

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T. AMARNATH GOUD

CRIMINAL APPEAL No.240 OF 2012

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

1) Accused No.1 in Sessions Case No.1 of 2011 on the file of the Principal Sessions Judge, Karimnagar, is the appellant herein. She was tried on two charges. The first charge was for the offence punishable under Section 302 IPC, for causing the death of her daughter-in-law by name Asra Begum (hereinafter referred to as "the deceased"), by pouring kerosene and setting her on fire. The second charge was for the offence punishable under Section 498-A IPC, for harassing the deceased. Vide judgment dated 02.03.2012, the learned Sessions Judge, convicted the accused under Section 302 IPC and sentenced her to suffer "imprisonment for life" and also to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of six months. She was further convicted for the offence punishable under Section 498-A IPC and sentenced to suffer rigorous imprisonment for a period of three years and to pay fine of Rs.1,00,00/-, in default to suffer simple imprisonment for a period of three months.

2) The averments in the charge sheet are as under:

Accused No.1 is the mother-in-law while accused No.2 is the husband of the deceased. The marriage of the deceased with

accused No.2 took place in the month of April, 2005. Out of wedlock they blessed with a son. For the last three years, accused No.2 was staying in Dubai, while the deceased was staying with her in-laws. Since last one year, accused No.1 was behaving very rashly and cruelly with the deceased and point out at her in every work she does, used to quarrel and beat her and also inform everything to accused No.2 over phone. On hearing the words of accused No.1, accused No.2 used to abuse the deceased in filthy language and harass her. It is said that accused No.1 did not even provide sufficient food and other requirements to the deceased and was harassing her mentally and physically. On 08.08.2010 the deceased went to her parents house and stayed with them on the night and returned to the house on the next day. When the deceased returned to home, accused No.1 asked her about she attending the function without her permission. She replied that she did not attend the said function. Suspecting that the deceased attended a function without her permission started harassing the deceased and also informed the same to accused No.2 on cell phone. On 09.08.2010 evening, the husband of the deceased made a phone call to her and asked whether she attended the function. On that she informed that she did not attend the function. By keeping the same in the mind, accused No.1 decided to eliminate the deceased. On 12.08.2010 at about 6.30 hours, when the deceased was working in the kitchen room by bending down, the accused No.1 poured kerosene and set fire to her. Unable to bear the flames the deceased raised hue and cries. On hearing the

same, PW.1, the brother-in-law of the deceased came there and put off the flames by covering a blanket and also poured water on her. Immediately she was shifted to Dr.Pajeshwaraiah Hospital, Jammikunta and later referred to M.G.M.Hospital, Warangal.

ii) On receipt of information about the incident, on 12.08.2010 at 12.00 hours, PW.18-the Head Constable recorded the statement of the deceased. Basing on the said statement a case in Crime No.232 of 2010 under Section 498-A and 307 IPC came to be registered. Ex.P21 is the statement of the deceased recorded by PW.18. Ex.P22 is the first information report. On receipt of a requisition from the police authorities, PW16-the Special Judicial Magistrate of First Class, Warangal, proceeded to the M.G.M.Hospital, Warangal, identified the injured with the help of the duty doctor and on being satisfied with regard to the mental condition of the deceased, recorded the dying declaration of the deceased. Ex.P19 is the dying declaration. Ex.P20 is the endorsement of the duty doctor.

Later, PW.18 visited the scene of offence and recorded the statements of PWs.1 to 7. He observed the scene of offence in the presence of PWs.10 and 11 and prepared an observation report as well as the rough sketch. Ex.P14 is the Crime Details Form containing both the documents. During the course of observation, he seized a kerosene can, match box, burnt saree piece and broken bangles from the scene of offence. He also got photographed the scene of offence. On 14.08.2010 at about 9.50 p.m., the deceased

succumbed to injuries. On receipt of the death information, PW.19-the Inspector of Police, altered the section of law from U/ s. 498-A, 307 IPC to Section 498-A and 302 IPC and later entrusted the investigation to PW.18. PW.18 proceeded to Warangal and gave requisition to PW.14-the Executive Magistrate, to conduct inquest over the dead body of the deceased. Accordingly, PW.14 held inquest over the dead body of the deceased in the presence of PWs.12 and 13. Ex.P15 is the inquest report. Thereafter, the body was sent for postmortem examination.

iii) PW.15-the Assistant Professor in Forensic Medicine Department, Kakatiya Medical College, Warangal, conducted autopsy over the dead body of the deceased and issued Ex.P16-the postmortem certificate. According to her, the cause of death was “due to burns”.

iv) On 16.08.2010 PW.19 arrested the accused No.1 and remanded him to judicial custody. After completing the investigation and after collecting all the material papers, PW19-the Inspector of Police filed a charge sheet before the Court of the Additional Judicial Magistrate of First Class, Huzurabad against accused No.1 only since accused No.2 was not arrested as he was in abroad. After following the procedure contemplated under Section 207 Cr.P.C., the learned Magistrate committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.1 of 2011.

3) On appearance, charges under Sections 302 and 498-A IPC came to be framed, read over and explained to the accused, to which she pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs. 1 to 19 and got marked Exs. P1 to P23 and Mbs. 1 to 4. 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 her behalf, in support of her defence.

5) Relying upon the two dying declarations made by the deceased, coupled with the evidence of the doctor and the Magistrate which proves that it was a homicidal death, the learned Sessions Judge, convicted the appellant. Challenging the same, the present appeal is filed.

6) Learned counsel for the appellant mainly submits that the two dying declarations made by the deceased cannot be accepted, as they are inconsistent with each other. According to him in one dying declaration the deceased never spoke about the fact of beating whereas in the dying declaration there is only reference to beating by the accused. In view of the above, he would contend that if the dying declarations are not accepted, there is no other evidence to connect the accused with the crime.

7) On the other hand, the learned Public Prosecutor would contend that if the argument of the learned counsel for the

appellant is accepted, at the most it may not amount to an offence under Section 498-A IPC, but definitely the act of accused would show that she intentionally poured kerosene and set her on fire.

8) The point that arises for consideration is whether the accused is responsible for the death of the deceased and whether the ingredients constituting an offence punishable under Section 498-A IPC are made out.

9) As seen from the record, PWs. 1 to 7, 10, 12 and 13 did not support the prosecution case and they were treated hostile by the prosecution. In the absence of any oral evidence, the entire case revolves around the two dying declarations made by the deceased. The first dying declaration was said to have been made on 12.08.2010 before PW.18-the Head constable, which is placed on record as Ex.P21. The said statement was treated as first information report. In the said statement, the deceased stated that her marriage with accused No.2 was performed in the year 2005 and out of wedlock they blessed with one son. According to her, her husband is residing in Dubai since three years and she is staying in her in-laws house along with her mother-in-law, father-in-law and brother-in-law. It is stated that since last one year, her mother-in-law has been behaving cruelly, pointing out to mistakes on every work done by the deceased and quarrelling with her whenever she talks apart from beating her. According to her, accused No.1 used to complain that if the deceased washes the clothes the soap gets exhausted in three days, where as if it is used

by her it would last for 10 days. Whenever the deceased was taking meals, accused No.1 used to say that the deceased was eating too much. If the deceased wears good cloths, accused No.1 used to comment stating as to why she is wearing good cloths and used to harass her till she changes into old cloths. It is further stated that on 08.08.2010 the deceased along with her son went to her parents house and returned back on the next day morning. Upon which, the accused No.1 said that she had been to Abadi Jammikunta to attend function. She also telephoned to her husband and told him. Her husband telephoned and asked the deceased as to why she had been to function. When she told him that she did not go to function, he asked her to give phone to his mother and talked to her. Keeping the same in mind, accused No.1 has been harassing her physically and mentally since last three days saying that she had attended the function. On the date of incident, while the deceased was setting right the articles in the kitchen by bending down, accused No.1 poured kerosene and set fire to her with a match stick.

10) A reading of the said statement would show that on the date of incident while the deceased was setting right the articles in the kitchen by bending down, her mother-in-law poured kerosene and set her on fire with a match stick. The incident in question took place at about 6.30 or 7.00 a.m., in the morning. When she raised cries, her brother-in-law (PW1) came there and put off the flames by pouring water and covering her with a blanket.

11) From the above, it is clear that it was the accused-mother-in-law, who poured kerosene and set on fire.

12) Insofar as the allegations of harassment are concerned, it appears that the accused was not allowing the deceased to wear new cloths, used to harass her stating that she is eating too much and used to quarrel with the deceased on the ground that the soap used by her gets exhausted in three days, while it lasts for 10 days if used by accused No.1. Apart from that the accused No.1 used to harass her by commenting that she is roaming in the village.

13) The second dying declaration is said to have been recorded by the Magistrate, which is placed on record as Ex.P19. As per the evidence of PW.16, on 12.08.2010, she received a requisition from the police outpost, M.G.M.Hospital to record the dying declaration of Asra Begum (deceased). Immediately, he went there and identified her with the help of the duty doctor and recorded her statement, after taking the endorsement of the doctor with regard to the mental fitness of the deceased to make the statement. She also ascertained the condition of the deceased, by putting some preliminary questions. As per the dying declaration, on the date of incident at about 7.30 a.m., while she was in the kitchen, her mother-in-law poured kerosene and set her fire. On hearing the cries of the deceased, her brother-in-law came there and poured water. Her elder brother brought her to the hospital. According to the dying declaration, her mother-in-law used to harass her severely and she was not giving food to her.

It was further stated that her mother-in-law used to quarrel everyday.

14) Though this dying declaration is subsequent to one recorded by the head constable, details of harassment as mentioned in the earlier statement are not mentioned except stating that her mother-in-law used to harass her severely by not giving food.

15) If these two dying declarations are looked into, definitely we feel that the ingredients to constitute an offence punishable under Section 498-A IPC are not made out. As stated earlier, the allegations of beating which are referred to in one dying declaration are absent in the other dying declaration. In one dying declaration she stated that her mother-in-law used to comment that she was eating too much of food and in other dying declaration she used to say that her mother-in-law was not providing food to her. Having regard to the above, we feel that the ingredients constituting an offence punishable under Section 498-A IPC are not made out.

16) However, the act of accused No.1 in pouring kerosene and setting her on fire is consistent in both the dying declarations. Even if the dying declaration recorded by the police is excluded from consideration as urged by the learned counsel, the dying declaration recorded by the Magistrate, inspires confidence in the Court to rely upon. No suggestions are given as to why the said dying declaration should be disbelieved. It is not the case of the

accused that the said dying declaration is an outcome of tutoring. Hence, we feel that the dying declarations recorded by the Magistrate can be acted upon to hold that the accused No.1 is responsible for the death of the deceased. Having regard to the circumstances stated above, the finding of the trial Court with regard to conviction and sentence for the offence under Section 302 IPC warrants no interference.

17) Accordingly, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant in S.C.No.1 of 2011 on the file of the Principal Sessions Judge, Karimnagar, for an offence punishable under Section 498-A IPC is set aside. However, the conviction and sentence recorded against her for the offence punishable under Section 302 IPC is hereby confirmed.

18) Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

18.04.2018
gkv