

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.280 of 2012

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

1) Accused No.1 in S.C.No.491 of 2010 on the file of the III Additional District and Sessions Judge, Kakinada, is the appellant herein. He along with accused Nos.2 to 4, were tried on two charges. The first charge was against accused No.1 for the offence punishable under Section 302 IPC, for causing the death of his wife by name Kakara Sumalatha (hereinafter referred to as "the deceased) on 28.04.2010 at Palikavari Veedhi, Patha Gaigolupadu Village, Kakinada Rural Mandal. The second charge was against accused Nos.2 to 4 for the offence punishable under Section 498-A IPC, for harassing the deceased to get additional dowry. Vide judgment, dated 31.01.2012, the learned Sessions Judge, while acquitting accused Nos.2 to 4 for the offence punishable under Section 498-A IPC, convicted accused No.1 for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.500/- in default to suffer simple imprisonment for a period of one month.

2) The facts as culled out from the evidence of the prosecution witnesses are as under:

i) PW.1 is the mother of the deceased, while PWs.2 and 3 are the sons of the deceased and accused No.1. Accused No.1 is the husband of the deceased, accused Nos.2 and 3 are parents of accused No.1 and accused No.4 is the sister of accused No.1. The marriage of the deceased with accused No.1 took place in the year 1999. Since all the witnesses turned hostile, we shall refer to the averments made in the charge sheet to know the facts in issue.

ii) As per the charge sheet, the case of the prosecution is that after shifting the family to Gaigolupadu village, accused No.1 was not looking after the deceased, PWs.2 and 3 properly, nor bringing provisions nor giving money for maintenance of the family. He was spending all his earnings for his luxuries and used to beat the deceased whenever she demanded money to bring the provisions and for maintenance of the family. It is alleged that the accused No.1 developed illicit intimacy with his niece and used to visit the house irregularly. On 22.04.2010, the accused No.1 left the house and returned to his house on 23.04.2010. When the deceased questioned him about his absence on 22.04.2010, he said to have replied that it is none of her

business. Then accused Nos.1 to 4 beat the deceased with hands, laid her down and kicked her.

iii) On 28.04.2010 at about 4.45 p.m., PW.16-the Sub-Inspector of Police, Sarpavaram Police station, received an intimation about the admission of one Sumalatha with burn injuries in the hospital. Ex.P20 is the medical intimation. Immediately he proceeded to the Government Hospital, Kakinada and recorded the statement of the deceased. Ex.P21 is the said statement. Basing on the said statement, he registered a case in Crime No.89 of 2010 for the offences punishable under sections 498-A and 307 read with 34 IPC. Ex.P22 is the first information report.

iii) On 28.04.2010 at about 5.00 p.m., PW14-the Special Mobile Magistrate, Kakinada, received a requisition from Government General Hospital, Kakinada, for recording the dying declaration of Sumalatha. Ex.P15 is the said requisition. Immediately, he proceeded to the hospital, identified the injured through the duty medical officer. After being satisfied that the declarant was in a fit state of mind to give declaration, he recorded the dying declaration. He also obtained the endorsement of the duty doctor with regard to mental fitness of the declarant before he

recording the dying declaration. Ex.P17 is the dying declaration.

iv) On 29.04.2010, PW.16 proceeded to the Government Hospital, Kakinada and recorded the 161 Cr.P.C. statement of the injured at 7.00 a.m., which is placed on record as Ex.P23. Thereafter, he proceeded to the scene of offence which is situated in the front portion of the house of the accused. In the presence of PW.13 and one G.Satyanarayana, he made an observation of the scene, which is placed on record as Ex.P13. During the said proceedings he seized Mos.1 to 6. He also prepared a rough sketch of the scene, which is marked as Ex.P24. The photographs of the scene were also taken vide Exs.P25 to P32. On 03.05.2010, he received intimation about the death of the deceased from the hospital. Basing on which, he altered the section of law from 307 IPC to 302 IPC. Ex.P36 is the altered first information report. In view of the death of the injured, he transferred the investigation to the Inspector of Police (PW.17).

v) On receipt of the altered first information report, PW.17 proceeded to the hospital and conducted inquest over the dead body of the deceased in the presence of PW.13 and another. Ex.P14 is the inquest report. He got

photographed the dead body of the deceased. During inquest, he examined PWs.1 to 8 but did not record their statement since the S.I. of Police has already recorded their statements. He examined PWs.11 and 12 and recorded their statements. Later, the dead body was sent for postmortem examination.

vi) PW15-the Assistant Professor, Department of Forensic Medicine in Rangaraya Medical College and Government General Hospital, Kakinada, conducted autopsy over the dead body of the deceased and issued Ex.P19-the postmortem certificate. According to him, the cause of death was “due to septic and toxic conditions as a result of 1st degree superficial inflicted burns on 87% of the body surface area”.

vii) On 04.05.2010, PW.17 arrested accused Nos.1 to 4 and forwarded them to judicial custody. After collecting all the material, PW.17 filed a charge sheet before the Court of the Special Mobile Judicial Magistrate of First Class, Kakinada, which was taken on file as P.R.C.No.29 of 2010. After complying with Section 207 Cr.P.C., the case was committed to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.491 of 2010.

3) On appearance, charge under Section 302 IPC came to be framed against accused No.1 and charge under Section 498-A IPC came to be framed against accused Nos.2 to 4, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 17 and got marked Exs.P1 to P38 and MOs.1 to 6. After the closure of prosecution evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the two dying declarations made by the deceased, to which they denied. No oral or documentary evidence was adduced on behalf of the accused.

5) Out of 17 witnesses examined by the prosecution, PWs.1 to 12 did not support the prosecution case and they were treated hostile by the prosecution. Believing the two dying declarations made by the deceased, the learned Sessions Judge, while acquitting accused Nos.2 to 4 for the offence punishable under Section 498-A IPC, convicted accused No.1 for the offence punishable under Section 302 IPC and sentenced him to suffer Life Imprisonment. Challenging the same the present Criminal Appeal came to be filed.

6) Learned counsel for the appellant mainly submits that no reliance can be placed on the two dying declarations made by the deceased since both of them are inconsistent with each other. It is urged that having disbelieved the substratum of the prosecution case, with regard to harassment for additional dowry, convicting the appellant basing on the two dying declarations, which are not only inconsistent but not supported by any independent evidence, is improper and illegal. In any event, she submits that a reading of the two dying declarations coupled with the medical evidence would show that the appellant never intended to cause the death of the deceased and in sudden provocation made by the deceased, the incident took place. Hence, pleads that the nature of offence be scaled down.

7) On the other hand, the learned Additional Public Prosecutor would contend that there is no need to disbelieve the two dying declarations recorded by the Magistrate and the police and as such the conviction imposed by the trial Court does not require any interference.

8) The point that arises for consideration is (i) whether the accused is responsible for the incident in question and (ii) whether the manner in which the incident took place warrants his conviction under Section 302 IPC.

9) As stated by us earlier, all the witnesses including the mother and children of the deceased did not support the prosecution case and were treated hostile by the prosecution. Therefore, we are left with the two dying declarations recorded by the police and the Magistrate coupled with the evidence of the doctor, to decide the above two issues.

10) The first dying declaration was recorded by PW.14-the Magistrate at 5.50 p.m. According to him, on that day he received a requisition from the Government General Hospital, Kakinada, for recording the dying declaration of the deceased. Ex.P15 is the said requisition. Pursuant to the same, he proceeded to the hospital at 5.20 p.m., identified the injured, put simple questions to the injured and after being satisfied with regard to mental fitness of the declarant, recorded the dying declaration. In the said dying declaration, the deceased stated as under:

“Today is my marriage day. My mother purchased cloths and I wore it. My husband came and beat me. While I am weeping inside the house, he said that I am not supposed to weep in the house and asked me to go out and die, saying that he poured kerosene on me and then I picked up the matchstick, then he lighted the matchstick and burnt me. He did not put of the fire even though I

was burnt. Then my relatives came and asked why you have not put off the fire and he rushed against them. The neighbours phoned for ambulance and brought me here. My husband did not give money for necessities if I asked him he scolded me. His niece is at Gorinta, near Samarlakota. Every week end he used to go there and nothing to say any more.”

11) A reading of the contents of the dying declaration would show that the day on which the incident took place was marriage day of the deceased and accused No.1. On that day the deceased came home and beat her. While she was weeping inside the house, accused No.1 asked her to go out and die, so saying he poured kerosene on the deceased, but he did not lit the match stick. When the deceased herself tried to light the match stick, accused No.1 is said to have lit the match stick. It is stated that the accused No.1 did not make any effort to put off the fire even though the deceased was burning.

12) In the cross-examination, the learned Magistrate, admits that the deceased stated before him as “Aggipullani nenu teesokoni ela ante anthaloki aayana veliginchesadu”. He admits that he did not seek any clarification to the statement made by the declarant. From a reading of the said sentence which was made in the dying declaration, it is

clear that the accused never set the deceased on fire initially and only when the deceased tried to lit the match stick, he lit and threw the match stick.

13) Coming to the next dying declaration (Ex.P21), recorded by PW.16 at 9.30 p.m., on 28.04.2010, basing on which the first information report came to be registered, it was stated that on the date of incident the accused No.1 went out at 8.00 a.m., returned home at 3.00 p.m., and questioned the deceased as to whether she cooked food. The deceased is said to have replied stating as to how she can cook food without any money being given to her. Then accused No.1 beat her with hands and legs and said that today is not her marriage day but is her death day. So saying, he poured kerosene and set her on lit fire. When she raised cries, nobody came for her rescue, but however one Ananda Rao, came and put off the fire, thereafter neighbours came there. Ananda Rao and neighbours scolded the accused No.1, telephoned to 108 ambulance and shifted her to Government Hospital, Kakinada. The version in the said statement appears to be a slight improvement from the statement made before the Magistrate. Though the reason for committing the offence is consistent but the deceased further stated that when she answered in negative, accused No.1 beat her with hands and legs and saying that it is not

her marriage day but is her death day, poured kerosene and set fire. Thereafter, accused No.1 took her to Government Hospital, Kakinada in 108 ambulance. It is clear that after setting the deceased on fire, accused No.1 at the instance of Ananda Rao, called 108 ambulance and took the deceased to the hospital.

14) It is also to be noticed that the contents of the scene of offence panchanama show that there was a galata prior to the incident. It would be appropriate to extract the contents of the scene of offence panchanama as observed by the panch witnesses and spoken to in the Court, which is as under:

“On observing the portion of Kakara Srinivas in the west side comes to south-west corner there are six broken glass bangles pieces. The wooden door of the Eastern door way was lying in the room towards northern side under it one pillow and plastic covers are lying scattered. There is one double cot bed with mattress without bed sheet in the room. Stuation of the room shows that galata took place in that room.”

15) Therefore, the scene of offence panchanama coupled with the two dying declarations clearly indicates

that there was some kind of quarrel between wife and husband leading to the incident in question.

16) It is clear that though accused No.1 initially did not lit the match stick immediately, as stated by the deceased in the dying declaration recorded by the police, but the deceased herself picked up a match stick and wanted to set herself fire, then accused No.1 said to have lit the match stick and threw at the deceased. Therefore, when the incident in question is preceded by a quarrel, and the act of the deceased in trying to set herself on fire by picking up a match box, provoked accused No.1 in throwing a match stick at her. Therefore, it cannot be said that accused No.1 had any motive to kill the deceased, but it can be inferred that he has intention and knowledge that such act would cause the death of the deceased. Hence, it is a fit case where the nature of offence can be scaled down from 302 IPC to 304 Part-I IPC.

17) Accordingly, the Criminal Appeal is partly allowed and the conviction imposed against the appellant/ accused in Sessions Case No.491 of 2010 on the file of the III Additional District and Sessions Judge, Kakinada, for the offence punishable under Section 302 IPC is set aside and consequently, the appellant is convicted under Section 304

Part-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous imprisonment for a period of ten 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 No.1 shall be set at liberty forthwith, if not required in any other case, on completion of ten years rigorous imprisonment, including remissions, if he is entitled to.

18) This Court, vide its order dated 05.06.2017 in CrI.A.M.P.No.824 of 2017 directed release of the appellant/ accused No.1 on bail on the terms and conditions mentioned therein. In view of the above sentence, the Magistrate concerned shall take immediate steps to secure the presence of accused No.1 to serve the remaining sentence of imprisonment. Registry is directed to forthwith communicate a copy of this Judgment to the concerned Court.

19) Consequently, miscellaneous petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

T. RAJANI, J

18.07.2018
gkv