

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR  
AND  
THE HON'BLE MS. JUSTICE J. UMA DEVI

Crl.A.No. 268 of 2013

JUDGMENT: (Per Hon'ble Ms. Justice J. Uma Devi)

1. Assailing the judgment dated 21.1.2013 passed in Sessions Case No. 265 of 2012 on the file of the I-Addl. District and Sessions Judge, West Godavari, Eluru whereby the accused was convicted for the offence under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for one month, the present appeal is filed.
2. The prosecution case as discerned from the material on record is briefly stated as under,

The accused is a resident of Bottalapalem village, Neredcherla Mandal of Nalgonda district. Some how he developed acquaintance with the deceased Nokku Sunitha, a resident of D. Yerravaram village of West Godavari district about one year prior to the incident. The accused seduced the deceased Nokku Sunitha with his sweet words, as a result of which she abandoned her husband and children, and eloped with him. Both of them started living as husband and wife in the house of one Gudelli Kondamma at Tadicherla village which they took on rental basis. Few days prior to the death of the deceased, ill-feelings arose between the deceased and the accused, when he refused to return the gold ornaments which she handed over to him and it was the reason for him to harass her both physically and mentally. She

also reported about the same to the village elders. One day prior to the date of the incident i.e., on 19.12.2009 during night hours there was a quarrel between her and the accused regarding the gold ornaments which she handed over to him. Owing to the reason mentioned above, the accused bore grudge against her and decided to kill her. On 20.12.2009 at 9.00 A.M. when the deceased insisted the accused for the return of her gold ornaments, there was a quarrel and the accused, with the intention of killing her, confined her in a room where they were residing together and poured kerosene on her and set fire to her. Thereafter he came out of the room and bolted the doors from outside in order to prevent her from coming out of the room. On hearing the cries of the deceased, and anticipating the arrival of his neighbours, he unbolted the doors and shifted her to the Government District Head Quarters Hospital at Eluru in 108 ambulance and admitted her for treatment. On the intimation given by the hospital authorities, the in charge Station House Officer of outpost police station attached to the Government District Head Quarters Hospital at Eluru, approached the deceased Nokku Sunitha and recorded her statement in the presence of casualty medical officer and forwarded it to the Station House Officer, Tadikalapudi police station on point of jurisdiction.

3. On the strength of the statement made by the deceased Nokku Sunitha to the Head Constable of outpost police station attached to the Government District Head Quarters Hospital at Eluru, the Station House Officer, Tadikalapudi police station registered a case in Cr.No.

153 of 2009 under Sections 342 and 307 IPC and took up investigation. Meanwhile the hospital authorities also sent a requisition to the Judicial Magistrate of First Class, Special Mobile Court, Eluru for recording the dying declaration of the deceased Nokku Sunitha. The Judicial Magistrate of First Class, Special Mobile Court, Eluru recorded her dying declaration in the presence of medical officer who was on duty. The deceased succumbed to burn injuries on 21.12.2009 in the Government District Head Quarters Hospital at Eluru.

4. On receipt of intimation about the death of the deceased from the Government District Head Quarters Hospital at Eluru, the Station House Officer, Tadikalapudi police station altered the section of law from Sections 342 and 307 IPC to 302 IPC on 21.12.2009 and issued the altered FIRs and handed over the case file to the Inspector of Police, Chintalapudi Circle for further investigation. The Inspector of Police, Chintalapudi Circle held inquest over the dead body of the deceased Nokku Sunitha and sent it for post mortem examination. The Medical Officer, who held autopsy over the dead body of the deceased Nokku Sunitha issued post mortem certificate opining that the death was due to hypovolemic shock due to 90% burns.

5. While the investigation was in progress, the accused approached the Village Revenue Officer, Kamavarapukota on 24.12.2009 and made an extra judicial confessional statement before him admitting the crime reported against him. The VRO recorded his

confessional statement and produced him before the police along with the statement recorded by him. The Inspector of Police, Chintalapudi Circle, based on the material evidence collected during the course of investigation, laid a charge sheet against the accused for the offence punishable under Section 302 IPC.

6. The Judicial Magistrate of First Class, Chintalapudi, before whom the charge sheet was filed, after complying with all the formalities, committed the case to the Court of Sessions, West Godavari division to inquire into. The Prl. Sessions Judge, West Godavari registered the case as S.C.No. 265 of 2012 and made over it to the I-Addl. District and Sessions Judge at Eluru for disposal in accordance with law.

7. After the accused made his appearance before the trial Court on affording opportunity of hearing to him, the I-Addl. District and Sessions Judge at Eluru framed a charge under Section 302 IPC against him. As the plea of the accused was one of denial, he was subjected to trial during which, the prosecution examined PWs 1 to 22 and marked Exs.P1 to P26 and M.Os 1 to 7. On behalf of the accused no evidence was adduced. On appreciation of the oral and documentary evidence, the trial Court found that the prosecution could bring home the guilt of the accused for the offence under Section 302 IPC and accordingly convicted and sentenced him as indicated above. Being aggrieved by the judgment of conviction and

sentence passed by the learned trial Judge, the accused came before us by preferring the present appeal.

8. It was contended by the learned counsel for the accused that the deceased was taken by him to the hospital for treatment on noticing her with burn injuries which would indicate that the accused had no intention or motive to cause her death. She contends that the trial Court, relying on the evidence of PWs 1, 2 and 16 who admittedly did not support the prosecution case, found erroneously that the accused had relationship with the deceased as her husband, ignoring her statement made before the Magistrate that '*S. Srinivas*' is not her husband and he is the person who brought her to the hospital for treatment. There was no endorsement on the statement made before the Head Constable of the outpost police station attached to the Government District Head Quarters Hospital at Eluru by the Duty Doctor that she was conscious and capable of making a statement. The statement, she made to the Head Constable of outpost police station attached to the Government District Head Quarters Hospital at Eluru would not stand to the test of legal scrutiny, and the same could not be relied upon by the trial Judge, to base the conviction.

9. Refuting the aforesaid submissions of the learned counsel appearing for the accused, the learned Public Prosecutor appearing for the State would submit that PWs 1, 2 and 16 in their evidence stated that the deceased and the accused were residing together as wife and husband in the house of Gudelli Kondamma which they secured from

her on rental basis. The learned trial Judge, on close scrutiny of the evidence on record particularly the evidence of PWs 1, 2 and 16 and the statement made by the deceased before the Head Constable of outpost police station attached to the Government District Head Quarters Hospital at Eluru and the statement made before the Magistrate, came to the opinion that the prosecution proved involvement of the accused in causing burn injuries to her and that she died due to burn injuries caused to her by him.

10. Since a specific plea of defence is taken by the accused that he was not the husband of the deceased Nokku Sunitha, and that she herself stated before the Magistrate that 'S. Srinivas' (accused herein) is not her husband and he only brought her to the hospital for treatment, we intend to go through the oral and documentary evidence placed before the Court by the prosecution thoroughly to answer the question '*whether the prosecution has placed the evidence on record to believe that the accused has got any sort of connection or relationship with the deceased Nokku Sunitha? and whether he is the person responsible for causing burn injuries to her which ultimately resulted in her death etc.?*

11. The undisputed fact is that criminal law was set into motion basing on the strength of Ex.P16-statement made by the deceased Nokku Sunitha to the in charge Station House Officer of outpost police station attached to the Government District Head Quarters Hospital at Eluru. In Ex.P16, the deceased Nokku Sunitha stated that

about one year prior to the date of the incident, Sampath Srinivasa Rao @ Saidulu (accused herein) cheated her and separated her from her husband; brought her to Tadicherla village; kept her in a house with his family i.e., his wife and children and that there was harassment on her for the past several days, therefore she thought of going back to her village; with that view when she asked the accused to handover the three sovereigns of gold items which she gave to him; to which he beat her. On 20.12.2009 at about 9.00 A.M. he kept her in the house and set fire to her after pouring kerosene on her, and went out of the house by bolting the door from outside, later he himself took her to the hospital at Eluru in 108 ambulance and admitted her there for treatment. The above statement made by the deceased was sent to the Tadikalapudi police station by P.W.15, the Head Constable-cum-the then in charge Station House Officer of the outpost police station attached to the Government Head Quarters Hospital at Eluru on point of jurisdiction.

12. The Sub-Inspector of Police, Tadikalapudi police station (P.W.19) who received Ex.P16, statement of the deceased from the out post police station, registered a case in Cr.No. 153 of 2009 under Sections 342 and 307 IPC and issued Ex.P23-FIR, rushed to the scene of offence, which was the house where the deceased and the accused were residing as tenants and prepared a rough sketch-Ex.P24 and also prepared panchanama-Ex.P13 in the presence of Parasa Srinivasa Rao (P.W.2) and M. Chittibabu mentioning its physical features in detail

and also recorded the statement of Gudelli Kondamma (L.W.1), the landlady of the said house. He also recorded the statements of PWs.1 to 3 and seized black coloured plastic tin with wooden lid, dismantled iron pipe cot with plastic tape (green colour 'Navar'), half burnt pillow, half burnt bontha, yellow colour burnt towel, white cotton towel with red border and red and yellow designed cotton blankets i.e., M.Os 1 to 7 respectively. On the next day, after receipt of intimation about the death of the deceased from the Government District Head Quarters Hospital at Eluru, P.W.19, the Sub-Inspector of Police, Tadikalapudi police station, altered the section of law from Sections 342 and 307 IPC to 302 IPC and issued altered FIR-Ex.P25.

13. P.W.1-Jangumilli Bhavani who was examined by the prosecution to speak about the galata that took place between the accused and the deceased prior to her death did not choose to speak about the said galata. But as per her evidence, the house where she resides is just two houses away from the house of the accused where he was living with the deceased as her husband, and the said house was taken on rent by him from Gudelli Kondamma. Though her evidence does not give any clue as to the galata said to have taken place between the deceased and the accused prior to her death, it makes clear that the accused and the deceased were living together in the said house since three months prior to her death.

14. P.W.2-Parasa Srinivasa Rao is also one of the neighbours of the house where the deceased and the accused were residing together in

the house of Gudelli Kondamma as her tenants. His evidence is that about one week prior to the death of the deceased, the accused brought his wife and children to the house of Gudelli Kondamma in which he was residing with her. Though he did not support the prosecution case as to the galata that took place between the accused and the deceased prior to her death, he spoke to the fact that the accused and the deceased were residing together in the house taken on rent from Gudelli Kondamma, and that the accused brought his wife and children to the said house about one week prior to the death of the deceased.

15. It would be quite natural for P.W.3-Sampathi Nagamani, the wife of the accused to give a go-bye to the version made before the police and support the version of her husband. She narrated a different story as to how the deceased received burn injuries. As per her version, the deceased received burn injuries due to self-immolation.

16. Shaik Baji whom the prosecution examined as P.W.16 was residing just one house away from the house of the accused. He spoke to the fact that the accused and the deceased were living in the house of Gudelli Kondamma since two or three months prior to the incident and about one week prior to the death of the deceased, another lady claiming to be the wife of the accused came there, and started living with him in the said house. Of course, he expressed his ignorance as to how the deceased and the wife of the accused were living, whether

they were living cordially? and whether there were any disputes between them etc.?

17. The above named witnesses viz., PWs 1, 2 and 16 are the residents of the locality where the accused was living with the deceased. The evidence given by them as to the living of the accused with the deceased as her husband, belies his plea of defence that he has no connection whatsoever with the deceased. The connectivity of the accused with the deceased has been demonstrated by the prosecution through the evidence of PWs 1, 2 and 16, though not on other aspects such as the quarrel that took place between them prior to the incident. But one thing that stands established from their evidence is that just one week prior to the death of the deceased, the accused had brought his wife and children to the said house and after they were brought there, the incident took place.

18. The spot panchanama-Ex.P13 which has been duly proved by the prosecution by examining PWs 12 and 19, the Sub-Inspector of Police, Tadikalapudi police station, who investigated at the initial point of time, also indicates signs of occurrence in the room where Sampath Srinivasarao @ Saidulu (the accused herein) was residing and the recovery of certain incriminating materials from the said room such as black coloured plastic tin with wooden lid, dismantled iron pipe cot with plastic tape (green colour 'Navar'), half burnt pillow, half burnt bontha, yellow colour burnt towel, white cotton towel with red border and red and yellow designed cotton blankets i.e., M.Os 1 to

7 respectively which is also one of the incriminating circumstances through which a reasonable inference can be drawn as the occurrence of the incident.

19. It was spoken to by P.W.12, the panch witness for Ex.P13 and for recovery of M.Os. 1 to 7, that in the house of Gudelli Kondamma, the landlady there were two portions, and each portion consists two rooms and in one portion Gudelli Kondamma was residing, and in another the accused was residing; when they enquired Gudelli Kondamma to know whether the deceased was living in the portion of the accused, she informed that the deceased was living in another room with the accused. The above evidence of P.W.12 would also make it clear that the deceased was living in a room with the accused and this part of his evidence remained unshattered. The accused did not offer any reasonable explanation in this regard during the course of his examination under Section 313 Cr.P.C.

20. It has been held by the Apex Court in *Munish Mubar Vs. State of Haryana*<sup>1</sup> that,

***“it is obligatory on the part of the accused, while being examined Under Section 313 Code of Criminal Procedure to furnish some explanation with respect to the incriminating circumstances associated with him, and the Court must take note of such explanation, even in a case of circumstantial evidence, so to decide, whether or not, the chain of circumstances is complete.”***

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<sup>1</sup> (2012)10SCC464

21. In *Kukkala Govinda Raju S/o Sathi Raju Vs. The State of A.P. rep. by its Public Prosecutor*<sup>2</sup> it has been held that,

*“if the offence takes place inside the privacy of a house and in such circumstances where the assailant has all the opportunity to plan and commit the offence at the time and in circumstances of his choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the Courts.”*

In para-42 of the same judgment it is observed that,

*“a judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the*

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<sup>2</sup> 2010 (1) ALD (Cri) 939 (DB)

***charge cannot be of the same degree as it is required in other cases of circumstantial evidence.”***

22. In the present case the prosecution by examining the panch witness for the spot panchanama and the Sub-Inspector of Police who investigated the case at the initial point of time, has proved that the incident took place in a room where Sampath Srinivasarao @ Saidulu (the accused) was residing.

23. As regards to the evidentiary value of the written dying declarations is concerned, two written dying declarations came to be made by the deceased and the same are marked as Exs.P16 and P26, of which Ex.P26 is the sheet anchor of the accused to claim exculpation from the criminal liability. Ex.P16 is the statement made by the deceased prior to her death before P.W.15-E.H.E.K. Prasad Rao, the in charge Station House Officer of outpost police station attached to the Government Civil Hospital at Eluru. It appears from the evidence on record that soon after the admission of the deceased in the Government Civil Hospital, Eluru, the hospital authorities sent Ex.P15-intimation about her admission with acute burn injuries, to the outpost police station attached to it. Ex.P15-hospital intimation given to the police would indicate that she was brought to the hospital with burn injuries of 80% to 90% by her husband for treatment and in that document she was described as the wife of Sampath Srinivas. Ex.P15, intimation was given to the police at 10.40 A.M. and the time and date

of incident as noticed from its contents was around 9.00 A.M. on 20.12.2009 at her house.

24. In the intimation given to the police by the hospital authorities as regards the time and cause of death also she was described as the wife of *S.Srinivas*.

25. In Ex.P16, statement made by the deceased to P.W.15, she stated that she belonged to Yerravaram village and married to one Konda Babu about 9 years ago and she had three children. One year ago, Sampath Srinivasa Rao @ Saidulu who belonged to Tadicherla village separated her from her husband by luring her, brought her to Tadicherla village and kept her in his house along with his wife and children. The said Srinivasa Rao was scolding and harassing her and was beating her for the past few days; she thought of getting herself separated from him and when she asked for the return of the jewellery handed over to him, she was beaten severely; on 20.12.2009 at about 9.00 A.M. Srinivas kept her in his house, poured kerosene on her, set fire to her and bolted the doors; and that after some time he himself shifted her to the Eluru Government Civil Hospital for treatment. Recording of her statement was completed by P.W.15 at 11.20 A.M., and as per the endorsement made by the duty doctor on it (Ex.P16), she was capable of making a statement.

26. The hospital authorities also gave intimation to the Magistrate on the same day at 11.20 A.M., about the admission of the injured in the hospital for treatment. In the said intimation also she was

described as the wife of *S. Srinivas* and that she was brought to the hospital by her husband with 80% to 90% of burn injuries with the time and date of receiving of burn injuries mentioned as 9.00 A.M. on 20.12.2009 at her house. Pursuant to Ex.P20-hospital intimation received from the Government Civil Hospital, Eluru, the Magistrate-P.W.21 went to the hospital and reached there by 12.05 P.M. After identifying the deceased in the casualty ward, and after satisfying herself as to her capability of making a statement, started recording her dying declaration as in Ex.P26 which would show that when a question was posed to her to disclose the name of her husband, she told his name as '*S. Saidulu S.* and made him responsible for causing of burn injuries to her. We will discuss the contents of Ex.P26 a little later.

27. On careful perusal of Exs. P16 and P26, it can be said that Ex.P16 was prior in point of time and based on it, criminal law was set into motion. In Ex.P16, the deceased made attribution against the accused Sampath Srinivas Rao @ Saidulu stating that he separated her from her husband, brought her to Tadicherla village and kept her in the house with his wife and children; For the last several days she was harassed and beaten by him. Therefore, she thought of going away to her native place and as such made a demand for the return of gold ornaments which she handed over to him. On that day she was abused and beaten and on the next day morning at about 9-00 A.M. after a

quarrel he poured kerosene, set her on fire and went out of the room by bolting the doors from outside.

28. There cannot be any dispute as to the factum of shifting the deceased to the hospital by the accused. In Ex.P26, the statement made by the deceased showing the cause for receiving burn injuries. She stated the name of her husband as '*Sampath Saidulu*' and gave a version stating that *S. Srinivas* was not her husband and he only brought her to the hospital for treatment. But the entire evidence available in the case record namely the statement made by her which was prior in point of time, and in all other documents, hospital intimations vis-à-vis the evidence given by PWs 1, 2 and 16 which we have referred to earlier makes it clear that the accused is the husband of the deceased.

29. The hospital intimation dated 20.08.2009 which was sent to the Magistrate, shows that the deceased was brought to the Hospital by her husband and the name of the husband was shown as *S.Srinivas*. So also the police intimation shows that it was her husband *S.Srinivas* who brought her to the Hospital. Having regard to the above, the Dying Declaration made before the Magistrate can be said to be an outcome of tutoring as the accused was by her side prior to arrival of the Magistrate.

30. The evidence of P.W.12 the Village Revenue Officer clearly discloses that on 24.12.2009 at 1.00 p.m., while he was at his office, the accused came to his office and made an extra judicial confession

stating that he poured kerosene on the deceased and set her on fire. He further claims to have disclosed that he along with the deceased used to reside in the house of Gudelli Kondamma of Taadicherla village. He further stated that the deceased is his concubine and about one year prior to the incident he brought her to his house. The accused also confessed before him that he has taken away three sovereigns of gold ornaments of deceased, for which the deceased raised a dispute and in that regard the village elders reprimanded him. Ex.P-11 is the statement recorded by P.W.12 and after recording the said statement he took the accused to the police station and handed over him to the police along with a report Ex.P-12. Therefore, the circumstance of extract judicial confession made by the accused before the Village Revenue Officer, in our view cannot be brushed aside, more so, when it gets corroboration from other quarters to establish the relationship between the accused and the deceased and the quarrel prior to the incident.

31. When once the second Dying Declaration recorded by the Magistrate is found to be an outcome of tutoring, the case now rests on the Dying Declaration recorded by the Head Constable, who was examined as P.W.15. The said Dying Declaration recorded by P.W.15, which is placed on record as Ex.P-16, contains the endorsement of the Doctor, with regard to the fitness, but in the said statement, the deceased stated about the accused taking away the gold ornaments and also about the quarrel which took place on 20.12.2009

at about 9.00 a.m. It appears that in pursuance to the said quarrel, the accused poured kerosene and set her on fire. As per the said Dying Declaration, after setting her on fire, he closed the doors, went out and on hearing the cries, he again opened the doors, called 108 Ambulance and took the deceased to the Hospital. From the acts of the accused, it is clear that if really he wanted to kill the deceased, definitely he would not have resorted to putting off the flames, calling the Ambulance and taking her to the Hospital. More over, as stated earlier, the incident in question was preceded by a quarrel with regard to return of the gold ornaments. Further, there is no evidence on record to show that prior to the said incident, there were any quarrels between the accused and the deceased. Therefore, having regard to the circumstances in which the incident in question took place, we feel that the case on hand would fall under Exception 4 to Section 300 IPC. The accused may not be having any motive to cause the death of the deceased since it was preceded by a quarrel, but definitely it can be said that he had an intention of causing such bodily injury as is likely to cause death. Hence, the case on hand would fall under Section 304 part-I IPC.

32. For the aforesaid discussion and in view of the judgment referred to above, we are of the opinion that an offence under Section 304 Part-I of IPC is made out. Hence, the conviction and sentence under Section 302 IPC is set aside and he is acquitted of the same. However, the appellant is convicted under Section 304 Part-I of IPC

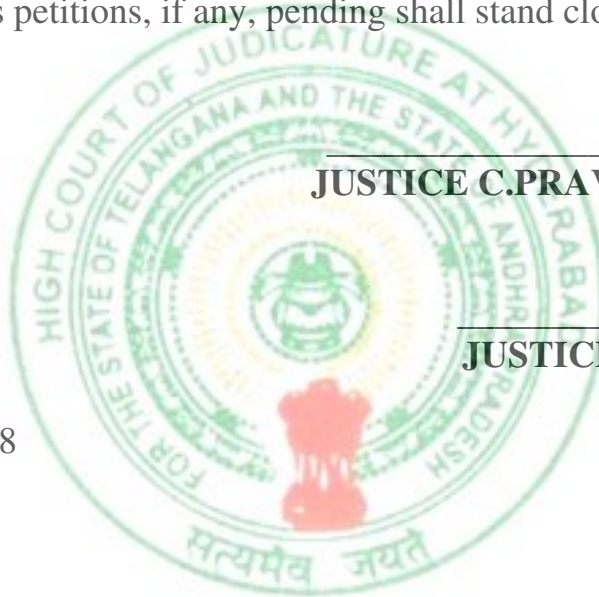
and sentenced to suffer rigorous imprisonment for a period of six years. The period of remand undergone by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. The appellant/accused shall be set at liberty forthwith on completion of six years rigorous imprisonment, if not required in any other case, on completion of six years' rigorous imprisonment including remissions, if he is entitled to.

33. Accordingly, the appeal is allowed in part. Consequently, miscellaneous petitions, if any, pending shall stand closed.

**JUSTICE C.PRAVEEN KUMAR**

**JUSTICE J.UMA DEVI**

Dt. 14.09.2018  
Kr/gm



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JUDGMENT: (Per Hon'ble Ms. Justice J. Uma Devi)

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