

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Appeal No.1300 of 2012

JUDGMENT : (per the Hon'ble Sri Justice N.Balayogi)

The appellant-accused, aggrieved by the judgment dated 12.6.2012 in S.C.No.24 of 2011 on the file of the learned VI Additional District & Sessions Judge, Markapur, Prakasam District, convicting and sentencing the accused to undergo life imprisonment with fine of Rs.5,000/-, in default, to suffer six months simple imprisonment for the offence under Section 302 I.P.C., preferred this appeal on the grounds that the trial Court convicted the appellant without there being evidence on record to prove essential ingredient of the alleged offence. It is further contended that though the evidence of P.Ws.1 to 15 is full of contradictions and discrepancies, the trial Court, without considering the same, erroneously convicted the appellant.

2. The prosecution case in brief is as follows :

P.Ws.1 and 2 are parents, P.W.3 and Subbalaxmi are sisters and P.W.5 K.Nagaiah is the senior paternal uncle of the deceased Meenakshi. According to the evidence of P.W.1, the original name of deceased Meenakshi is Mariya Kumari. According to the evidence of P.Ws.1 and 2 - parents of the deceased and P.W.3 - sister of the deceased, the marriage between the deceased Meenakshi and

appellant/accused was solemnized five years prior to the incident at Markapur in Poola Subbaiah Colony. After the marriage, the deceased and accused lived together happily for a period of two years in their own house along with in-laws of the deceased. Afterwards, the accused took the rented house in the same colony and started living there with the deceased till her death.

3. The evidence of P.Ws.1 to 3 is that at about 4 PM, P.W.5 telephoned to P.W.1 and intimated that the accused poured kerosene on his wife and set her on fire and she was admitted in the Markapur Government Hospital with burn injuries and her condition was serious.

Their further evidence is that they immediately rushed to the Markapur Government Hospital and there they found the deceased with burn injuries and she was crying with unbearable pains. When enquired by P.W.1, the deceased told that the accused poured kerosene and lit her on fire for not begetting children.

It is their further evidence that few hours after the arrival of P.Ws.1 to 3 to the Hospital at Markapur, the injured was shifted to Government Hospital, Guntur in ambulance for better treatment and they followed the injured to the Hospital, Guntur. The appellant/accused addicted to drinking and started harassing the deceased and he has illegal contacts with one, Bhagyam, daughter-in-law of Jukuntla Israel. For questioning the illicit intimacy of Bhagyam with the accused, the deceased was also beaten by her.

4. According to the evidence of P.W.4, the P.Ws.1 and 2 are his paternal uncle and aunt, P.W.3 is his cousin sister and P.W.5 is his father. He used to play nearby the house of the deceased Meenakshi. While so, on 16.10.2010 at 3.30 PM while he was playing nearby the said house, he witnessed the accused coming along with auto and rushed into the house telling him to wait outside the house and at that time, Meenakshi was taking bath. Within no time, the accused came out of the house after setting her sister on fire by pouring kerosene on her and went away. On hearing the cries of his sister, he peeped into the house through a small hole of a door and found the deceased Meenakshi shouting and crying with flames. Immediately, he raised hue and cry and rushed to his house and informed to his father who was present in the house. Then, his father rushed to the house of the accused and by putting off the flames, shifted the deceased sister to the hospital. Neighbours of the deceased, P.Ws.6 to 9, gathered and helped in shifting the deceased to the Hospital. Whereas, P.Ws.6 to 9 turned hostile. Their evidence is that the deceased came out of the house with burn injuries shouting for help. On hearing cries, P.Ws.6 to 9 - neighbours gathered, in the meanwhile the accused came along with his father, then flames were put off and they shifted the injured in ambulance to the hospital.

5. P.W.10 is photographer who took Ex.P6-photos of the dead body with the scene of offence. P.W.11 is the Tahsildar, who recorded Ex.P8 - Dying Declaration of the deceased Meenakshi, on

receipt of Ex.P7 - requisition, in the presence of duty Doctor and at that time, Meenakshi was conscious and coherent and in a fit state of mind through out and to that effect the Doctor certified. In Ex.P8 - Dying Declaration she stated that the appellant/accused poured kerosene on her and set her on fire in the house near masjid centre in poola subbaiah colony, Markapur and at that time, herself and accused were only persons in the house and the cause for setting fire is that she could not conceive.

6. P.W.12 – Civil Assistant Surgeon conducted PME on the dead body of the deceased Meenakshi and issued Ex.P9 - PME report. P.W.14 – Inspector of Police recorded Ex.P13 - statement from the deceased Meenakshi and registered the same as a case in crime No.181 of 2010 under Section 307 I.P.C. He observed the scene of offence in the presence of P.W.13 and seized M.O.1 under Ex.P10 seizurenama.

7. P.W.15, Inspector of Police, took up the investigation and issued requisition to the Tahsildar to conduct inquest over the dead body and the Tahsildar conducted inquest over the dead body in the presence of P.W.13. He arrested the accused in the presence of P.W.13 explaining the rules of arrest.

8. Now, the point that arises for determination is :

“Whether the conviction and sentence imposed by the trial Court in S.C. No.24 of 2011, dated 13.6.2012 can be sustained?”

The contention of the appellant is that the evidence of P.Ws.1 to 15 is full of contradictions and discrepancies and further that P.Ws.1 to 3 are interested witnesses. The trial Court, without considering these facts, simply convicted the appellant on presumptions and assumptions. In fact, the entire prosecution case is relied on circumstantial evidence. P.Ws.1 and 2 are parents and P.W.3 is the elder sister of the deceased Meenakshi. P.W.5 is brother of P.W.1 and P.W.4 is the son of P.W.5. Therefore, P.Ws.1 to 5 are related to each other and they are related to the deceased by blood relationship. It is also a fact that P.Ws.6 to 9 are neighbours to the appellant and deceased Meenakshi. Therefore, in view of relationship between the deceased and P.Ws.1 to 5, their evidence has to be scrutinized with utmost care and caution.

9. On a clear going through the evidence of P.Ws.1 to 5, there is nothing suggested or proved for P.Ws.1 to 5 to speak against the appellant/accused. If that is so, they would not have spoken that after the marriage, the appellant and the deceased Meenakshi-alias-Mariya Kumari lived happily for a period of two years along with the in-laws of the deceased. There is no exaggeration or exorbitant manner of evidence is found in the entire evidence of P.Ws.1 to 3. The clear evidence of P.Ws.1 to 3 and 5 with regard to motive of the accused to kill the deceased is as she has not begotten any children.

10. Ex.P8 - Dying Declaration is recorded by P.W.11, the Tahsildar, after receiving Ex.P7 - requisition from the in-charge of the

Hospital, Markapur. P.W.14, having received Ex.P14 - hospital intimation on 16.10.2010 in Government Area Hospital, Markapur, rushed to the Hospital, recorded Ex.P13 - statement of the deceased and registered the same as case in crime No.181 of 2010 for the offence under Section 307 I.P.C. and issued Ex.P15 - F.I.R. In both Exs.P8 and P13 the motive for the offence was clearly stated by the deceased that as she was not blessed with any children, her husband Siva poured kerosene on her body and set her on fire, as a result of which, her entire body was burnt. No single contradiction or omission was suggested to none of the witnesses P.Ws.1 to 5 or got it clarified through the Investigating Officer - P.W.15.

11. The evidence of P.Ws.1 and 2 is consistent, corroborative through out without any discrepancy or contradiction that the marriage between the deceased Meenakshi-alias-Mariya Kumari and the appellant/accused was solemnized five years prior to the incident in Poola Subbaiah colony, Markapur. Immediately after the marriage, the deceased joined the accused at his house in Poola Subbaiah colony and they lived along with her in-laws happily for a period of two years. Thereafter, the appellant took a separate house on rent in the same colony and started living with the deceased till her death.

12. The further evidence of P.Ws.1 and 2 is that the appellant/accused is addicted to vices, such as drinking and he has illicit contact with one, Bhagyam, daughter-in-law of Jukuntla Israel. There is no cross-examination on the evidence of P.Ws.1 to 3 that the

accused addicted to drinking and developed illicit intimacy with one Bhagyam, daughter-in-law of Israel, but the suggestion to P.W.1 is that accused never ill-treated the deceased for her failure to conceive and he never driven her out of the house.

13. Even though P.W.1 never spoken about the expenditure of Rs.32,000/- for the treatment of the deceased, but the accused gave a statement which was denied by P.W.1 that P.W.1 himself prevented the deceased from joining the accused earlier to the incident demanding Rs.32,000/- which he has already spent for her medication. With regard to the differences between the accused and the deceased, there is evidence of P.Ws.1 and 2 wherein they have deposed that earlier to the incident the appellant harassed the deceased for not giving birth to children and she was also driven out of the house. On the intervention of elders, the deceased joined the appellant/accused. The evidence of P.W.2 corroborates with the evidence of P.W.1 about the earlier harassment of accused to the deceased for not begetting children and necking the deceased out of the house for about 4 or 5 times. On the intervention of elders, the deceased joined the appellant/accused on the undertaking given by him to take care of her.

14. During cross-examination of P.W.2, the defence counsel elicited that the mental condition of the deceased was not proper and she used to beat P.W.2 and was adamant towards her and she has voluntarily stated that the deceased developed adamant nature since the time of administering of *pasaru* by the accused and his mother to make

deceased surrender to them, without hearing P.W.2. Having learnt the same, P.W.2, on the advice of elders, has once applied lemon juice on the head of the deceased by cutting her hair on the top in the round shape. They also took the deceased to Nandyal, Markapur and Hubli to get anti dose for the *chetabadi* allegedly made by the accused and his family members. They were told by quacks that the accused and his family members did *chetabadi* to the deceased. It went on for two years before her death. The deceased used to beat her alone when she was under the influence of *chetabadi*. There is also suggestion to P.W.5 that the mental condition of the deceased was not stable and she has committed suicide by pouring kerosene due to her ill-health, which was denied by P.W.5. From the cross-examination of P.Ws.1, 2 and 5, it is clear that the appellant/accused and his parents administered *pasaru* to the deceased to make her surrender to them and thereafter she became more adamant and used to abuse her own mother i.e., P.W.2. We are satisfied with the explanation of P.W.2 for developing adamant nature by the deceased herself during her life time. The clinching evidence of P.Ws.1 to 3 and 5 established that there are disputes and differences developed between the appellant and his wife Meenakshi as she could not begot children and on the intervention of elders, the dispute was pacified for the reason that the appellant has given undertaking to take care of her.

15. P.W.4 is the son of P.W.5. According to him, after school hours he used to play in front of the house of the deceased. The school

hours are from 9.30 AM to 4.00 PM. By the time of occurrence, he was studying 6th class. Generally, he spends half an hour to one hour from 4.00 PM to 4.30/5.00 PM. On 16.10.2010 at about 3.30 PM while he was playing nearby the house of his sister Meenakshi, the appellant/accused came along with auto and rushed inside the house and by that time, the deceased was in the bathroom. During cross-examination, P.W.4 stated that the deceased without bolting the door went into the bathroom telling him that she was going to take bath and asked P.W.4 to stay outside and the deceased closed the door without bolting from inside, though the door was having a provision to bolt the door from inside. P.W.4 further stated during cross-examination that by the date of incident, he was in *dasara* vacation, therefore his presence on 16.10.2010 at 3.30 PM at the house of the accused and deceased cannot be doubted.

16. The further evidence of P.W.4 is that on 16.10.2010 at about 3.30 PM while he was playing near the house of Meenakshi accused came along with auto and rushed into the house. By that time, Meenakshi was taking bath, then the accused told P.W.4 to wait outside the house and within no time came out of the house after setting her sister on fire by pouring kerosene on her and went away. On hearing the cries of the deceased, P.W.4 peeped into the house through a small hole of a door and found the deceased Meenakshi shouting and crying with flames. Immediately, he raised hue and cry and rushed to his house and informed to his father who was present in

the house. P.W.5, father of P.W.4, corroborated that on that day at 3.30 PM when he was at home, his son P.W.4 came and informed that the deceased was set fire and he immediately rushed to the house of the deceased and found her in flames shouting for life outside her house. By the time of his arrival, P.Ws.6 to 9 – neighbours were gathered and probably with their help, the deceased came out of her house. He put off the flames with the help of others and informed about the occurrence to his brother P.W.1. On the information given by them, the ambulance came in which the deceased was shifted to the Government Hospital, Markapur for treatment. He was told by P.W.4 that accused who went inside the house, poured kerosene and lit fire to the deceased. The evidence of P.Ws.1 and 2 corroborate the evidence of P.Ws.4 and 5, wherein P.W.1 deposed that on the date of incident at about 4 PM he was informed by P.W.5 over phone about the admission of deceased in the Government Hospital, Markapur with burn injuries and further that the appellant poured kerosene on her and set her on fire and she was in serious condition. Immediately, P.Ws.1 and 2 along with P.W.3 rushed to the Area Hospital, Markapur along with other family members and relatives by 5 PM.

17. During cross-examination, P.W.5 stated that after their arrival, the accused left the place apprehending danger to him in their hands and he did not accompany the injured to the hospital. According to the corroborative and consisting evidence of P.Ws.4 and 5, they are

the persons who had last seen the accused at his house i.e., the scene of offence.

18. P.Ws.6 to 9 are neighbours who stated before the police in Section 161 statements that their enquires reveal that the appellant/accused Siva poured kerosene on the body of the deceased and set her on fire with a view to kill her as she was not blessed with any children. But, they turned hostile. Even then, in their evidence in chief they have stated that the house of the accused, deceased Meenakshi and P.Ws.6 to 9 are situated in one street. According to their evidence, the house of P.W.6 is situated in the opposite direction intervening by houses of four others to the house of accused and the house of P.W.7 is by the side of the house of the accused. The house of P.W.8 is in the same street as that of the house of accused separated by the house of Yesu and the house of P.W.9 is by the side of the house of the accused. Therefore, P.Ws.6 to 9 are immediate neighbours to the accused and there is every possibility of them of hearing hue and cry of P.W.4 and immediately rushing to the house of the accused and witnessing the burning of the deceased and also presence of accused at the spot, but their evidence is that on that day at about 4 PM wife of the accused came out of her house with burns shouting for help. On hearing the cries, P.Ws.6 to 9, who were neighbours, gathered and in the meanwhile, accused and his father came to that house. So in the evidence of P.Ws.6 to 9 they tried to include the presence of the accused at the house at the time of the incident, but according to their

161 statements under Exs.P2 to P5, they told that they came to know that as the deceased has not begotten children, the accused poured kerosene on her and lit her on fire and hurriedly left the home. On peeping through the small hole of the door, P.W.4 witnessed the deceased Meenakshi shouting and crying with flames. Immediately, he raised hue and cry and rushed to his house and informed to his father who was present in the house. Then, his father rushed to the house of the accused and by putting off the flames, shifted the deceased to hospital.

19. P.W.10 is the photographer who took photographs of the dead body along with the scene of offence under Ex.P6. The suggestion to P.W.10 is that he is not the photographer who took Ex.P6 photographs. He took photographs on the requisition of Sub-Inspector of Police, Markapur Town Police Station on 17.10.2010.

20. Now, coming to the evidence of P.W.11, on 16.10.2010 she received requisition from the in-charge, Area Hospital, Markapur to record the dying declaration. Immediately, she proceeded to Area Hospital, Markapur, identified the patient with the help of duty doctor and while recording the statement, she was conscious and coherent and in a fit state of mind through out. To that effect, she obtained endorsement of the Doctor in Ex.P8. She recorded the dying declaration on 16.10.2010 at 5.30 PM at Area Hospital, Markapur. In the dying declaration the deceased clearly stated that her husband by name Siva, accused herein, poured kerosene on her and set her on fire

in her house at Poola Subbaiah colony, Markapur and at the time of incident, she herself and her husband alone were present and none else were present. The reason stated by her to lit her on fire is that as he could not conceive.

21. Similarly, P.W.14, the Inspector of Police, having received hospital intimation from the Government Area Hospital, Markapur, rushed to the hospital, recorded the statement of Meenakshi and he also sent requisition to P.W.11 for recording the dying declaration of the deceased. The evidence of P.W.14 read with P.Ws.13 and 15 goes to suggest that he received the hospital intimation under Ex.P14, rushed to the Hospital, recorded Ex.P13 at 17.00 hours on 16.10.2010 at Government Area Hospital, Markapur. He also obtained the endorsement of the duty Doctor under Ex.P13 under Ex.P19 that “patient is conscious and coherent with fit state of mind while recording her statement”. It is also specifically recorded by P.W.14 that the contents of the statement were read over and admitted to be true and obtained LTI of Meenakshi on Ex.P13. Similarly, on Ex.P8, P.W.11 also obtained LTI of Meenakshi and endorsement of the Doctor. In both Exs.P8 and P13 the deponent clearly stated that earlier, about a few days back, her husband attempted to pour kerosene on her as she was not blessed with any issues and she has escaped luckily. On 16.10.2010 at noon time the accused came and stated that she had not begotten any issues through him and threatened and encouraged her to die and poured kerosene on her and set her on fire

with match stick and as a result of it, her body was burnt in the flames and her husband escaped from that place due to fear. When she raised cries, neighbours came and put off the flames and telephoned to 108 ambulance and on arrival of ambulance, she was taken to Government Hospital, Markapur and admitted in the hospital and the Doctor treated her. The motive for the killing is as she has not begotten any issues. In both Exs.P8 and P13 the deceased clearly stated that except herself and the accused none else were present at the home at the time of incident. P.W.4 was also outside the house, therefore, the accused clearly chosen the time when none were present in the house, poured kerosene, lit her on fire with an intent to kill her as she has not begotten any issues.

22. P.W.13 is the V.R.O. whose clinching evidence is that the police observed the scene of offence and seized M.O.1 plastic kerosene tin under Ex.P10 seizurenama. His further evidence is that on the next day the police also conducted inquest in the presence of himself and another wherein he signed. The inquestdars against column No.15 opined that the accused set the deceased on fire by pouring kerosene for her failure to conceive.

23. P.W.15 took up the investigation on 17.10.2010 and his evidence is that after conducting inquest under Ex.P11, he sent the dead body for PME examination. The Doctor, who conducted autopsy on the dead body of the Meenakshi, was examined as P.W.12 and his report is marked as Ex.P9. During cross-examination P.W.12 found

burns all over the body with kerosene smell. About 90% of the skin is involved and it is red in colour and all the internal organs are congested and she opined that the death is due to shock and dehydration with extensive burns. The only suggestion to P.W.12 is that on the basis of inquest report, PME certificate is prepared without PME to accompany the police, that suggestion cannot be sustained in view of clinching evidence of P.W.15 - Investigating Officer.

24. The evidence of P.W.14 further established that after seizure of M.O.1, he prepared Ex.P6 rough sketch of the scene of offence after receiving Ex.P17 death intimation of the victim woman and Ex.P18 altered memo was submitted to the Court. On 23.10.2010, on reliable information, P.W.15 secured the presence of mediators, proceeded to Poola Subbaiah Colony and apprehended the accused.

25. The above facts and circumstances clearly goes to suggest that the accused was last seen by P.W.4 at his house while he went inside the house, poured the kerosene on the deceased and lit her on fire and hurriedly came out. P.W.4 intimated the same by raising hue and cry and on hearing the same, neighbours came, secured 108 ambulance in which the injured was sent to the Area Hospital, Markapur, for treatment. P.W.4 immediately went to his house, informed the same to P.W.5, who in turn telephoned and informed to P.W.1 about the accused pouring kerosene, lighting of fire and shifting of the deceased to Government Area Hospital, Markapur in 108 ambulance. There is continuity of chain of circumstances connecting

the accused with the murder. In the earliest statement of the deceased recorded by P.W.14 under Ex.P13 and dying declaration Ex.P8 recorded by P.W.11, the deceased clearly stated that the accused poured kerosene, lit her on fire as she could not conceive.

26. The motive for the murder of Meenakshi is as she did not conceive and which is not the only fault of the deceased. Even prior to the incident, the accused harassed the deceased and on intervention of elders, the deceased joined the appellant/accused on the undertaking given by him to take care of her. On 16.10.2010 at about 4.00 PM the accused poured kerosene on the deceased and lit her on fire. P.Ws.6 to 9, though turned hostile, their evidence established that they have seen the Meenakshi with flames in the house of the accused. The relevant portion to support the prosecution case can be considered even though the witness turns hostile. The inquestdars under Ex.P11 inquest report opined that the accused himself poured kerosene and lit her on fire as she did not conceive. P.Ws.11 and 14 who are Tahsildar/Executive Magistrate and Sub-Inspector of Police who recorded Ex.P8 and P13 from the deceased categorically stated in their evidence that on intimation received from P.W.12 they went to the Area Hospital, recorded dying declaration and before them the deceased clearly stated that she was set fire by the accused intentionally to kill as she could not conceive. Therefore, PME report under Ex.P9, inquest report under Ex.P11 corroborated with the evidence of P.Ws.1 to 5 goes to suggest that the death is homicide.

27. P.Ws.1 to 5, though related to the deceased, their evidence inspires confidence and are testified as circumstantial witness to prove that the accused addicted to vices and with an intention to kill the deceased, as she did not conceive, poured kerosene and lit her on fire. P.W.4 is the immediate witness who has seen the deceased in burns, immediately after coming out of the accused from the house hurriedly. The evidence of P.W.4 clinches the issue that while he was playing nearby the house of the deceased, accused came along with auto, rushed into the house and by that time, the deceased was taking bath and the accused/appellant asked P.W.4 to wait outside and he went inside the house and within no time came out of the house after setting the deceased on fire by pouring kerosene and went away. Then, on hearing the cries, P.W.4 peeped into the house through the small hole of the door and found the victim woman in flames. He raised cries, then P.Ws.6 to 9 and other neighbours came and put off the flames and shifted her to Government Hospital in 108 ambulance.

28. There is convincing evidence of P.W.2 that as the accused and his mother gave *pasaru* to make the deceased surrender to them, they took the deceased to Nandyal, Markapur and Hubli to get anti dose for the *chetabadi* allegedly made by the accused and his family members. The evidence of P.Ws.1 and 2 is clear that the accused was taken to various places apprehending that the deceased was victim of *chetabadi* in the hands of the family members of the accused and it is the evidence of P.W.2 that after applying *pasaru* by accused and his

family members, the deceased started acting adamantly. After length of cross-examination of P.W.2 it is elicited that mental condition of the victim woman was not proper and she used to beat and adamant towards her mother and reason for such behaviour is administering of some *pasaru* on her by the accused and his mother to make her surrender to them. P.W.2 further stated in the cross-examination that the deceased used to be afraid of her father P.W.1 when she was under the influence of *chetabadi*. The deceased used to deny to take food describing the food as insects. The clinching evidence on record supported by Exs.P8, P13 and inquest report – Ex.P11, corroborated with the evidence of P.Ws.1 to 5, established that the accused poured kerosene on the deceased and lit her on fire and she succumbed to burn injuries and the accused intentionally killed her as she did not conceive. Absolutely there are no contradictions or omissions either marked or suggested to any of the witnesses or got it clarified as alleged in the appeal.

29. In the facts and circumstances discussed above, we are of the considered view that the trial Court, having marshalled the facts and on appreciation of evidence, both oral and documentary, came to the right conclusion and rightly convicted and sentenced the accused for life imprisonment for the offence punishable under Section 302 I.P.C. We do not find any illegality or infirmity in the findings, conviction and sentence of the trial Court warranting interference.

30. In the result, the criminal appeal is dismissed while confirming the judgment dated 12.6.2012 in S.C.No.24 of 2011 on the file of the learned VI Additional District & Sessions Judge, Markapur, Prakasam District, convicting and sentencing the accused to undergo life imprisonment with fine of Rs.5,000/-, in default, to suffer six months simple imprisonment for the offence under Section 302 I.P.C.

31. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

23rd March, 2018

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