

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

CRIMINAL APPEAL NO.1111 OF 2013

JUDGMENT: (Per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Having been convicted of offence under Section 302 IPC, having been sentenced to life imprisonment, fined Rs.1,000/-, and directed to undergo a simple imprisonment of one month in default thereof, by judgment dated 28.08.2013 passed by the III Additional District & Sessions Judge, Ranga Reddy District, the appellant has challenged the same before this Court.

Briefly, the facts of the case are that on 12.11.2012, around 6.00 p. m, the Police Station Neeredmet received a telephonic message from the Gandhi hospital that a patient, Smt. Vaseena, has been admitted in the Burns Ward. Immediately, on receiving the said information, K. Sridhar Rao (P.W-8) went to the hospital and recorded the statement of Smt. Vaseena (Ex.P-6). In her statement (Ex.P-6), she claimed that she and her husband, Columbus (the accused) were married on 12.12.2011 according to the Christian customs and rites. She further claimed that although her husband was not working, and did not bring any necessary items in the house, he used to drink. He used to abuse her in filthy language, and used to harass her mentally. He used to sell the household articles in order to buy liquor. She further stated that *"today i.e., on 12.11.2012, afternoon he came house (sic) by consuming liquor. Then, myself and my mother-in-law Cahtern (sic) questioned him as to why he came house drunken like this. Then he abused both of us, picked up wick kerosene stove, sprinkled kerosene on me and lit fire with matchstick and thrown (sic) on me.*

At that time my mother-in-law went outside. Unable to bear the burns, when I came out by crying, at that time my husband is in intoxication. On hearing my cries, when the 'basthi' people (locality people) abused my husband, then my husband poured water on me and put off the flames. Then, when the locality people called the ambulance, myself and my husband came to Gandhi Hospital and I was admitted."

On the basis of the said statement, the police registered a formal F.I.R, namely F.I.R. No.452/2012, for offence under section 307 IPC. However, with the death of Smt. Vaseena on 14.11.2012, the offence was altered to one under Section 302 IPC. Subsequently, the accused Ch. Clemiti Columbus was put up for trial.

In order to support its case, the prosecution examined eleven witnesses, submitted ten documents, and a single material object. But the defense neither examined any witness, nor submitted any documents. Consequently, by judgment dated 28.08.2013, the appellant was convicted and sentenced as aforementioned.

Mr. P. Ramchander, the learned counsel for the appellant has pleaded that the learned trial court has relied upon the dying declaration (Ex.P-5), and the statement of the injured (Ex.P-6), treating the latter as a dying declaration, in order to convict the accused for offence under Section 302 IPC. However, there are contradictions in the two dying declarations. Therefore neither of the two dying declarations are reliable.

Secondly, the case is based on circumstantial evidence. However, the prosecution has not presented a complete change of

circumstances which would unerringly point to the guilt of the accused. Therefore, the conviction is legally unsustainable.

Thirdly, even if the dying declaration (Ex.P-5) and the statement of the deceased (Ex.P-6) were to be believed, the case does not travel beyond Section 304 Part-II IPC. For, according to the deceased, the appellant came in a drunken state, they had a heated argument, at the spur of the moment, he allegedly poured kerosene on the deceased, and yet brought her to the hospital for treatment. Therefore, the appellant did not have the intention to kill her. At best, only knowledge can be attributed to him that such an act is likely to lead to her death. Hence, the conviction should be altered from offence under Section 302 IPC to 304 Part-II IPC. Therefore, the sentence should also be reduced by this Court.

On the other hand, the learned Public Prosecutor, Mr. C. Pratab Reddy, has pleaded that firstly there is no contradiction between the dying declaration (Ex.P-5), recorded by Smt. K. Sailaja (P.W-7), and the statement of the deceased (Ex.P-6) recorded by Sri K. Sridhar Rao (P.W-8). The only difference between the two statements of the deceased is that in her statement (Ex.P-6), she has given more information with regard to her marriage to the appellant. Since, both the dying declaration (Ex.P-5) and the statement of the deceased (Ex.P-6) are in consonance with each other, the learned trial court is legally justified in relying upon these two statements of the deceased in order to convict the accused for offence under Section 302 IPC.

Secondly, it is not a case of circumstantial evidence, but a case of direct evidence. For, the statements of the injured (the deceased) are readily available. The courts are justified in relying on a dying declaration (Ex. P. 5) as the law treats the dying declaration almost as a gospel truth. For, the law presumes that a person on the edge of death does not speak a lie. But, he is motivated to speak the truth as he is about to meet his/her creator. Therefore, on the basis of the dying declaration (Ex. P. 5), the prosecution has succeeded in establishing its case against the appellant.

Lastly, the intention of the appellant was to commit murder of his wife. For, he had poured the kerosene on her body, and burned her. According to the Post-Mortem Report (Ex.P-10), the deceased has suffered anti-mortem burn injuries on the face, front of chest, front of abdomen, neck, left hand, right upper thigh, back of left trunk; she had suffered 40% burn injuries. According to the testimony of Dr. B. Sriramulu (P.W-10), the cause of the death was due to the burn injuries. Hence, the case clearly falls within Section 302 IPC. Therefore, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

Smt. K. Sailaja (P.W-7) in her testimony clearly states that *“the duty doctor identified the patient and also gave the certificate of the condition of the patient. According to the certificate of the duty doctor, the patient was conscious, coherent and it is a fit state of mind to give declaration. I put some preliminary questions to the*

patient to ascertain whether she is in a fit state of mind to answer my questions and give her statement. I introduced myself to the patient and recorded her statement. I found the patient to be in a fit state of mind, and she was conscious, and coherent". "Ex.P-5 is the dying declaration recorded by me ." Thus, the injured was conscious, and coherent, and in a fit state of mind to give the statement.

The statement of Smt. Vaseena (Ex.P-6) as given to K. Sridhar Rao (P.W-8) is as under:

I state you that, my name is V.H. Vaseena, W/o Kemitu Columbus, Age 25 years that I am a house wife. My house number is 31-142/3, Ramakrishna Puram, Neredmet. It is our own house. Myself and my husband Columbus, S/o Selvaraj, Aged 42 years were married as per Christian Customs at Rock Church, Yousufguda in the presence of elders on 12.12.2011 and it was an arranged marriage. At the time of marriage no dowry was given. My husband did not do any work. Since the marriage he did not bring any necessary items in the house. When I ask, he will state that do not ask anything and went out in the house and used to come by consuming alcohol. He used to abuse me in filthy language and used to harass me mentally and used to sell away the household articles and used consume liquor. Today i.e., on 12.11.2012 afternoon he came house by consuming liquor. Then, myself and my mother-in-law Cahteren (sic) questioned him as to why he came house drunken like this. Then he abused both of us, picked up wick kerosene stove, sprinkled kerosene on me and lit fire with match stick and thrown on me. At that time my mother-in-law went outside. Unable to bear the burns, when I came out by crying, at that time my husband is in intoxication. On hearing my cries, when the 'basthi' people (locality people) abused my husband then my husband poured water on me and put off the flames. Then, when the locality people called the ambulance, myself and my husband came to Gandhi Hospital and I was admitted.

The extract of the dying declaration recorded by Smt. K. Sailaja (P.W-7) is as under:

1). *How you sustained burns?*

Ans: Yesterday at 3.30 p.m, my husband came to house in drunken condition, I asked him why you consume liquor. We quarrel each other. My husband got angry and beat me.

When I questioned why you beat me, immediately he poured kerosene and lit fire. I did not expect that he will do like that.

2).....

3). *Who put off the flames?*

Ans: My husband. The opposite house people called ambulance. My husband came with me to the hospital.

4). *Who is responsible for the burns sustained by you?*

Ans: My husband in a drunken condition poured kerosene in angry. He is responsible.

5). *Did he put any troubles to you?*

Ans: No. He did not put any troubles. When I asked her why you drink, he got angry.

6). *Are you speaking truth?*

Ans: I am speaking truth.

A bare perusal of these two statements of the deceased clearly reveal that there is no contradiction between the dying declaration (Ex.P-6), and the statement of the deceased (Ex.P-5). In both the statements the deceased has clearly stated that it is the appellant who had poured kerosene on her, and burned her. Moreover, since there is no contradiction between the two statements, since the dying declaration was given by the injured, when she was in a fit state of mind, and was coherent, the learned trial court was justified in relying on the said dying declaration (Ex.P-5), and on the statement of the injured (Ex.P-6). Therefore, the first contention raised by the learned counsel for the appellant is clearly unacceptable.

The learned counsel for the appellant is equally unjustified that this is a case of circumstantial evidence. Since the statement of the injured (Ex.P-6), and her dying declaration (Ex.P-5) exist, it is a case of direct evidence. Since a consistent story has been

narrated by the injured, the deceased, the learned trial court need not look for further corroboration in the case. Therefore, the learned counsel is unjustified in claiming that the prosecution is expected to present a complete chain of circumstances which would unerringly point to the guilt of the accused, and would exclude any other hypothesis with regard to his innocence. Hence, the second contention raised by the learned counsel is unsustainable.

However, a bare perusal of the dying declaration (Ex.P-5) prominently brings out a few factors in favour of the appellant: firstly, the appellant and the deceased were quarrelling at the time of the incident. Secondly, the quarrel was with regard to the drinking habit of the appellant. Thirdly, in the heat of the moment, at the spur of the moment, the appellant picked up the kerosene stove, poured kerosene and ignited the fire. Fourthly, the injured herself did not expect the appellant to do so. Fifthly, he brought her to the hospital. Moreover, according to the Post-Mortem Report (Ex.P-10), the deceased has suffered a burn of 40%. Hence, the deceased did not suffer an extensive burn. These factors clearly reveal that the appellant did not have the intention to cause her death. But, still he can be attributed with the knowledge that the act of burning may likely lead to her death.

Therefore, the present case certainly does not fall within the ambit of Section 302 IPC. Instead, it falls under the ambit of Section 304 Part-II IPC.

In the result, the Criminal Appeal is partly allowed. The conviction of the appellant, Ch. Clemiti Columbus, S/o. H.B.

Selvaraj, in S.C. No.201 of 2013 on the file of the learned III Additional District & Sessions Judge, Ranga Reddy District, vide judgment dated 28.08.2013, is altered from Section 302 IPC to Section 304 Part -II IPC. The sentence is reduced from life imprisonment to seven (7) years rigorous imprisonment and to pay a fine of Rs.1,000/- (Rupees one thousand only) as imposed by the learned Trial Court, in default, the appellant is directed to undergo a further simple imprisonment of one (1) month.

RAGHVENDRA SINGH CHAUHAN, J

M. SATYANARAYANA MURTHY, J

Date: 04.12.2018

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