

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM
AND
THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

CRIMINAL APPEAL No.1380 OF 2011

JUDGMENT: (*Per Hon'ble Sri Justice T.Sunil Chowdary*)

1 This appeal is filed under Section 374 (2) Cr.P.C, questioning the legality and sustainability of the conviction and sentence dated 01.12.2010 imposed against the accused in S.C.No.74 of 2010 on the file the Court of the II Additional District & Sessions Judge, East Godavari District at Amalapuram.

2 The gravamen of the charge levelled against the accused is that on 12.12.2009 Kandregula Madhavarao (P.W.6) lodged a compliant with the Station House Officer, Nagaram police station, East Godavari District, who in turn registered a case in Crime No.94 of 2009 for the offence punishable under Section 174 Cr.P.C. Thereafter, the Inspector of Police, Razole Circle-P.W.12 has taken over the C.D. File and conducted investigation.

3 During the course of investigation, it is revealed that the first wife of the accused deserted him; therefore, he married one Katakam Lakshmi @ Mahalakshmi (hereinafter referred to as 'the deceased') and out of their wedlock, they were blessed with one daughter-P.W.1. Originally, the accused was resident of Gudapalli village and he addicted to vices. The

accused shifted his family from Gudapalli village to Mogalikuduru village.

4 On the night of 10.12.2009, being the marriage anniversary of the deceased and the accused, the accused requested the deceased to join with him to which the deceased refused. On 11.12.2009 also the deceased slept in the kitchen along with her daughter, which is not relished by the accused. On 12.12.2009, in the morning hours, the accused picked up a quarrel with the deceased in connection with which Jana Bhadramma-P.W.2 admonished the accused. On the same day at about 11.30 AM, the accused once again picked up quarrel with the deceased. The accused poured kerosene on the deceased and set her to fire. Noticing the same, P.W.1 informed the same to P.W.2 and others. Due to the burns, the deceased struggled for some time and succumbed to the injuries. The accused fled away from the house. On the same day at about 2-20 PM, P.W.12-the Inspector of Police, visited the scene of offence and prepared scene of offence observation report-Ex.P.2 in the presence of P.W.6. He also conducted inquest over the dead body of the deceased in the presence of P.W.6 and others and prepared inquest panchanama-Ex.P.3. P.W.12 examined and recorded the statements of witnesses and sent the dead body to the government hospital where Dr.A.Rajaroo-P.W.7 conducted autopsy over the dead body of the deceased and issued post-mortem examination report-Ex.P.5. Dr.M.Narendra Kumar-

P.W.8 examined the accused and issued wound certificate-Ex.P.6. P.W.9 got taken photograph-Ex.P.7 of scene of offence. K.Veera Bhadra Rao-P.W.10 is the Fire officer who submitted report-Ex.P.8. On 13.12.2009 the accused approached PW.6 and narrated the incident and sought his help. P.W.6 recorded the confessional statement of the accused-Ex.P.4 and produced the accused before P.W.12. After receipt of the complaint-Ex.P.4, the section of law was altered to Sections 498-A and 302 of IPC. After completion of investigation, PW.12 laid charge sheet against the accused for the offences punishable under Sections 498-A and 302 of IPC.

5 The Judicial Magistrate of First Class, Razole has taken cognizance of the offence under Sections 498-A and 302 IPC and numbered the charge sheet as PRC No.21 of 2009 and after furnishing the copies of all documents to the accused, committed the case to the District and Sessions Division, East Godavari under Section 209 Cr.P.C., as the offence punishable under Section 302 IPC is exclusively triable by the Court of Session. The learned District and Sessions Judge, East Godavari at Rajahmundry has numbered the case as S.C.No.74 of 2010 and made over the same to the II Additional District and Sessions Judge at Amalapuram, for trial and disposal in accordance with law. The learned II Additional District and Sessions Judge, Amalapuram, on appearance of the accused, framed charges against him for the offences punishable under Sections 498-A and 302 of IPC,

read over and explained the same to the accused in Telugu, for which the accused pleaded not guilty and claimed to be tried.

6 During the course of trial, on behalf of the prosecution, P.Ws.1 to 12 were examined and Exs.P.1 to P.10 and M.O.1 were marked. After completion of recording of evidence, the accused was examined under Section 313 Cr.P.C with reference to the incriminating material deposed against him by the prosecution witnesses, which he denied.

7 No oral or documentary evidence was adduced on behalf of the accused. Basing on the oral and documentary evidence available on record, the trial Court found the accused not guilty of the offence punishable under Section 498-A of IPC and acquitted him of the said offence. However, the trial Court found the accused guilty of the offence punishable under Section 302 IPC, convicted and sentenced him to imprisonment for life and also to pay a fine of Rs.1,000/- in default, to suffer rigorous imprisonment for a period of six months. Hence the present appeal.

8 The learned counsel for the accused strenuously submitted that the trial Court committed grave error in placing reliance on the testimony of P.W.1, who is aged about 8 years. She further submitted that the trial Court ought not to have placed reliance on the testimony of P.W.1. She further submitted that the trial Court ought not to have

placed reliance on Ex.P.4 the extra judicial confession alleged to have been made by the accused before P.W.6. She further submitted that the trial Court failed to consider that the deceased sustained burn injuries due to blasting of gas stove. She further submitted that the trial Court convicted and sentenced the accused basing on assumptions and presumptions, which is not permissible under law.

9 *Per contra*, the learned Public Prosecutor submitted that the trial Court considered oral and documentary evidence in right perspective and arrived at a conclusion that the accused committed the offence punishable under Section 302 of IPC. He further submitted that the testimony of P.Ws.1, 2, 3 and 4 is cogent, convincing, coherent and corroborative with each other, on all material aspects. He further submitted that the trial Court has considered Ex.P.4 as a corroborative piece of evidence. He further submitted that the trial Court has considered various aspects while convicting the accused; therefore, this is not a fit case to interfere with the judgement of the trial Court.

10 Now the points for consideration in this appeal are,

1. Whether the prosecution has proved the guilt of the accused for the offence punishable under Section 302 IPC beyond all reasonable doubt?
2. Whether the conviction and sentence imposed against the accused is not sustainable either on facts or in law?

11 Both the points are intertwined with each other and hence we are inclined to answer both these points simultaneously in order to avoid recapitulation of facts and evidence.

12 P.W.1 is none other than the minor daughter of the accused and the deceased. P.W.2 is the sister-in-law of the deceased. P.Ws.3 and 4 are neighbours. P.W.5 is a resident of Gudapalli Village. P.W.6 is Village Revenue Officer of Geddada Village, who worked as In-charge VRO of Mogalikuduru Village, at the relevant point of time.

13 As seen from the testimony of P.W.6, on 12.12.2009, on coming to know about the incident, he submitted a report to the Station House Officer, Nagaram Police Station. The testimony of P.W.11 reveals that he registered a case in Cr.No.94 of 2009 basing on the complaint lodged by P.W.6 and issued FIR-Ex.P.9. Initially the case was registered under Section 174 Cr.P.C. and after completion of investigation the section of law was altered to Sections 498-A and 302 of IPC. By examining P.Ws.6 and 11, the prosecution has established that P.W.6 set the criminal law into motion.

14 As seen from the testimony of P.Ws.1 to 4, the incident took place at the house of the accused and the deceased. The testimony of P.W.6 clearly reveals that the Inspector of Police-P.W.12 visited the scene of offence and prepared scene of offence observation report-Ex.P.2. The testimony of P.W.12

reveals that he observed the scene of offence in the presence of P.W.6 and others and prepared Ex.P.2 scene of offence observation report. The testimony of P.W.12 also reveals that he seized the burnt ash-M.O.1 at the scene of offence. By examining P.Ws.1 to 4, 6 and 12 and marking Ex.P.2 and M.O.1, the prosecution clinchingly established the place of occurrence of the incident.

15 The next question that falls for consideration is, whether the death of the deceased is homicide or not?

16 As per the oral testimony of P.Ws.1 to 4, the deceased died due to burn injuries. As per the testimony of P.W.6, P.W.12 conducted inquest over the dead body of the deceased and prepared inquest panchanama-Ex.P.3. In the cross-examination of this witness, nothing is elicited to disbelieve the prosecution version so far as conducting of inquest over the dead body of the deceased is concerned. The panchayatdars opined that the deceased died due to burn injuries. The testimony of P.W.7 reveals that on 13.12.2009 he conducted autopsy over the dead body of the deceased and found 90% burns on her body. He opined that the deceased died of oligemic shock due to extensive burns as well as asphyxia and to that effect he issued Ex.P.5 post-mortem certificate. By examining P.Ws.1 to 4, 6, 7 and 12 and marking Exs.P.3 and P.5, the prosecution clinchingly established that the deceased died due to burn injuries.

17 The crucial question that falls for consideration is whether the prosecution established the guilt of the accused for the offence under Section 302 of IPC beyond all reasonable doubt.

18 As rightly pointed out by the learned counsel for the appellant P.W.1 was aged about 8 years at the time of the incident. Therefore, we have to carefully scrutinize the testimony of P.W.1 line by line in order to ascertain whether she is capable of deposing evidence. Before recording of evidence, the learned Additional District Judge put number of questions to P.W.1 in order to ascertain whether she was capable of understanding the questions. The learned District Judge after satisfying himself with the answers given by P.W.1, he recorded her evidence. The answers given by the P.W.1 to the questions put to her by the Court indicate her mental faculty and capability of deposing evidence. The entire evidence of P.W.1 i.e., the chief-examination as well as cross-examination was recorded in the question and answer format. As per the testimony of P.W.1, her father-accused poured kerosene on her mother-deceased and set her fire. Her testimony further reveals that while burning in the flames, her mother requested her to go and intimate the incident to P.W.2. On seeing pathetic condition of the mother, P.W.1 rushed to the house of P.W.2 with a fond hope that she may rescue her mother. The learned counsel for the appellant has drawn the attention of this Court to the decision of Hon'ble

apex Court in **Pratap Singh v State of M.P.**¹. As per the principle enunciated in the said case, “*if there are material contradictions in the testimony of the witness, the Court can discard the same*”. As observed supra, there are no material contradictions or omissions in the testimony of P.W.1 so as to discard the same. The presence of P.W.1 at the time of the incident was spoken by P.W.2. The houses of P.Ws.2, 3 and 4 are nearby the house of the accused and the deceased. The testimony of P.Ws.2 to 5 clearly reveals that the accused was addicted to bad vices and harassed the deceased. As seen from the testimony of P.Ws.2, 3 and 4 by the time they came to the house of the accused, he is running out of the scene, they attempted to catch-hold of him but in vain. This itself indicates the conduct of the accused. In the cross-examination of P.Ws.1 to 4, no suggestion was put to them about the fleeing away of the accused from the scene of offence immediately after the incident. The very purpose of cross-examination of witnesses is to elicit the truth or to improbabilise the version of the Prosecution or to probablise the stand taken by the defence. As seen from the testimony of P.W.5, the accused originally belonged to Gudapalli Village. The testimony of P.W.5 reveals that the accused sold away his property situated at Gudapalli Village and shifted his residence to Mogalikuturu Village. The material placed

¹ AIR 2006 SC 514

before the Court clinchingly establishes that the accused was very much present at the time of the incident.

19 The testimony of P.W.8 coupled with Ex.P6 reveals that the accused also sustained injury on his right eye. A perusal of Ex.P.6 Wound certificate of the accused reveals that the accused sustained a fresh simple injury caused by a rough surface. Thus, it is clear that the injury sustained by the accused is not a burn injury and not related to the incident. Had the accused made any attempt to save the deceased, he might have received burn injury.

20 The learned counsel for the appellant submitted that it is not mentioned in Ex.P1 that the accused poured kerosene on the deceased and set her to fire. Suffice it to say that the F.I.R. is not an encyclopaedia of all minute details of the incident. A perusal of the record reveals that on receipt of the information about the occurrence of incident, P.W.6 came to the scene of offence and submitted Ex.P1 complaint to the Station House Officer. Admittedly, P.W.6 is not an eye witness to the incident. After extinguishing the fire, the Fire Officer (P.W.10) prepared the report-Ex.P8. As per the recitals of Ex.P8 report, the enquiry of P.W.10 revealed that the accused went away while the house was burning. There is no need or necessity for the Fire Officer to blame the accused by making a false report.

21 The learned counsel for the appellant further submitted that the trial Court committed grave error in placing reliance on the oral testimony of P.W.6 and recitals of Ex.P4 the alleged extra Judicial confession of the accused. As per the testimony of P.W.6, on 13.12.2009, the accused came to his house and narrated the entire incident. His testimony further reveals that he prepared the statement as per the dictation of the accused. It is a settled principle of law that Extra Judicial Confession can be used as a corroborative piece of evidence. A perusal of the record reveals that P.W.6 produced the accused before the Investigating Officer-P.W.12 and handed over Ex.P4 statement given by the accused. P.W.6 is the *de facto* complainant. In such circumstances, the possibility of approaching the P.W.6 by the accused seeking some help cannot be ruled out completely. In the cross-examination of P.W.6 and P.W.12, nothing is elicited to disbelieve their testimony. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the appellant that the trial Court committed error in placing reliance on Ex.P4.

22 Taking into consideration the facts and circumstances of the case, we are of the considered view that the prosecution is able to establish beyond all reasonable doubt that the accused was responsible for the death of the deceased.

23 The learned counsel for the appellant submitted that even assuming but not conceding that the accused is involved in the commission of the offence, it was only due to grave and sudden provocation; therefore, it will fall within the ambit of Section 304 Part-I of IPC and outside the purview of Section 302 of IPC. To substantiate the stand, she has drawn the attention of this Court to the decision in **Sanjeev v State of Haryana**², wherein the Hon'ble apex Court held that, "*the act committed by the appellant in the present case is covered by Exception 4 to Section 300 IPC i.e., culpable homicide not amounting to murder, as such the same is, punishable under Section 304 Part I IPC.*"

24 It is the case of the prosecution that the accused poured kerosene on the deceased and set her fire, which fact was established by the prosecution beyond all reasonable doubt. As per the testimony of P.W.7-Dr.A.Rajarao, who conducted autopsy on the dead body of the deceased, at the time of the Post-mortem examination, the body reeked with kerosene oil. If the act committed by the accused falls within the purview of culpable homicide not amounting to murder, then the Court can convict the accused for the offence under Section 304 Part-I of IPC. In the instant case, the accused poured kerosene on the deceased and set her fire in the presence of his daughter. Even a devil does not know the human mind. The intention of an individual can be gathered from the facts

² (2015) 4 SCC 387

and circumstances of the case. Absolutely there is no evidence on record to establish that the deceased herself provoked the accused. We have carefully perused Ex.P4 the extra Judicial confession of the accused in order to ascertain whether the case on hand will fall under Section 304 Part I of IPC. The accused has not taken any steps to save the life of his wife. A perusal of the record clearly reveals the intention of the accused to kill the deceased by pouring kerosene and set her fire. Viewed from any angle, we are not unable to accede to the contention of the learned counsel for the appellant that the act committed by the appellant will fall within Section 304 Part I of IPC.

25 In the light of the above discussion, we are of the considered view that the case on hand falls within the ambit of Section 302 of IPC. The conviction and sentence imposed by the trial Court against the appellant are not called for any interference in this appeal.

26 Accordingly, the criminal appeal is dismissed. Miscellaneous petitions, if any pending in this appeal, shall stand closed.

CHALLA KODANDA RAM, J

T.SUNIL CHOWDARY, J

January 06, 2018.
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