

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD

Crl.A.No.699 of 2012

Date:06.11.2018

Between.

Shaik Baji,
S/o Nasar Vali

.....Appellant

And.

The State of A.P, reptd.,
by the Public Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellant: Mrs. A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor for the State of AP

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

Accused No.1 in Sessions Case No.406 of 2010 on the file of the Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-IV Additional District and Sessions Judge, Guntur, filed this Criminal Appeal questioning his conviction for the offences punishable under Sections 302 and 498-A IPC and sentencing to suffer Rigorous Imprisonment (for short 'RI') for life and to pay a fine of Rs.2,000/- and in default of payment of fine, to suffer simple imprisonment for two months for the former offence and also to suffer RI for a period of one year and to pay a fine of Rs.500/- and in default of payment of fine, to suffer simple imprisonment for one month for the latter offence. Both the sentences were directed to run concurrently.

The deceased was the wife of the appellant. On 09.12.2009, the deceased suffered burns and one month thereafter, she succumbed to them. Though initially, the Police have registered F.I.R. under Sections-309, 498-A and 307 IPC, based on Ex.P-11-the statement of the deceased recorded by P.W-11 and Ex.P-9-dying declaration of the deceased recorded by P.W-10, the F.I.R. was altered by deleting Sections-307 and 309 IPC and adding 302 IPC after the death of the deceased. Based on the material collected during the investigation of the case by the Police, the lower Court framed the following charge:

“Firstly and lastly, that you A-1 is the son of A-2, that you A-1 married the deceased-Shaik Hasinabee about two years ago and that both lived together happily for about six months and thereafter, she gave birth to a male child and that you A-1 was addicted to vices and that you A-1 sold her gold chain, silver anklets to meet your vices and that you A-2 joined A-1 and started harassing the deceased. You A-1 also suspected the fidelity of the deceased. On 09.12.2009, you A-1 picked up quarrel with deceased and poured kerosene on her and tortured her, she raised alarm, the flames were extinguished by the neighbours and the deceased told them that you poured kerosene, her statement was recorded in the hospital, later, the deceased died. Thus, you A-1 liable for the offences under Sections-498-A and 302 of IPC and you A-2 liable for the offence punishable under Section-498-A IPC.”

As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution examined P.Ws.1 to 11, got Exs.P-1 to P-19 marked and produced M.Os.1 to 3. On behalf of the defence, no evidence was let in.

On appreciation of the oral and documentary evidence, the lower Court has acquitted accused No.2 and convicted and sentenced the appellant/accused No.1 in the manner as noted hereinbefore.

The necessity to re-appreciate the evidence is obviated as, after a detailed hearing, Mrs. A.Gayathri Reddy, learned counsel for the appellant, fairly conceded that the prosecution succeeded in bringing the evidence on record to show that the cause of

death of the deceased was not suicide and that, while the deceased has poured kerosene on herself in order to threaten the appellant, who was harassing her, the appellant has lit the match stick and set fire on the deceased. She, however, argued that on the facts and circumstances of the case, the act committed by the appellant falls under Exception-IV to Section-300 IPC and consequently, under Section-304 IPC.

Learned counsel representing the learned Public Prosecutor for the State of Andhra Pradesh, sought to justify the judgment of the lower Court.

Even as per Ex.P-11-the statement of the deceased recorded by P.W-11, the deceased poured kerosene on herself, following a serious quarrel between herself and the appellant, to threaten the latter, who has set fire to her. An act committed by a person leading to death falls under Exception-IV to Section-300 IPC, *i.e.*, culpable homicide not amounting to murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner. The fact that the appellant has not poured kerosene on the deceased shows that he did not have the pre-meditated intention to kill the deceased. However, the fact that the appellant has set fire on the deceased after the latter has poured kerosene on herself would show that the appellant has

developed intention to kill her in the sudden fight and in the heat of passion after he saw the deceased pouring kerosene on herself and he set fire on her. The further fact that the deceased died more than one month after the occurrence shows that the appellant has not acted in a cruel or unusual manner by taking undue advantage of the situation. Therefore, we have no hesitation to hold that the act committed by the appellant amounts to culpable homicide not amounting to murder.

The further question, however, is under which of the two parts of Section-304 IPC the offence would fall. The offence falls under Section-304 Part-I IPC, if the act by which the death is caused is done with the intention of causing death or of causing bodily injury as is likely to cause death. As observed hereinbefore, the appellant had acted with the intention of causing the death of the deceased. Therefore, the offence committed by him falls under the said provision.

As regards the sentence, considering the young age of the appellant, we are of the opinion that interests of justice would be met if he is sentenced to undergo rigorous imprisonment for a period of eight years.

With respect to the conviction and sentencing of the appellant for the offence punishable under Section-498-A IPC, the evidence of P.Ws.1, 2 and 5 apart from Exs.P-9 and P-11- the dying declaration and the statement of the deceased,

respectively, clearly show that the appellant used to harass the deceased. Therefore, the lower Court has rightly convicted the appellant for the said offence and appropriately sentenced him for the said offence. Hence, we do not find any reason to interfere with that part of the judgment of the lower Court.

On the analysis as above, the Criminal Appeal is partly allowed by converting the conviction of the appellant from Section-302 IPC to one under Section-304 Part-I IPC and substituting the life imprisonment imposed on him by the lower Court with rigorous imprisonment for eight years. All other sentences including that of fine shall stand confirmed. The appellant shall surrender himself before the Superintendent of Police, Central Jail, Rajahmundry, within one week from today for serving the remainder of the sentence.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE T.AMARNATH GOUD

06th November, 2018

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