

HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.1412 of 2011

JUDGMENT: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present appeal, appellant/A.1 has challenged judgment dated 01.02.2011 passed in S.C.No.219 of 2010 on the file of the Sessions Judge, Adilabad, whereby the appellant was held guilty for the offence under Sections 302 and 498-A IPC and accordingly convicted and sentenced to life imprisonment and also to pay fine of Rs.1000/- and in default to suffer simple imprisonment for three months for the offence under Section 302 IPC and also to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.500/- and in default to suffer simple imprisonment for a period of two months for the offence under Section 498-A IPC.

2. Case of the prosecution is that appellant/A.1 married deceased Venkatamma in the year 2000; however, they were not blessed with children out of their wedlock, though they lived together for two years at first instance. Later, disputes arose between them on account of deceased Venkatamma not begetting children due to which she went to her parents' house and stayed there for about four years. Thereafter, panchayat was held in the presence of elders in this regard at the house of appellant and in the panchayat, appellant promised to look after the deceased well and brought her home to Adilabad and they started living together in a rented room at Ramnagar, Adilabad. The

appellant with an intention to get rid of the deceased asked her to give divorce and on her refusal bore grudge against her and decided to kill her, so that he can contract second marriage. On 28.01.2010, the appellant did not attend duty and picked up quarrel with the deceased on the ground that she had not washed the bed-sheets with *nirma* surf and at about 5.00 p.m., he poured kerosene over her and set her ablaze with an intention to kill her and fled away from the scene when neighbours gathered. Neighbours shifted the deceased to hospital where her dying declaration was recorded. She succumbed to injuries at 11.00 p.m. Accordingly, crime was registered under Sections 302 and 498-A read with Section 109 IPC against the appellant and the brother of the deceased/A.2. After the investigation, investigating officer filed charge sheet. After committal of the case to the Court of Sessions, the learned trial Court framed charges under Sections 302 and 498-A IPC against the appellant/A.1 and under Sections 302 and 498-A r/w 109 IPC against A.2, read over and explained to them, to which they pleaded not guilty and claimed to be tried.

3. To prove its case, the prosecution examined P.Ws.1 to 17 and marked Exs.P.1 to P.16 and M.Os.1 to 7 and closed its side. The accused were examined under Section 313 Cr.P.C., on 05.10.2010 and they denied the evidence. The accused were directed to enter defence evidence, if any, on their behalf, however, they reported no defence.

4. The trial Court, after considering the evidence of the prosecution witnesses and the material on record, including the statements recorded under Section 313 Cr.P.C., of the accused,

convicted appellant/A.1 and acquitted A.2. Being aggrieved, appellant/A.1 has filed the present appeal.

5. Learned counsel appearing on behalf of the appellant submits that P.Ws.1 and 7, landlords of the appellant and deceased, in whose house they were staying on rent, have categorically deposed that appellant/A.1 tried to pour water on the flames and put off the fire on the body of the deceased; thus, he had no intention to kill the deceased; the trial Court, ignoring the said fact, convicted the appellant under Sections 302 and 498-A IPC instead of Section 304 IPC. He further submits that, earlier, disputes arose between the appellant and the deceased about 7 to 8 years prior to the incident and there were no recent atrocities or harassment by the appellant towards the deceased; therefore, there was no occasion for the trial Court to convict the appellant under Section 498-A IPC. On these grounds, learned counsel prayed this Court to modify the conviction and sentence and convict the appellant under Section 304 IPC, while acquitting him under Section 498-A IPC.

6. We have heard learned counsel for the appellant, learned Public Prosecutor and perused the material on record.

7. P.W.1 who is the ward member of Ramnagar locality of Adilabad municipality and the neighbour of the appellant and the deceased, deposed that on 28.01.2010, at about 5.30 p.m., he heard cries from the house of the deceased Venkatamma, he rushed there immediately and found the deceased Venkatamma in flames with burn

injuries and the appellant was trying to pour water over her and after people gathered there, the appellant fled away from the scene of crime. The neighbours who gathered there called 108-ambulance and shifted the deceased to RIMS Hospital, Adilabad.

8. P.W.2, A.Radha, who is the sister of the deceased, deposed that the appellant married the deceased about 8 years ago. Initially, for about 2 years, they lived happy married life. Thereafter, the appellant made her to consume poison for not begetting children. The deceased came to her parents and stayed with them for about 4 years. Thereafter, the appellant came along with village elders and took the deceased to his house, by promising to look her after well. Thereafter, they stayed at Shantinagar for about a month; however, the appellant again beat the deceased. Thereafter, the deceased came to her and the appellant came to her again and took the deceased back to Ramnagar a month prior to the incident. She further deposed that on 28.01.2010, she saw TV scroll news about the incident and went to hospital at 8.00 p.m., and the deceased told her that her husband, i.e., the appellant herein, poured kerosene on her, set her ablaze, poured water and fled away after the ambulance had come and that her sister Venkatamma died at 11.00 p.m., on the same night.

9. P.W.3 is the mediator between the appellant and the deceased and he deposed that about four months prior to the death of the deceased, P.W.2 approached him for negotiations and he mediated between them and the appellant promised to look after his wife well and accordingly took her with him. Thereafter, appellant put-up

family at Shanthinagar. Subsequently, he came to know that deceased Venkatamma died due to burn injuries.

10. P.W.4 is the photographer who has taken the photographs of the deceased at her house and at the hospital. P.W.5 is the mediator of inquest.

11. P.W.6, Dr. Shrujana, deposed that on 28.01.2010 at about 5.20 p.m., a patient by name Venkatamma was brought in 108-ambulance and admitted with burn injuries. She was on casualty duty at the time the deceased was admitted in the hospital, who died at 11 p.m. She gave death intimation-Ex.P.3 to the Police.

12. P.W.7 T.Gangamani, the owner of the house where the incident took place, deposed that she owns a house at Ramnagar, Adilabad and she let out a portion to appellant and his wife Venkatamma on a monthly rent of Rs.500/-, who joined about 15 or 20 days prior to the incident. On 28.01.2010, a quarrel had taken place between the appellant and the deceased. At about 5.00 p.m., appellant came and asked her for switching on the motor; accordingly, she switched on the motor and went to bathroom. When she came out, found flames coming out from the portion of the appellant and also heard cries of the deceased Venkatamma and she informed her husband on telephone. The neighbours gathered, ambulance was summoned and the deceased Venkatamma was shifted to hospital.

13. P.W.8, a neighbour of the appellant and the deceased, deposed that at about 5.00 p.m., she went for water and saw flames coming out

from the portion of the appellant and also heard cries of a woman; on seeing, she poured water over the deceased and covered her with a cloth. A.1 was not available in the house and all the household articles were burnt. Thereafter, ambulance was summoned and the deceased Venkatamma was shifted to hospital.

14. P.W.9, Nimmala Ramesh Reddy, is an elder who tried to pacify the matter between the accused and the deceased and he conducted a panchayat and questioned the appellant as to the harassment meted out by him with regard to the deceased, who promised to take care of the deceased.

15. P.W.10 is a witness for confession of the appellant and seizure of M.O.1 – kerosene-stained shirt from his possession. He deposed that on 05.02.2010 at about 10.10 a.m., Police called him to Mujju hotel, Adilabad, where the appellant was present and at the instance of the appellant, Police seized shirt – M.O.1 with kerosene smell under Ex.P.6-panchanama.

16. P.W.11 is the investigating officer who visited the hospital and recorded the statement of the deceased under Ex.P.7 and basing on the same, case in Cr.No.18 of 2010 was registered. He identified Ex.P.7 as the statement recorded by him and Ex.P.8, FIR having been issued thereon. He also deposed that Ex.P.9 is the requisition given by him to the Magistrate and Ex.P.10 is the dying declaration recorded by the Magistrate.

17. As per the deposition of P.W.7, the learned Magistrate recorded the dying declaration of the deceased, which is marked as Ex.P.1. Before doing so, the learned Magistrate expressed his opinion that he was satisfied about the condition of the declarant that she was conscious, coherent and in a fit state of mind to give her statement. He also obtained the certificate of the medical officer by name Dr.Karuna, who was present all through the recording of the statement of the deceased and her endorsement was obtained both at the time of commencing of the statement and also at the time of conclusion of the statement.

18. It is pertinent to mention here that the incident had taken place on 28.01.2010 at about 5.30 p.m., and the said witness recorded the statement of the deceased at about 6.09 p.m., on the same day, whereby the deceased had stated that her husband beat her everyday, he used to suspect her that she was practicing sorcery and finally her husband poured kerosene over her and set her. She categorically stated that it was about 4 or 4.30 p.m., and after setting her on fire, he poured water and that the owner of the house - P.W.7 Gangamani came there, started the electric motor pump, poured water and the neighbours who gathered there shifted her to hospital. Further, she categorically stated about the identity of her husband that he was working in Thirumala petrol pump and that her brother was working as a Conductor in RTC and that her brother and husband are responsible for the injuries caused to her.

19. In addition to the above, the deceased Venkatamma was consistent in her statement made before P.W.11 - S.I. of Police.

20. P.W.1 spoke about the presence of appellant/A.1 that he tried to put off flames by pouring water and left the place after people gathered. P.W.7 also spoke about a quarrel having taken place on 28.01.2010 between the appellant and his wife and that appellant came at about 5.00 p.m., asked for switching on the motor and thereafter she noticed flames coming from the portion of the appellant; also heard cries of the deceased Venkatamma and that appellant left the place after public gathered there. P.W.8 deposed to the same effect that about 5.00 p.m., she went for water and she found flames coming out of the portion of the appellant, heard cries of a woman and she poured water over her and covered her with cloth and that all the household articles were burnt. P.W.12 is the medical officer who conducted post mortem examination over the body of the deceased. He deposed that the burns were to the extent of 85% and the death is due to cardio respiratory failure due to external extensive burns and shock and that in 80% of cases, the patient may be able to answer the questions in low voice. Accordingly, from the evidence, the prosecution has established that Exs.P.7 and P.10 were immediately recorded by P.Ws.11 and 17 respectively and the dying declaration is categorically pointing out finger against the appellant, holding him responsible for causing death of the deceased. It has also come in the evidence that the appellant was harassing his wife, i.e., the deceased Venkatamma, for not begetting children; he tried to get divorce from

her; he was also suspecting that she was practicing sorcery against him; thereby it is clear that the appellant continuously tortured and harassed the deceased. Ultimately, the appellant poured kerosene over her and set her on fire with an intention to get rid of her.

21. Fact remains that the appellant, after pouring kerosene over the deceased, set her on fire. He did not try to extinguish the fire and take the deceased to the hospital to save her life. Though P.Ws.1 and 7 had deposed that the appellant tried to pour water upon the deceased, but the said fact is not supported either by the deceased herself in the statements recorded by P.Ws.11 and 17, nor by other witnesses, who were examined by the prosecution. It is also fact that two panchayats were held before the incident. The said factum has been proved by P.Ws.3 and 9. The deceased could not beget any children out of the wedlock between herself and the appellant and therefore the appellant was harassing her on the said pretext. He also exerted pressure on the deceased to give him divorce so that he can contract second marriage. Accordingly, it is very well established that appellant used to beat the deceased daily; he even beat her and harassed her on the date of the incident.

22. Keeping in view the aforesaid discussion and the material on record, we find no illegality or perversity in the impugned judgment of the trial Court.

23. The appeal is devoid of merit and is accordingly dismissed.

As a sequel, miscellaneous petitions if any pending in the appeal stand closed.

SURESH KUMAR KAIT, J

T. RAJANI, J

April 19, 2018
MRR

