. Thus, the evidence

of PW2 remained unchallenged. From the evidence of PW2, it is clear that on the date of incident, when PW2 along with PW1 opened the door of the house of the deceased, they saw the deceased in flames. Similar such version was spoken to by PW1, who was treated hostile.

11. Though learned additional public prosecutor tried to contend that PW2 ought to have been treated hostile, but in the absence of the same, it may not be proper for us to declare that witness hostile, at this stage. At least things would have been different, had the prosecution cross-examined PW2. Therefore the evidence of PW2 is of no help to the prosecution.

12. The other circumstance relied upon is the dying declaration recorded by the Magistrate on 14.02.2010. Before going to that aspect, it is to be noted here that the FIR came to be registered basing on the statements made by A2 and PW1.

13. As per the statement given by A2, the deceased was mentally unsound for the past one year and used to move here and there, irrespective of timings and the villagers used to bring her back to their house. On the date of incident, himself (A2) and his family members went to attend their work and at about 05.30 p.m., when no one was present in the house, his mother who is not mentally sound poured kerosene on her body and set her on fire. PW1 called 108

ambulance and he along with PW2 shifted the injured to the Government hospital, Nizamabad. This version which is given by A2 are made the basis to issue FIR.

14. The statement that the deceased was alone inside the house, which was recorded in the hospital by PW13, gets corroboration from the version of PW1, who of course resiled from his earlier statement in other aspects. But, however, in the dying declaration, a different version is given by the deceased. As per the statement given by the deceased before PW13, on the date of incident at about 03.00 p.m., her daughter-in-law Sunitha poured kerosene, set her ablaze, kicked the injured with legs and fisted her. At that time, the husband of the injured went to rear the sheep. It is stated that her daughter-in-law did not provide food to the injured and that she caught hold of the tuft of the injured and dragged her in front of the house, beat on her waist with an axe and also on the hip. At the time of incident, PW2 went to attend his work, but her two daughters-in-law and brother-in-law were present in the house. After sometime, when the deceased went inside the house, her daughter-in-law Sunitha (A1) followed the injured, lit a match stick and set her ablaze. Thereafter, another daughter-in-law (PW4) and brother in law of the injured came there. But, strangely, PW4 did not support the prosecution case and was treated hostile. It was elicited from PW13 that no one was present at the time of

recording the statement of the injured, except himself, his attender and the injured.

15. But in the cross examination, he admits that before he went there, attendants were present at the injured and he sent them out before recording the statement of the injured. The above version of the Magistrate does not get corroboration from any quarters, leave alone with the version of PW2. As per Ex.P25 – the dying declaration, soon after the deceased was set on fire, the daughter in law of her brother came to the spot. But as per the evidence of PW2, at the time of incident, no persons were present in the house and the deceased was alone in the house. Later, PW2 and PW1 accompanied the deceased to the hospital. In these circumstances, we feel that it may not be safe to act on the dying declaration, in the absence of any corroboration from any quarters, more particularly, when the evidence of PW2 stands contrary to the contents of dying declaration.

16. Apart from that, it is also to be noted here that there is no evidence on record to show that the death of the deceased was due to injuries caused by A1. The evidence of PW8 would show that on 14.02.2010, while he was on duty, the injured was brought to the hospital with burn injuries. He admitted the injured in burns ward for treatment. On 18.02.2010, the duty nurse of the burns ward by name Laxmi came to him and informed about the missing of the patient, which was

also informed to the police. Thereafter, he searched for the patient in the hospital, but in vain.

17. PW10 the police constable of I Town Police Station, Nizamabad, deposed that on 14.02.2010 at about 05.30 p.m., a patient from Gollakpally village was brought in 108 ambulance to the hospital for injuries and was admitted in Women burns ward for treatment. On 18.02.2010 at about 06.30 a.m., the ward boy came to him and informed him that a patient by name Narsubai who was admitted in the hospital on 14.02.2010 was found missing from the bed. But there is no evidence on record to show whether it was A2 to A4, who took away the deceased from the hospital. Though prosecution in the charge sheet, tried to say that while the deceased was being taken to their house from the hospital, she died, but there is no evidence to substantiate the same. It is the case of the prosecution that on receiving the information about the funeral and the burial of the body on the next day, PWs.15 and 16 proceeded to the said place, seized MOs.2 and 3 ash and burnt bones and the same were sent to forensic lab for examination. But the FSL report dated 06.04.2010 reveals that the Assistant Professor, Forensic Department examined the material objects in the above crime and observed as under:

“1. The charged bone appears to be of human vertebra.
For confirmation send for DNA Analysis.

2. As the bones are charged, it is not possible to determine the age.”

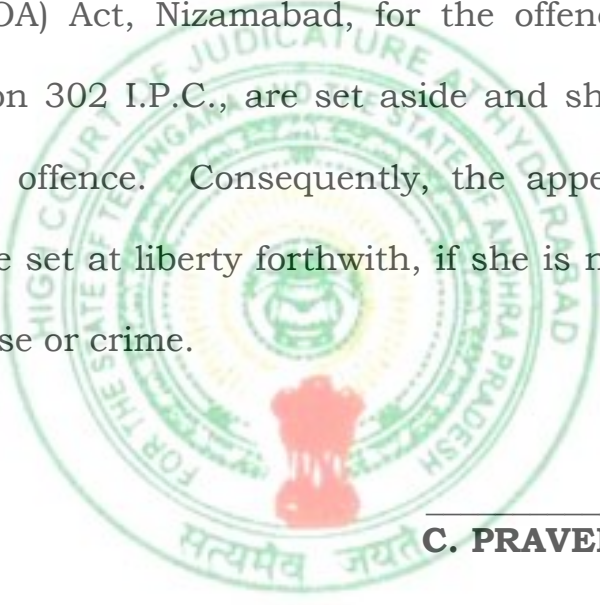
18. From the observation made in the FSL report, it would show that as the bones were charged, it was not possible to determine the age and the charged bone which appears to be a human vertebra was sent for DNA analysis. Therefore, the FSL report, in our view, does not conclusively establish the age of the injured and also as to cause of death. No other incriminating material was seized from the spot, to show that the body, which was burnt, was that of the deceased.

19. Having regard to the above, the plea of the accused that the deceased was mentally un-sound, used to move here in there and the villagers used to bring her back, which was referred in the FIR in the earlier statements cannot be ignored. More particularly, in the absence of any evidence to show as to how and in what circumstances, the deceased left the hospital and also as to what happened to her thereafter. This view of ours gets corroborated from the FSL report, which does not give any indication as to the cause of death of the deceased. Further, the plea of the accused also gets fortified from the evidence of PW11, who in his evidence states that when he along with the SI of police went to the house of the deceased, A2 was present and on enquiry, he informed them that her mother was mentally derailed and that on one occasion, she jumped into an open well and tried

to commit suicide and also set herself ablaze by pouring kerosene.

20. For the aforesaid reasons, we feel that it is a fit case where benefit of doubt can be extended to the accused.

21. Accordingly, the appeal is allowed. The conviction and sentence recorded against the appellant/accused No.1 in the judgment dated 31.01.2012, in Sessions Case No.131 of 2011, on the file of Special Judge for Trial of Cases under SCs/STs (POA) Act, Nizamabad, for the offence punishable under Section 302 I.P.C., are set aside and she is acquitted for the said offence. Consequently, the appellant/accused No.1 shall be set at liberty forthwith, if she is not required in any other case or crime.



C. PRAVEEN KUMAR, J

T. RAJANI, J

Date:24.07.2018

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