

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.677 of 2014

JUDGMENT: (*per Hon'ble Smt Justice T. Rajani*)

This appeal is preferred by appellant against the judgment of the VI Additional District and Sessions Judge, Siddipet in S.C.No.428 of 2012 dated 21.01.2014, convicting him under Section 235 (2) of the Criminal Procedure Code and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- in default to undergo simple imprisonment for a period of three months for the offence punishable under Section 302 of the Indian Penal Code and also sentenced him to undergo simple imprisonment for three years and to pay a fine of Rs.500/- in default to suffer simple imprisonment for a period of two months, for the offence punishable under Section 498-A IPC.

2. The facts of the case, briefly, as per the charge sheet are as follows:

On telephonic information received by L.W.16, the SI of Police, Mulugu Police Station, on 21.06.2012 at 2100 Hrs, from the Gandhi Hospital, Secunderabad, that one patient, Smt. Limngala Jayamma, was admitted in the female burns ward, he instructed L.W.15 to visit the hospital and record her statement, as such, L.W.15 recorded the statement of Smt. Lingala Jayamma, who is the deceased in this case. She sated that she is a native of Mulugu village and she is the elder daughter to her parents. She was married to the accused 13 years ago and after marriage, they led happy life and were blessed with a son and a daughter. Since then, the accused got addicted to liquor and

other bad habits and used to beat and harass her mentally, due to which she went to her parents' house. Later, the accused came to her parents' house and harassed her and her parents, for money to consume liquor and for other needs, without doing any work for himself. On 21.06.2012, the accused asked her money, for consuming liquor, but she refused to give money and on that, he poured kerosene on her body and set her on fire.

Based on the statement of the deceased, a case was registered in Cr.No.40 of 2012 for the offence under Sections 498-A and 307 IPC. During the course of investigation, the scene of offence panchanama was conducted and the statements of witnesses were recorded. On 07.07.2012, the accused was arrested and was interrogated. He confessed about the commission of offence. On 13.07.2012, telephonic information was received that the deceased succumbed to the injuries, and then the section of law, 307 IPC, was altered to Section 302 IPC. The inquest and post mortem examination were conducted on the dead body of the deceased and after concluding the investigation, charge sheet was laid against the accused for the same offences.

The Judicial Magistrate of First Class, Gajwel took cognizance of the case for the above offences and by virtue of orders in PRC.No.47 of 2012 committed the case to the Sessions Division, Medak. The Sessions Judge, in turn, made over the case to the VI Additional District and Sessions Judge, Siddipet for trial and disposal in accordance with law. The trial Court, on appearance of the accused, framed charges against him for the same offences and after recording the plea of not guilty by the accused, conducted the trial of the case

and examined P.Ws.1 to 11, Exs.P1 to P12 and M.Os.1 to 4 on behalf of the prosecution. After concluding the prosecution evidence, the accused was questioned about the incriminating circumstances appearing in the prosecution evidence, which he denied and reported no evidence on his behalf.

3. The Court below, after appreciating the evidence on record and considering the material on record, passed the impugned judgment against which the present appeal is preferred on the following and other grounds that were urged at the time of hearing:

The Court below failed to see that there are no eye witnesses to the incident and P.Ws.1 and 2, being the mother and paternal uncle of the deceased are interested witnesses. Even P.W.1 stated that she did not witness the appellant pouring kerosene on the deceased. The Court below mechanically relied on whatever was found to be against the appellant/accused and discarded and disbelieved the evidence coming in favour of the appellant. The Court below failed to see that the basic ingredient for commission of a crime would be motive and none of the prosecution witnesses stated any material fact or material incident to substantiate their attributions. The motive alleged, which is refusal to provide money to the appellant, is not substantial enough for committing such an horrific crime. As per the case of the prosecution, there were two adjacent portions and the deceased used to stay in one portion and P.W.1 used to stay in the other adjacent portion. P.W.1 stated that there was a quarrel ensued between the deceased and the accused before the incident and that the deceased made huge cries when the appellant poured kerosene on

her. P.W.1 sated that she immediately rushed and covered the deceased with a blanket and poured water on her. The evidence of P.W.1 is highly improbable and totally unbelievable. If she was truly present in the adjacent portion, it would be natural that she would react swiftly and more appropriately rather than wait until kerosene is poured on the deceased and set her on fire. P.W.1 stated that she heard sounds of alleged quarrel between the deceased and the appellant and she heard cries of the deceased. If P.W.1's version is true, there is absolutely no explanation in her evidence as to why she did not intervene at the time of the alleged quarrel or when deceased raised cries or even when the appellant allegedly poured kerosene on the deceased or as to why there was so much delay in P.W.1 going to the spot. P.W.12 is a hearsay witness. The Court below grossly erred while considering Ex.P12, post mortem examination report wherein the Doctor opined that the case could be an attempt to commit suicide by the deceased. Based on the above grounds, the appellant sought for setting aside the judgment of the Court below.

4. Heard both sides.

5. The argument of the counsel for the appellant mainly pointed out the lapse of the prosecution to prove the extent of the burn injuries sustained by the deceased. She contends that unless the extent of burn injuries are proved and the quantity of kerosene used is proved, the intention to commit the offence cannot be gathered and hence, the benefit of the said doubt has to be extended to the accused. She also contends that there are no eye witnesses to the incident and that the evidence of P.W.1 would go to show that there

was a quarrel preceding the incident and she pleads the Court to infer from the said fact, that the incident might have been an outcome of a sudden quarrel, without any premeditation and consequently, she pleads to convert the conviction from that of Section 302 IPC to Section 304 Part I or Part II IPC, in case we are not convinced with the argument that she extended, seeking for acquittal of the accused. The counsel further vehemently contends that the death of the deceased is not a result of the burns sustained by her but it is due to septicaemia that she developed due to the infected burn injuries and hence, it cannot be said that the accused is responsible for the death of the deceased.

6. Learned Public Prosecutor, on the other hand, contends that the evidence of P.W.1 is highly probable and that the deceased made a statement to P.W.1 also immediately after the incident and hence, the statement of the deceased would get strong support from the said fact. He also contends that septicaemia, which developed as a consequence of burn injuries, cannot be taken as a ground to disconnect the accused with the death of the deceased.

7. Keeping the above arguments in view, we frame the following points for determination:

1. Whether the death of the deceased due to septicaemia, which the deceased developed due the infected burn injuries, would entitle the accused for the benefit of acquittal for the offence punishable under Section 302 IPC.

2. Whether the two statements of the deceased are consistent and whether they can be relied upon.
3. Whether the evidence of the prosecution witnesses would lend support to the statements of the deceased and would suffice to prove the guilt of the accused for the offence for which he was charged, beyond all reasonable doubt.
4. Whether the judgment of the Court below is sustainable.
5. To what result.

POINT No.1:

8. The evidence of the Doctor, who conducted the post mortem examination, can be looked into in the foremost. He was examined as P.W.11. On 13.07.2012, he conducted post mortem examination on requisition from the SHO, Mulugu Police Station. He found anti mortem dermo epidermo mixed infected burn injuries on the lower part of the face, neck, front chest, front upper abdomen, back chest, back up trunk, both hands, left leg up to the ankle dent. He opined that the cause of death as burn injuries. Nothing was put to him in the cross-examination to say that the death is not due to burn injuries.

9. But, however, the counsel for the appellant relies on the post mortem examination report issued by P.W.11, wherein he mentioned that the cause of death is burns (septic burns). Learned counsel contends that since the deceased died due to septicaemia caused by burn injuries, the case cannot be brought under Section 300 IPC. For that, she takes support of a decision of the Supreme Court in

B.N. KAVATAKAR v. STATE OF KARNATAKA¹. A perusal of the judgment shows that the Supreme Court took up an overall scrutiny of the facts and circumstances of the case coupled with the opinion of the medical officer and arrived at a conclusion that the offence therein is attracted by only Section 326 read with 34 IPC.

In MANIBEN v. STATE OF GUJARAT² the Supreme Court scaled down the offence from Section 302 IPC to Section 304 Part II. It was a case where the accused, during a quarrel, threw a burning wick on the deceased. Hence, the Supreme Court held that the accused did not have intention to cause the death of the deceased or bodily injury, which did not immediately lead to death but lead to the death only after being infected. However, the case on hand cannot be compared with the case decided by the Supreme Court in the above decision, as in this case, the statements of the deceased are to the effect that the accused poured kerosene, lit match stick and set her on fire, which cannot be said to be a sudden act.

10. The decision of the Madras High Court in N. CHELLAIAH v. STATE³, relied upon by the counsel for the appellant, do not help the accused in any manner. On the other hand, it has considered all the cases on subject and held that if it is proved that the injury is fatal and the intention was to cause the death, though the death occurred several days after septicaemia had supervened, it is undoubtedly a murder, as it falls within the first limb of Section 300 IPC; if it is

¹ 1994 SUPP (1) SCC 304

² (2009) 8 SCC 796

³ 2013 LAWSUIT (MAD) 444

proved that the injuries by themselves are sufficient to cause death in the ordinary course of nature and if it is established that those injuries were the intended injuries, though the death occurred after septicaemia had supervened, the act of the accused would squarely fall under the third limb of Section 300 IPC; if it is proved that the injuries are imminently dangerous to life, though the death had occurred after septicaemia had supervened, then the act of the accused would squarely fall under the fourth limb of Section 300 IPC, provided the other requirements, like knowledge on the part of the accused etc., are satisfied.

The Court further held that, on the contrary, if it clear that the injury is neither fatal nor likely to cause death nor sufficient to cause death or that the injury has nothing to do with the death, then, the offence would fall neither under Section 302 IPC nor under Section 304 IPC. The Court went further and illustrated the instances under illustrations A to C, which can be extracted hereunder:

“Illustration – A:-

With a small iron pipe, the accused causes an injury on the tip of the right hand little finger of the deceased. There is an open wound on the tip of the finger and the bone is exposed. The deceased does not take treatment at all and the injury results in infection and septicaemia. The deceased dies of the same after thirty days of the occurrence.

Illustration – B:-

The accused causes an injury with formidable weapon like sickle on the neck. There is huge loss of blood. The deceased is taken to the hospital, where skilled doctors give treatment in a higher medical institute having all latest equipments.

Life saving drugs are given. The injured survives for thirty days and dies due to septicaemia due to injury.

Illustration – C:-

The accused cut the deceased on his hand with a sickle and severs the hand, resulting in huge loss of blood. The deceased is taken to the hospital and treated by skilled doctors. Notwithstanding the same, he develops septicaemia due to the injuries and dies after thirty days due to septicaemia.

It held that in all the cases illustrated, though the death occurred due to septicaemia after thirty days, they cannot be equated to each other and there is a world of difference, which is explained by the Court. In the first illustration, the Court took note of the fact where the injury was caused on the little finger and held that the said injury is not likely to cause the death of any person. Coming to the second illustration, the Court observed that the injury is on the vital organ viz. neck. Though there is septicaemia, the primary cause is the injury and septicaemia is only a secondary cause and hence, held that the offence would fall under the third limb of Section 300 IPC. In the third illustration also, the Court held that the primary cause is the injury though there was secondary cause viz. septicaemia. Even going by the above decision, merely because the death is due to septicaemia, it cannot be said that the burn injuries are not the cause of the death and the benefit of decisions cannot be extended to the accused.

The point is answered accordingly.

POINT No.2:

11. The deceased in this case made a statement before the police and also before the Magistrate and in both the statements, she gives a consistent version with regard to the incident proper. The first

statement given to the police, on the basis of which, the case was registered. The said statement is marked as Ex.P10. Her version is that after marriage with the accused, they lived happily for sometime and she begot a boy and a girl child. The accused got addicted to drinking and has been harassing her and not being able to bear the said harassment, she went to her parents' house. The accused has been harassing her parents for money. On 21.06.2012, he demanded money and when she refused, saying that she does not have money, the accused saying that he would kill her, brought kerosene available in the house, poured on her and set her on fire.

In the statement given to the Magistrate, which is marked as Ex.P6, she states that on that day the accused came and asked money and when she refused, he harassed her for some time. When she did not give money, he brought kerosene, poured on her and lit a match stick and set her on fire. She could not put off the flames and came out of the house. Then her mother, uncle and aunt took her to Gajwel Government hospital. She further stated that herself and her mother stayed in the same house in separate rooms. The accused used to threaten that he would kill her and used to come drunk everyday and used to harass her by talking in filthy language.

12. Hence, the version of the deceased in both the statements is the same. From the fact that the accused poured kerosene and set her on fire, it cannot be said that he did have the intention to kill the deceased. The said fact, being consistent in both the statements and as the statements of the deceased inspire confidence, the same can be relied upon.

13. The contention of the counsel for the appellant that the absence of the stamp of the doctor, who made certification, makes the statement unreliable is not at all merited. The law is well settled that even in the absence of certification of a doctor also, a statement can be relied upon, if the Magistrate is satisfied with the mental fitness of the deponent. The point No.2 is answered accordingly.

POINT No.3:

14. Apart from the statement of the deceased, the evidence of P.Ws.1 and 2, who spoke about the incident, is also available, though P.Ws.3 and 4, who are also material witnesses, turned hostile. P.W.1 is the mother of the deceased. She spoke about the marriage of the deceased and the accused and the accused picking up quarrels in a drunken condition and demanded money. It is said that if his demand was not fulfilled, he used to assault the deceased. In view of the quarrels, they took the deceased and accused to their house and they were living together. Even then the accused did not mend his behaviour and continued the quarrels and also threatened them when interfered. In June 2012 the accused picked up a quarrel with the deceased, when she was in another room. She heard cries of the deceased. Immediately she rushed to the spot and noticed the deceased in flames. She tried to extinguish the flames by covering her body with blanket and by pouring water. Then the deceased informed her that the accused poured kerosene on her and set her on fire. She called the ambulance and then shifted the deceased to the hospital.

15. The fact, that was elicited in the cross-examination of P.W.1, that the deceased used to express an aversion towards life since no change is made by the earnings of her own and accused, is interpreted

by the counsel for the appellant to contend that the deceased might have committed suicide due the said reason. However, when a positive statement of the deceased is available on record, there is no need to assume the reasons for the death of the deceased. Life is a long journey and filled with several emotions. The financial status of the family of the deceased is reflected in her statement and also the evidence of P.W.1 and there may be one view expressed by the deceased, that she had aversion towards life due to the meagre earnings. But that cannot be interpreted in a way to state that it has lead the deceased to commit suicide. The cross-examination does not further benefit the accused, as nothing was elicited to affect the credibility of P.W.1 and no omissions were pointed out. Hence, the statement made by the deceased to P.W.1 also gains strength. She, however, admitted that she is not an eye witness to the quarrel alleged to have taken place in the portion of the deceased. Though such a statement was elicited from P.W.1, the counsel now makes an attempt to contend that since P.W.1 spoke about the quarrel on the date of the incident, it has to be concluded that the accused committed the offence in a fit of quarrel. But the said argument is completely incomprehensible. He cannot have the quarrel as a defence of his plea of provocation. The contention that the conduct of PW.1 in not coming to the spot immediately, in spite of hearing the quarrel, would deprive her testimony of credibility, is not acceptable. The succession of events might have been so quick, that she could reach only by the time as stated by her. There cannot be any other reason. Nothing, which would suggest that she might not have been in the house and could not have come to the spot, was elicited from her.

16. P.W.2 corroborated the evidence of P.W.1 with regard to the quarrels between the couple. He further stated that 20 days prior to the death of the deceased, the accused came to his house under the influence of alcohol and quarrelled with the deceased and thereafter, the deceased was seen in flames. On hearing the commotion, the villagers came there and he also rushed to the scene and noticed the deceased with burn injuries. The cross-examination of P.W.2 also does not cast any doubt on his credibility. He only expressed his ignorance as to whether the deceased herself poured kerosene and committed suicide. Even if it is accepted that there was a quarrel preceding the incident, the manner in which the accused committed the offence would clearly show that he had an intention to cause, if not death, a bodily injury to the deceased, which would be sufficient to lead to her death.

17. The evidence of P.W.11 and the post mortem examination report would show that the injuries are present all over the body of the deceased, from which it can be gathered that the kerosene that the accused poured on the deceased was sufficient enough to wet the whole body in kerosene and the quantity of kerosene also can be gathered from the said fact. That apart, the intention of the accused in lighting a match stick and throwing on the body of the deceased cannot be interpreted in any other manner, except that the accused wanted to cause bodily injuries, which are likely to lead to the death of the deceased.

18. The contention of the counsel for the appellant that the kerosene was not brought by the accused and hence, no premeditation

can be gathered on his part cannot at all be appreciated. Kerosene is a material, which would be available in every household in villages. Hence, the act of the accused in taking time to go to that part of the house where the kerosene was available and also the match stick, would show that he had a premeditation to cause the death of the deceased. Hence, seen from any angle, the act of the accused falls within the ambit of Section 300 IPC for which he is liable for punishment prescribed under Section 302 IPC.

The point is accordingly answered.

POINT No.4:

19. For the reasons mentioned in the above points, there need not be any interference with the judgment of the Court below. The evidence also proved that the deceased was subjected to cruelty, within the meaning of Section 498-A IPC. Hence, on that count also, the judgment of the Court below needs to be upheld.

POINT No.5

In the result, the criminal appeal is dismissed upholding the conviction and sentence imposed on the appellant/accused vide judgment of the VI Additional District and Sessions Judge, Siddipet in S.C.No.428 of 2012 dated 21.01.2014.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

C. PRAVAEEN KUMAR, J

T. RAJANI, J

July 10, 2018
DSK