

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MRS. JUSTICE T.RAJANI

CRIMINAL APPEAL No.1234 of 2011

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

The sole accused in Sessions Case No. 39 of 2009 on the file of the Court of the Additional District and Sessions Judge (FTC), Srikakulam is the appellant herein. He was tried for the offence punishable under Section 302 IPC for causing the death of his wife Sumbari on 03.03.2008 between 10 to 10.15 p.m., at Lotturu Village of Srikakulam District. Vide judgment dated 22.09.2011, the learned Additional District and Sessions Judge convicted the accused for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of one month. Assailing the same, this appeal came to be filed.

2. Since all the material witnesses did not support the prosecution case, we have to revert back to the allegations made in the charge sheet to find out the case of the prosecution. PW1 is the father of the deceased, while PW2 is the mother of the deceased. The accused is the husband of the deceased. The marriage between the accused and deceased took place about six or seven years prior to the date of incident. The accused used to work as a Field Assistant in N.R.E Scheme in his village besides

attending coolie works now and then. Apart from that, he was acting as Panchayat Ward Member. After marriage, the accused and deceased lived together happily and out of wedlock, they were blessed with a daughter, who was aged about 3 ½ years at the time of the incident. The deceased was going daily to Trimurthy Cashew Factory, Goppilli Village for coolie work along with the other ladies of the village. Since one year, the accused learnt that his wife was moving intimately with some other persons and asked her to discontinue such contacts. There was no proper response from the deceased. Accordingly, on 03.03.2008, at 9 p.m., the accused is said to have picked up a quarrel with the deceased and in drunken state, he poured kerosene and set her on fire. Subsequently, she was shifted to the Community Health Centre, Palasa by PWs 1, 2 and others.

3. On 04.03.2008, at about 5.40 a.m., PW12-the Assistant Sub Inspector of Police, Kasibugga Police Station received intimation from the Medical Officer, Community Health Centre about the admission of the injured in the hospital. Ex.P27 is the said intimation. In response to the same, PW12 visited the Government Hospital, Palasa where the injured was undergoing treatment, and recorded her statement, in the presence of the duty doctor, i.e., PW5. After recording the statement, he read over the contents of the statement to the deceased, which she admitted to be correct. As she was not able to sign, he obtained the left thumb impression of the deceased. Ex.P28 is the statement of the injured. He also

obtained the certificate of PW5 with regard to the mental condition of the deceased, which is placed on record as Ex.P11.

4. On 04.08.2008, at about 8.05 a.m., PW7, who was working as Judicial Magistrate of First Class, Palasa received a requisition from PW5 for recording the dying declaration of the injured/ deceased. Immediately, he proceeded to Community Health Centre, Palasa and reached there by 8.15 a.m. After disclosing his identity and putting simple questions to the injured to know her state of mind, he recorded her dying declaration, which is placed on record as Ex.P12. The said dying declaration also shows that he obtained the endorsement of the doctor with regard to the fitness of the deceased. After recording the statement, he read over the contents of the statement to the injured, explained to her, which she admitted to be true. He then obtained her left thumb impression on the said declaration and also obtained the endorsement of PW5 on the same, which is Ex.P13. Ex.P21 is the said dying declaration.

5. Basing on the above two dying declarations, PW12-the Assistant Sub Inspector of Police, Kasibugga Police Station registered a case in Crime No. 45 of 2008 for an offence punishable under Section 302 IPC and sent copies of the same to all concerned. Ex.P29 is the First Information Report. Thereafter, he again went to Government Hospital, Palasa and recorded the statement of PWs 1, 2 and another. From the hospital, he went to the scene of offence and inspected the same in the presence of

PW8 and another. During the observation proceedings, he seized M.O.1-plastic can, M.O.2-burnt piece of saree and M.O.3-match box. He also prepared a rough sketch of the scene, which is placed on record as Ex.P13 and also got the scene photographed.

6. On 06.03.2008, PW9-the Inspector of Police, Ichapuram took up further investigation. On 10.03.2008, at about 8.15 a.m., PW1, who is the father of the deceased, gave a report about the death of his daughter. Ex.P1 is the said report. Basing on the same, PW9 altered the section of law from 307 IPC to 302 IPC and issued Ex.P23-the altered F.I.R. Thereafter, he conducted inquest over the dead body in the presence of PW8. At the time of inquest, he recorded the statement of PW1. Ex.P22 is the inquest report. He also got the dead body photographed, and handed over further investigation to PW10-the Inspector of Police, Kasibugga, who sent the dead body for post mortem examination.

7. On 10.03.2008, at about 3.30 p.m., PW13-the Associate Professor, Forensic Medicine, Siddardha Medical College, Vijayawada received a requisition from the Station House Officer, Kasibugga to conduct autopsy over the body of the deceased. Accordingly, he conducted autopsy over the body of the deceased and issued Ex.P32-the Post Mortem Report. According to him, the cause of death was due to shock due to infected burns.

8. The evidence of PW10 goes to show that on 12.03.2008, he returned to his office and took up investigation. After verifying the investigation done by the Assistant Sub Inspector of Police,

Kasibugga and PW9, he recorded the statements of PWs 4, 5 and others. On 10.12.2008, LW18-Behara came to the office of PW10 and presented a report given by the accused, which is placed on record as Ex.P25. After collecting all the necessary documents, he filed charge sheet against the accused for the offence punishable under Section 302 IPC, which was taken on file as PRC No. 01 of 2009 on the file of Court of the Judicial Magistrate of First Class, Palasa. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions, which came to be numbered as S.C.No. 39 of 2009 on the file of Court of the II Additional District and Sessions Judge (Fast Track Court), Srikakulam. Basing on the material on record, a charge for the offence punishable under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

9. In support of their case, the prosecution examined PWs.1 to 13 and got marked Exs.P1 to P32 and M.Os.1 to 3. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him in the evidence of the prosecution witnesses, to which he denied. No oral or documentary evidence was adduced by the accused in support of his defence. Out of the (13) witnesses examined by the prosecution, PWs 1, 2 and 3 did not support the prosecution case and were treated as hostile by the prosecution.

10. Relying upon the two dying declarations of the deceased, the Court below convicted the accused for the offence punishable under Section 302 IPC. Challenging the same, the present appeal came to be filed.

11. The learned counsel for the appellant mainly submits that the entire case rests on the two dying declarations made by the deceased, which are inconsistent with each other. According to him, if really the incident happened in the manner proposed by the prosecution, there was no reason for the deceased to speak at variance in the two dying declarations. In the absence of any other evidence corroborating the contents of the two dying declarations, he pleads that the two dying declarations by themselves are not sufficient to convict the accused.

12. On the other hand, the learned Public Prosecutor opposed the same, contending that the two dying declarations placed on record as Ex.P28 and Ex.P21, which were recorded by PW12 and PW7 respectively, are consistent with each other with regard to the manner in which the incident occurred, and as such, the same can be made the basis to convict the accused.

13. The fact that the death of the deceased is a homicidal death, is not in dispute. The said fact is spoken to by PW13, the doctor who conducted the post mortem examination and issued Ex.P32-the post mortem certificate. As contended by the learned counsel for the appellant, PWs 1, 2 and 3, who are the relatives of the deceased and who were examined to speak about the

harassment and the information which they received as to the manner in which the incident took place, did not support the prosecution case and were treated hostile. Therefore, we are left with the two dying declarations of the deceased, to find out as to how the incident occurred and whether the accused is responsible for the death of the deceased.

14. The first dying declaration was recorded by PW12-the Assistant Sub Inspector of Police, Kasibugga Police Station on 04.03.2008. His evidence is to the effect that on the said day, at about 5.30 a.m., he received intimation from PW5-the duty doctor working in Community Health Centre, Palasa about the admission of the injured/ deceased with burn injuries. Immediately, he proceeded to the said hospital, obtained a certificate of the doctor with regard to the mental condition of the injured, and then recorded the statement of the injured, which is marked as Ex.P28.

15. A reading of Ex.P28 would show that it was a lengthy statement given by the injured/ deceased in Telugu. In the said statement, the injured/ deceased states that about eight years back, her marriage was performed with Balakrishna, which was a love marriage. The said marriage was not performed according to Hindu custom or according to caste custom. Pursuant to the advice given by the elders in the meeting held in the village, they were leading marital life as husband and wife. Out of wedlock, they were blessed with a female child, aged about three years. The dying declaration also discloses that the deceased used to work in

Trimurthy Cashew Nuts Buddy and her Manager used to go to the neighbouring villages for cement work. Likewise, on 03.03.2008 morning, she worked in Goppili Cashew nuts buddy and returned by 3'O clock in the afternoon. At that time, she came to know that her husband was wandering in the village after consuming alcohol. While she was in the house after doing cooking and other household works, her husband came in a fully drunken condition and pushed her out, shouting loudly as to why she is going to the cashew nuts buddy and also with different persons, which she denied. The said dying declaration also discloses that since last one year, the accused was alleging that the deceased was maintaining illicit relationship of the deceased with some villagers. Thereafter, she went to sleep along with her child, thinking as to why she should quarrel with a drunkard. It is stated that at about 10 'O clock, the accused brought the kerosene tin which was available in the house, and poured the same on her body. As the coolness touched her body, she got up, and at that time, the accused is said to have set her on fire. At that time, her sister-in-law by name Meena and some others came and protected her. Later, her parents came and shifted her to Palasa Government Hospital. It is stated that herself, her mother and father together came in the said vehicle to Government Hospital, Palasa, where she was admitted. It is also stated that the accused, alleging adultery on the deceased, tried to kill her twice or thrice prior to the incident in question. This statement was recorded on 04.03.2008.

16. The second dying declaration is Ex.P12, which was recorded by PW7-the Magistrate. The evidence of PW7 shows that on receiving requisition from the doctor on 04.03.2008 at 8.05 a.m., he proceeded to the hospital, and after being satisfied with regard to the mental condition of the injured/ deceased, recorded her statement. In her statement, the deceased/ injured stated that her husband poured kerosene, set her on fire and then ran away. According to her, the incident occurred at 10 p.m. on 03.03.2008. According to her, about five days prior to the incident, her husband poured kerosene on her, and on being afraid, she went to her mother's house. It is her evidence that on 03.03.2008, at about 9 p.m., she quarreled with her husband and then went into sleep. Due to flames on her body, she woke up and cried loudly. Immediately, her husband and sister of her husband by name Meena tried to extinguish the fire by pouring water, and later, her husband ran away. Thereafter, her parents and uncle shifted her to hospital.

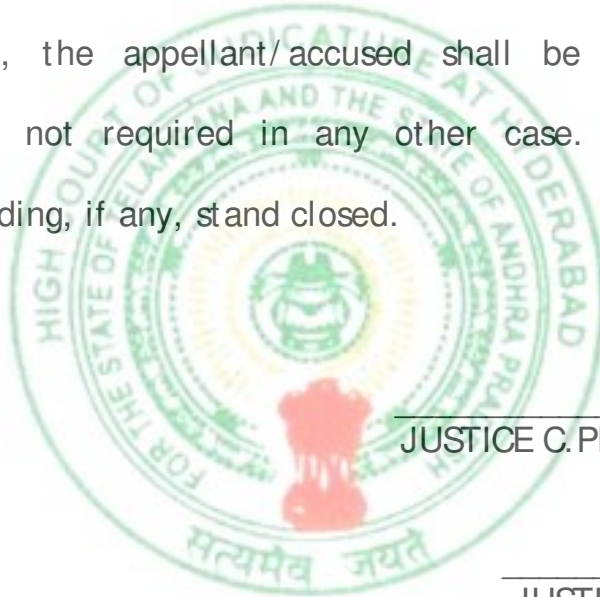
17. A reading of the above two dying declarations would show that the second dying declaration, which was recorded by the Magistrate, does not, in any way, indicate motive on the part of the accused to commit the crime. Though, in the first dying declaration, the deceased gives a detailed account about her life, including her employment and also the disputes between her husband and herself, strangely, the same does not find place in the second dying declaration, which was recorded by the Magistrate within an hour or so. Insofar as the incident proper is concerned,

in the first dying declaration, the deceased stated that on that day, i.e., 03.03.2008, at about 9 p.m., there was a quarrel and after the quarrel, she went to bed along with her daughter. While she was on the bed, the accused poured kerosene on her body. Immediately, she got up, feeling the coolness on her body. At that time, the accused is said to have set her on fire. Hearing the commotion, the sister of the accused and other neighbours gathered there and tried to extinguish the flames. But, in the second dying declaration, the deceased does not say that it was the accused who set her on fire. It is stated that on 03.03.2008, at about 9 p.m., she quarreled with her husband and went to sleep. While she was sleeping, she got up due to flames on her body and then raised cries. Hearing the same, her husband and her sister-in-law tried to extinguish the flames by pouring water.

18. From the above, it is clear that the two dying declarations are not consistent with regard to the manner in which the incident took place. In the first dying declaration, the deceased categorically states that immediately after the kerosene was poured, she got up and then the accused set her on fire, while in the second dying declaration, it is stated that while in flames, she got up and raised cries, and then the accused and her sister-in-law tried to extinguish the flames. In the absence of any other evidence connecting the accused with the crime, and taking into consideration the two dying declarations which are materially inconsistent with each other, more particularly, with regard to the manner in which the incident occurred, we feel that it is a fit case

where the accused can be acquitted, by extending the benefit of doubt, more so, when there were some other persons in the house at the time of the incident.

19. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 22.09.2011 in Sessions Case No. 39 of 2009 on the file of the II Additional District and Sessions Judge (Fast Track Court), Srikakulam, for the offence punishable under Section 302 I.P.C., is set aside, and he is acquitted for the said offence. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in any other case. Miscellaneous petitions pending, if any, stand closed.



JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

19.06.2018
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