

HON'BLE SRI JUSTICE P. NAVEEN RAO
AND
HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL APPEAL NO.760 OF 2013

JUDGMENT: (Per Hon'ble Sri Justice P. Keshava Rao)

The present Criminal Appeal is filed by the sole accused challenging the judgment in S.C.No.570 of 2010, dated 09.07.2013 on the file of III Additional Sessions Judge, Karimnagar whereby the accused was found guilty for the offence under Section 302 I.P.C. and was sentenced to undergo imprisonment for life and to pay a fine of Rs.500/-, in default, to suffer simple Imprisonment for one month. However, he was found not guilty for the offence under Section 498-A I.P.C. and was acquitted of the said charge.

2. Heard the learned counsel appearing for the appellant and the learned Public Prosecutor for the respondent-State.

3. The case of the prosecution is that on 10.05.2010 at about 15.00 hours, P.W.1 gave a report to the police. Pursuant thereto, Crime No.62 of 2010 was registered against the accused for the offence under Sections 498-A and 307 I.P.C. In the compliant, P.W.1 stated that about 19 years prior to the filing of the complaint, his sister-Shobha (hereinafter referred to as 'deceased') was married to the accused, who was the 3rd wife as per their caste customs. Later the accused addicted to alcohol and was not doing any work. He used to harass the deceased mentally and physically to give money for his drinks. Though the accused was advised several times including by way of conducting panchayats,

there was no change in his attitude. The deceased was blessed with two sons namely, Sampath and Sagar, whose ages are 18 and 13 years respectively. That on 10.05.2010 at about 9.00 a.m., his nephew-Sagar, who is a deaf and dumb, came and informed with his signs that the accused was beating the deceased. Immediately, P.W.1 along with his mother-P.W.2 rushed to the hut of the accused and found that the hut was burning in flames and the door of the hut was bolted from outside. On hearing cries, they opened the door and found the deceased caught in flames. They extinguished the flames and with the assistance of 108 Ambulance, the deceased was shifted to Government Civil Hospital, Karimnagar. Basing on the complaint, P.W.22 registered the said crime and visited the scene of offence. He prepared scene of observation report, in the presence of P.W.18 and another and got photographed the scene of offence with the help of P.W.16 and recorded the statements of witnesses. On receipt of requisition from the Police outpost attached to the Hospital, P.W.23, who is the Special Judicial Magistrate of First Class, Excise, Karimnagar, visited the hospital and recorded the dying declaration of the deceased under Ex.P.10 after complying with necessary formalities. On the same day, at about 5.10 p.m., the deceased succumbed to the burn injuries while undergoing treatment in the Hospital. On receipt of death intimation, the investigating officer conducted inquest over the dead body of the deceased and altered section of law from Section 307 to 302 I.P.C. and issued altered memo-Ex.P.8. The accused was arrested on 14.05.2010 at Chellur bus-stop. On interrogation, he confessed his guilt and he was produced before

the Magistrate concerned for judicial remand. P.W.24, Civil Assistant Surgeon in Government Civil Hospital, Metpalli conducted post-mortem examination over the dead body of the deceased and issued Ex.P.13, post mortem certificate, opining that the deceased died of shock with 70 to 75% of burns due to kerosene. After completion of investigation, a charge sheet was filed against the accused.

4. The learned Judicial Magistrate of First Class, Huzurabad took cognizance of the offence and numbered the same as P.R.C.No.55 of 2010. Since the offence is exclusively triable by a Court of Sessions, after complying with the procedure contemplated under Section 207 of Cr.P.C. in furnishing all the documents to the accused, the case was committed to the Sessions Division. Pursuant thereto, the District and Sessions Judge took cognizance of the offence and numbered as S.C.No.570 of 2010 for the said offences and made over the same to III Additional Sessions Judge, Karimnagar. After appearance of the accused, the prosecution and the accused were heard and charges under Sections 498-A and 302 I.P.C. were framed against the accused and read over and explained to him in Telugu. The accused pleaded not guilty and claimed to be tried.

5. The prosecution, in order to bring home the guilt of the accused, in all, examined P.Ws.1 to 26 and marked Exs.P.1 to P.13 apart from material object as M.O.1. On behalf of defence, Ex.D.1 was marked, but no oral evidence was adduced. After closure of evidence, when the accused was examined under Section 313 of

Cr.P.C. explaining the incriminating material available on record, he denied the same.

6. The learned Sessions Judge, after appreciation of the evidence and the material on record, by judgment dated 09.07.2013 convicted and sentenced the appellant as aforementioned, against which, the present appeal is filed.

7. The learned counsel appearing for the appellant contended that the Court below erred in convicting the appellant without appreciating the evidence brought on record in proper perspective. The Court below ought not to have relied on the evidence of P.W.14, who is a deaf and dumb, and ought not to have convicted the appellant. The evidence of P.W.15 cannot be believed, since he interpreted and translated the evidence of P.W.14. The dying declaration of the deceased vide Ex.P.10 recorded by P.W.23 ought not to have been looked into since the deceased suffered 95% burns and she was not in a fit state of mind to give statement. Since there are no eye-witnesses to the commission of offence, the conviction cannot be based on circumstantial evidence, which is not trustworthy more particularly, the evidence of P.W.14, P.W.15 and Ex.P.10.

8. On the other hand, the learned Public Prosecutor appearing for the respondent-State supported the impugned judgment and contended that since the entire case rests upon circumstantial evidence, the prosecution established its case beyond all

reasonable doubt by connecting the chain of events to prove the guilt of the accused.

9. Having heard both the counsel and from the perusal of material available on record, the point that arises for consideration is:

“Whether the prosecution has proved the guilt of the accused beyond all reasonable doubt and whether the accused is liable to be convicted for the above said offences?”

10. P.W.1, who is the brother of the deceased, deposed that the deceased was given in marriage to the accused 19 years prior to filing of the complaint. She was the 3rd wife to the accused as per their caste custom. They lived happily for some time after the marriage and out of wedlock, they were blessed with two sons. However, the accused addicted to alcohol and was not doing any work. The deceased was attending cooli work and earning money. The accused used to beat the deceased for money. The sons of the deceased also informed about the harassment meted out to the deceased by the accused. Even the panchayat held to resolve the disputes was also of no use. In fact, in the panchayat, the accused promised not to harass the deceased and would look after her well. On 10.05.2010, the 2nd son of the deceased i.e. P.W.14 came to him and informed that the accused was beating the deceased. Immediately, when P.W.1 and his mother-P.W.2 rushed to the hut of the accused, they observed flames coming out of the hut and also heard the cries of deceased. Immediately, they went inside the hut and extinguished the flames on the body of the deceased. On enquiry, the deceased informed P.W.1 and

his mother-P.W.2 that the accused poured kerosene on her body and lit fire. Immediately, the deceased was shifted to the Government Hospital, Karimnagar. He lodged Ex.P.1 report with the police. However, the deceased succumbed to the injuries on the same day in the hospital at 5.10 p.m. Though he was cross-examined at length, nothing has been elicited to discredit his testimony relating to burning of the hut and their shifting the deceased to the hospital in 108 ambulance. A suggestion was also given that since the deceased was not interested to stay at Venkayagudem village, she herself committed suicide, but the same was denied.

11. P.W.2, who is the mother of P.W.1 and the deceased deposed the sequence of events and corroborated the evidence of P.W.1 in all aspects. She further deposed that since the harassment meted out by the accused to the deceased was unbearable, a panchayat was conducted in the presence of elders namely, J.Narayana-P.W.7; E.Mallaiah-P.W.8; and N.Mogili-P.W.6. However, there was no change in the attitude of the accused. When herself, P.W.1 and L.W.5 went to the scene of offence, the hut was in flames. Immediately, they brought the deceased out of the hut and shifted her to the Government Hospital, Karimnagar. In fact, her statement was also recorded under Section 164 of Cr.P.C. before the Magistrate. In the cross-examination, suggestion given on behalf of accused that the deceased herself poured kerosene on her body and set fire and the door of the hut was bolted by her younger son i.e. P.W.14 from the outside, was denied.

12. P.W.3, who is the sister-in-law of the deceased also deposed about the disputes between the accused and the deceased. The accused used to abuse the deceased stating that he would kill her and contract 4th marriage with another woman. She also deposed that the accused poured kerosene on the body of the deceased and set fire. P.W.4, who is the elder son of the deceased, also deposed that his parents used to quarrel with each other. A panchayat was held by his grand-mother in the presence of P.Ws.6,12 and 8. The accused abused his mother (deceased) and threatened to kill her and contract another marriage. On 05.10.2010, the accused poured kerosene on the body of the deceased and set fire to her. On receipt of information, he went to the hospital and when enquired, the deceased informed that the accused poured kerosene on her body and set fire. Though P.W.4 is not an eyewitness to the occurrence, but he came to know through the deceased that the accused poured kerosene on her person and set fire. P.Ws.5 and 6, who are the elders in the village gave evidence with regard to the payment of Rs.20,000/- in cash towards dowry to the accused at the time of marriage. According to them, the accused is habituated to alcohol and used to harass the deceased for money. They also deposed that they conducted a panchayat with regard to the disputes between the accused and the deceased. On the date of incident, P.W.14 came to them and made signs and cried. When they went to the hut of the deceased, they observed the hut was in flames. Immediately, P.W.5 along with P.Ws.1 and 2 rescued the deceased and shifted her to the Government Hospital, Karimnagar. P.Ws.7 and 8, who

are elders in the panchayat and P.Ws.9 to 13, who are neighbours, also deposed that the accused was addicted to alcohol and used to beat the deceased for money without doing any work. On coming to know about the incident, when they went to the scene of offence, the deceased informed them that the accused poured kerosene on her person and set fire. It is relevant that all the above said witnesses in the chief-examination categorically and consistently stated about the harassment meted out by the accused to the deceased and he used to beat her for money. In the cross-examination, the said aspect is not denied and no suggestion is given to the contrary. In fact, P.W.9 specifically stated that the accused is habituated to alcohol and used to harass the deceased for money. But, no suggestion was put to him to deny the same.

13. P.W.14 is the younger son of the deceased and he is deaf and dumb. His statement was recorded by the prosecution with the help of a trained teacher for deaf and dumb. He is examined as P.W.15. He answered to all the questions of the learned Public Prosecutor and replied through signs and gestures. To corroborate the same, the prosecution has examined P.W.15, who is a trained graduate teacher for deaf and dumb. He attended the police station on 14.06.2010 to act as an interpreter to record the statement of P.W.14. He understood the answers given by P.W.14 through signs and gestures. P.W.23, the Magistrate deposed that on 10.05.2010 on receipt of information from the police, she recorded the dying declaration of the deceased, marked as

Ex.P.10. According to her, at the time of giving the statement, the deceased was conscious, coherent and was in a fit state of mind to give statement. After satisfying herself, she recorded the statement of the deceased under Ex.P.10. In the statement, the deceased stated that on the date of incident, the accused came to her in drunken condition and attempted to beat her with stick and when she scolded him, he brought a kerosene tin, poured kerosene on her body and set her ablaze with a matchstick. After observing the fire, the accused escaped from the scene. She also stated that on receipt of information, P.W.1 came to the spot and shifted her to Government Hospital, Karimnagar. The deceased also said to have stated that her husband (accused) is responsible for her burns. Nothing contrary is elicited in the cross-examination of P.W.23. P.W.24, who is the medical officer, who conducted post-mortem examination, deposed that she conducted autopsy over the dead body of the deceased and noted burns as first degree on face, chest, both upper limbs and lower limbs and she noted the burns percentage at 70 to 75. She opined that the cause of death was due to shock of 75% burns, due to pouring kerosene. P.Ws.25 and 26, who are investigating officers, have deposed the nature of investigation conducted by them more particularly, with regard to the recording of the statements of witnesses and on requisition, the dying declaration of the deceased was recorded by the Magistrate- P.W.23.

14. From the above, all the prosecution witnesses, particularly, P.Ws.1 to 3, and P.Ws.23 and 24 categorically deposed the

harassment meted out to the deceased in the hands of the accused and the nature of burns sustained by her. Though they were cross-examined at length, the defence could not succeed to elicit any answers thereby throwing any amount of doubt or suspicion in their evidence. In fact, as far as the evidence of P.Ws.7 to 13 are concerned, they have specifically deposed that the accused habituated to alcohol and used to harass the deceased. But, not even a single suggestion was given to them to deny the same.

15. It is the specific case of the prosecution that the accused poured kerosene on the deceased and set fire. Thereafter he came out of the hut and bolted from outside and left the scene of offence. However, in the cross-examination, the suggestion given to the prosecution witnesses by the accused was to the effect that since the deceased was not willing to go and stay at Venkayagudem village, she committed suicide by pouring kerosene herself on her body and lit fire. However, in the light of the evidence of P.Ws.1 to 5 and 7 to 13 to the effect that the deceased was rescued from the hut and was shifted to the Government Hospital, Karimnagar, the suggestion given by the accused that the deceased herself committed suicide is not correct more particularly, in the light of Ex.P.10-dying declaration.

16. In Ex.P.10, dying declaration, the deceased stated that the accused poured kerosene on her body and lit fire. As per the evidence of P.W.23, who recorded the statement of the deceased, the deceased was conscious, coherent and in a fit state of mind to

give her statement. She has obtained certificate from the duty doctor to that effect and then only proceeded to record the statement of the deceased. After recording the statement, P.W.23 obtained the thumb impression of the deceased and also certificate from the duty doctor. However, in the cross-examination, no suggestion was put to P.W.23 to discredit the above said aspect.

17. Though P.Ws.9 and 12 were declared hostile, to some extent, their evidence paled into insignificance in the light of Ex.P.10 and the evidence of P.Ws.1 to 5.

18. Further the sons of the accused i.e. P.Ws.4 and 14 have also deposed about the nature and conduct of the accused and he used to harass the deceased and beat her for money. In fact, P.W.14 has seen the accused and deceased together and at that relevant point of time, the accused was beating the deceased. The said aspect has been corroborated by the evidence of P.Ws.1 to 3. The prosecution evidence in that aspect is not shaken in any manner. Therefore, in the light of the evidence of P.Ws.1 to 5 on one hand and P.Ws.23 and 24 on the other, apart from Ex.P.10-dying declaration, it is clear that the prosecution has established the guilt of the accused beyond all reasonable doubt by producing cogent and trustworthy evidence. There are absolutely no grounds to interfere with the conviction and sentence imposed by the lower Court.

19. In the result, the criminal appeal is dismissed confirming the judgment of the lower Court in all aspects.

Miscellaneous petitions, if any pending, shall also stand dismissed.

P. NAVEEN RAO, J

P. KESHAVA RAO, J

Date:31-12-2018.
Tsr.

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AND
HON'BLE SRI JUSTICE P. KESHAVA RAO**

CRIMINAL APPEAL NO.760 OF 2013

(Judgment of the Bench delivered by the
Hon'ble Sri Justice P. Keshava Rao)

Date:31.12.2018

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