

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.717 of 2012

Date: 13.11.2018

Between:

Syed Basha

.....Appellant

and:

The State, rep. by its Public Prosecutor,
High Court of Andhra Pradesh.

.....Respondent

Counsel for the appellant: Mrs.C.Vasundhara Reddy
for Mr. Suresh Kumar Reddy Kalava

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*)

This case involves gruesome killing of two innocent persons *i.e.*, a young woman and an infant, who are the wife and son of the appellant/accused respectively. Though initially, the appellant was suspected along with one Shafi, interestingly, the Police have registered FIR only against Shafi. The FIR was, however, altered later *vide* Ex.P.14- Alteration Memo based on Ex.P.24- Dying declaration recorded by PW.13- III Additional Junior Civil Judge, Tirupathi, on 26.05.2010 and the appellant alone was arrayed as accused.

Based on the material collected during the investigation of the case by the Police, the lower Court framed the following charges:

“Firstly:

That you being the husband of L.W.1 S.Sabitha prior to 13-05-2010 at Bangalore and Punganur subjected her to cruelty *i.e.*, demanding additional dowry of Rs.10,000/- from her parents and that you thereby committed an offence punishable u/sec.498-A of Indian Penal Code and within my cognizance.

Secondly:

That you on or about 13-05-2010 at about 2-00 a.m., at your house in Bhagath Singh Colony, Punganur did an act *i.e.*, pouring thinner liquid on your wife *i.e.*, L.W.1 S.Sabitha and lighting fire with such intention and under such circumstances *i.e.*, you suspected her character and you

caused hurt to your wife and that of you thereby committed an offence punishable u/sec.307 of Indian Penal Code and within my cognizance.

Lastly:

That you on the above said date, time and place committed murder intentionally causing the death of your son Thanveer by pouring thinner on your son and litting fire and that you thereby committed an offence punishable u/sec.302 of Indian Penal Code and within my cognizance.”

As the plea of the appellant was one of denial, he was subjected to trial, during which, the Prosecution examined P.Ws.1 to 14, got Exs.P-1 to P-25 marked and produced M.Os.1 to 7. On behalf of the defence, DW.1 was examined and Exs.D.1 and D.2 were marked.

On appreciation of the oral and documentary evidence, the lower Court has found the appellant guilty of the offences punishable under Sections 302 and 498-A IPC and sentenced him to undergo Rigorous Imprisonment for life and also to pay a fine of Rs.1,000/- and in default of payment of fine, to suffer Simple Imprisonment for three months for the former offence and also to undergo Simple Imprisonment for a period of one year and also 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. Aggrieved by the same, the appellant filed this Criminal Appeal.

For convenience, both the deceased son and wife of the appellant shall be referred as deceased Nos.1 and 2 respectively.

Smt.C.Vasundhara Reddy, learned Counsel representing Mr.Suresh Kumar Reddy Kalava, learned Counsel for the appellant, submitted that there are three statements of deceased No.2 treated as dying declarations; that they suffer from serious contradictions and that therefore, they are not worthy of reliance. She further submitted that though one Shafi was named along with the appellant as suspect in Ex.P.11- statement of deceased No.2 recorded by PW.22- Sub-Inspector of Police, Punganur Police Station and he was shown as accused in the First Information Report (FIR), his name was, subsequently, deleted and the name of the appellant was included. The learned Counsel, accordingly, submitted that the appellant was roped into the case as an after thought. She further argued that in the absence of any corroborative evidence to prove that the appellant caused the death of the deceased, the Prosecution failed to prove his guilt beyond all reasonable doubts. She referred to Ex.P.22- FSL report and submitted that no inflammable hydrocarbons were found on items 1 to 3- wearing apparel of deceased No.2 and that therefore, the

Prosecution failed to prove that she had suffered burns on account of pouring of thinner liquid as alleged by it. The learned Counsel alternatively submitted that the fact that deceased No.2 received burns only to the extent of 30 to 40% and died on 31-07-2010 *i.e.*, more than 75 days after the incident, after she suffered burns, shows that the appellant did not have the intention of killing her and that therefore, the offence alleged against him falls under Section 304 Part II IPC.

Opposing the above submissions, the learned Counsel representing the learned Public Prosecutor for the State of Andhra Pradesh submitted that Exs.P.11, P.15 and P.24- the three statements of deceased No.2 proved beyond any doubt the presence of the appellant at the time of occurrence and that having failed to come out with any explanation for the cause of both the deceased suffering burns, the Court below has rightly found the appellant guilty of the offence of murders.

As regards the alternative submission, the learned Counsel submitted that even though deceased No.2 died about 75 days later, deceased No.1 died within a couple of hours after his admission into the hospital and that therefore, the conviction of the appellant for the offence punishable under Section 302 IPC cannot be altered to that under Section 304 Part II IPC.

We have carefully considered the respective submissions of the learned Counsel for the parties with reference to the record.

The case of the Prosecution is mainly based on Exs.P.11 and P.15 recorded by PW.10- Sub-Inspector of Police, Punganur Police Station and PW.11- Inspector of Police, Punganur Circle respectively, and Ex.P.24 recorded by PW.13- III Additional Junior Civil Judge, Tirupati, apart from the ocular evidence of PW.1- mother of deceased No.2 and the grand mother of deceased No.1 and PW.2- neighbour of the deceased and also the brother of the owner of the house, in which the appellant and the deceased were residing as the tenants.

In her evidence, PW.1 deposed that the appellant has looked after deceased No.2 well only for a period of one year after marriage and that later, he started harassing her by insisting on her to bring money from her parents *i.e.*, PW.1 and her husband; that one day before the incident, she received a phone call from deceased No.2, who informed on phone that the appellant was beating and abusing her by insisting on her to bring Rs.10,000/- or atleast Rs.5,000/- from PW.1; that she consoled her daughter, proceeded to Punganur and met her at her house; that deceased No.2 cried and narrated the harassment made by the appellant for

not bringing money; that one month thereafter, one day at about 7.00 a.m., one person came to her house and informed her that while she was at bus stand, she heard the discussion between some persons that both deceased No.1 and deceased No.2 sustained burn injuries and were shifted to SVRR Hospital, Tirupathi, for treatment; that upon hearing the same, PWs.1, 2 & 4 and other relatives rushed to the Hospital; that when she first tried to approach deceased No.2, she was driven away by the Hospital management; that on the next day at about 7.00 a.m., she was allowed to see deceased No.2; that when she enquired as to what happened, the latter informed that herself and her son sustained burn injuries; that the appellant has insisted on her to sleep in a separate room along with deceased No.1; that the appellant and his parents slept in the hall; that at about 3.00 a.m., she woke up with the emission of the smell of thinner; that she noticed that the appellant sprinkled thinner on her and her son; that immediately, the appellant lit fire with match stick and went away into the hall; that deceased No.2 raised cries for help; and that after confirming that both the deceased were substantially burnt, the appellant and his parents approached them and poured water upon them with a bucket. That the appellant threatened deceased No.2 not to reveal his name to her parents or to the Police and informed her that he will kill her son, if she reveals the truth to anyone. That deceased

No.2 also informed PW.1 that, in order to save her son from the appellant, she gave false statement at the time of admission in the hospital; and that subsequently, on coming to know that her son died, she gave true and correct statement.

PW.2 deposed that when she was sleeping in her house at about 2.00 or 3.00 a.m., she heard the cries; that when she rushed to the house of the appellant, she found deceased Nos.1 and 2 in flames and the appellant and his parents pouring water upon them; that after all of them have put out the flames, the appellant secured one Tata Sumo and shifted both the deceased initially to the Government Hospital, Punganur, and from there, to Tirupathi for treatment, where deceased No.1 died. That the witness visited deceased No.2 in Tirupathi hospital; that on her enquiry, deceased No.2 had informed that the appellant had sprinkled thinner upon her and her son and set them on fire.

In Ex.P.11- statement of deceased No.2 recorded by PW.10, she stated that herself and her son were sleeping in her tiled roof house on the night of 12-05-2010, that the appellant was sleeping near her feet while her parents-in-law were sleeping in the hall; that at about 2.00 a.m., suddenly, her saree caught flames due to which deceased No.1 also caught flames and both of them raised cries. That on hearing the cries, the appellant and his parents-in-law put

out the flames by pouring water and shifted herself and her son to the Government Hospital at Punganur for treatment, who referred them to the Tirupathi Hospital. She further stated that she came to know that her son did not recover from burn injuries and died on the morning of 13-05-2010 and that she suspects one Shafi, who is the resident of her colony, and her husband for the said incident. She further stated that the appellant now and then used to tell her that if she leaves his house, he will marry another woman. She further added that some one poured thinner on her and lit fire with match stick and that she does not know, who committed the offence and for what purpose.

Ex.P.15 was recorded by PW.11 on 14-05-2010. In that statement, deceased No.2 referred to the dowry paid by her parents to the appellant, his sustaining losses in Panipuri business, borrowing some money, commencing painting work and harassing her to bring money from her parents to discharge the debt of Rs.1 lakh. She further stated that she has brought Rs.20,000/- from spandana group through her parents and that one month later, the appellant started harassing her demanding to bring another sum of Rs.10,000/- from her parents. As regards the actual event, she stated that on the night of 12.05.2010, herself and deceased No.1 were sleeping in their tiled roof house; that at about 2.00 a.m., she

woke up due to thinner smell; that she observed her husband near her feet with thinner bottle; that he poured thinner on herself and her son, lit fire with match stick and threw the match stick on her saree, as a result of which, both herself and her son sustained burn injuries; that on hearing their cries, the appellant went out, brought water and poured the same on herself and her son and that later, she was shifted to Punganur Hospital and therefrom to SVRR Hospital, Tirupathi; that after she was admitted in the said Hospital, the appellant threatened her to state that the incident happened accidentally; that she was suspecting one Shafi for the incident; and that she has, accordingly, stated before the Police.

Twelve days after Ex.P.15 was recorded, PW.13- III Additional Junior Civil Judge, Tirupathi, recorded Ex.P.24- statement of deceased No.2. In the said statement, she stated that the appellant started harassing her since 1½ years after their marriage demanding money and also suspecting her character. She further stated that one night, when herself and her son were sleeping in a room and her parents-in-law were sleeping in the hall, at about 3.00 a.m., her husband poured thinner on herself and her son; that on hearing the cries, her parents-in-law and neighbours came; and that the appellant shifted them to the Government Hospital, Punganur.

If we closely examine the three different statements made by deceased No.2, there are marked improvements from one statement to the other. In her earliest statement *i.e.*, Ex.P.11, she was not very sure as to who set herself and her son on fire. She, however, suspected the appellant and one Shafi. In the later two statements *i.e.*, Exs.P.15 and P.24, she directly indicted the appellant of pouring thinner and setting fire to herself and her son. In Ex.P.15, she has stated that as the appellant has threatened to kill her son, if she speaks the truth, she did not disclose that her husband is the offender. However, as rightly submitted by the learned Counsel for the appellant, in her earliest statement *i.e.*, Ex.P.11 itself, deceased No.2 has referred to the fact of the death of her son. It would, thus, appear that deceased No.2 has come out with improved versions in Exs.P.15 and P.24, evidently, as a result of tutoring by PW.1. Therefore, it is not safe to rely upon the contents of Exs.P.15 and P.24. Ex.P.11 being the earliest statement, it is safe to rely upon its contents. As noted above, deceased No.2 did not claim to have seen the appellant or any one else pouring thinner and setting them on fire. She referred to the fact that her husband was sleeping in the same room. However, in Exs.P.15 and P.24, she varied her version by stating that the

appellant was sleeping along with her parents in the adjacent hall.

Even PW.1 also deposed on the same lines.

Assuming that the appellant was sleeping in the adjoining hall, the fact, however, remains that he was very much present in the house when the occurrence has taken place. Except making a suggestion to PW.1 and other witnesses that the deceased sustained accidental burns through a kerosene lamp, no evidence was let in by the defence in support of this suggestion. It was specifically put to the appellant through question Nos.43 and 44 that PW.10 has recorded the statement of deceased No.2 in the burns ward on 13-05-2010 at 8.00 p.m., and based on the statement of deceased No.2, he altered the Sections of Law from 302 and 327 IPC to 304-B and 302 IPC. Questions were put to the appellant with respect to recording of Exs.P.15 and 24 by PWs.11 and 13. Except expressing ignorance, the appellant did not offer any explanation. The only explanation offered by the appellant, in answer to question No.74 as to whether he has anything to say about the case, was that he did not know PW.1 prior to the marriage; that one Chittimabee arranged his marriage with deceased No.1; that since then, PW.1 has no liking towards him; and that therefore, she has foisted the case.

Though there is no direct evidence to prove that the appellant had caused the death of the deceased, from the above discussed evidence, it is quite evident that he was very much present in his house, if not in the room in which the deceased were sleeping. Therefore, the burden lies on the appellant to explain as to how the deceased caught fire, which was especially in his knowledge. As noted herein before, though the statements of the deceased were specifically put to him, he did not offer any explanation whatsoever. He neither pleaded his absence at the time of occurrence nor pleaded accidental death. Though the appellant has a right to maintain silence, his failure to explain the incriminating points would give rise to the Court drawing adverse inference (see **Phula Singh vs. State of Himachal Pradesh**¹, **Ram Naresh Vs. State of Chattisgarh**², **Munish Mubar vs. State of Haryana**³, **Raj Kumar Singh @ Raju @ Batya vs. State of Rajasthan**⁴ and **Raj Kumar Singh vs. State of Rajasthan**⁵).

By failing to explain the cause of burns, which occurred when he was very much present in the house, the appellant also failed to discharge the burden placed on him under Section 106 of the Indian Evidence Act, 1872. Therefore, we are of the opinion that

¹ AIR 2014 SC 1256 = 2014(4) SCC 9

² AIR 2012 SC 1357 = 2012(4) SCC 257

³ AIR 2013 SC 912 = 2012 (10) SCC 464

⁴ AIR 2013 SC 3150 = 2013 (5) SCC 722

⁵ (2013) 5 SCC 722

the lower Court has rightly held the appellant as being responsible for causing burns to both the deceased.

With respect to the submission of the learned Counsel for the appellant that Ex.P.22- FSL report does not show the presence of hydrocarbons on the wearing apparel of deceased No.2, we may point out that the said report does not even show the presence of any Kerosene so as to come to the conclusion that the deceased have received accidental burns from the Kerosene lamp as sought to be projected by the defence. The fact that the deceased died of burns is not in dispute. RFSL report being an opinion evidence, the same is not conclusive and binding on the Court. If the undisputed facts reveal that the deceased have suffered burn injuries on account of fire, RFSL report cannot override the same.

As regards the alternative submission advanced by the learned Counsel for the appellant, no doubt, deceased No.2 has died 75 days after her receiving burns, but her son- deceased No.1 died instantaneously *i.e.*, within three hours of his suffering burns. It is not the case of either the Prosecution or the defence that any altercation preceded the incident. Therefore, it could be safely concluded that with a premeditated intention, the appellant poured thinner on deceased No.2 and set her on fire, which has also spread to deceased No.1, as a result of which, both of them died. The

mere fact that the percentage of burns was not high cannot weigh with this Court in gathering the intention of the appellant. When he was neither provoked nor instigated, there was no reason for the appellant to even entertain the idea of pouring thinner and setting the deceased on fire. It cannot, therefore, be said that the appellant did not have the intention of doing away with the life of the deceased. The ruthless manner in which the appellant has executed his plan is evident from the fact that he was not even worried about the welfare of his own son /deceased No.1. We are, therefore, not impressed by the submission of the learned Counsel for the appellant that his client had no intention of causing the death of the deceased. At any rate, even though deceased No.2 died after 75 days, deceased No.1 died almost instantaneously. Therefore, the act committed by the appellant cannot be brought under the offence of culpable homicide not amounting to murder.

For the afore-mentioned reasons, we do not find any merit in this Appeal and the same is, accordingly, dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Dt: 13th November, 2018
dr/lur

