

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CRIMINAL APPEAL No.161 of 2013

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

The sole accused in Sessions Case No.192 of 2008, on the file of the Additional District and Sessions Judge, Vikarabad, is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife Smt.Kunti Jagamma, on the intervening night of 08th and 09.04.2008 at Navalga village. Vide judgment dated 10.01.2013, the learned Sessions Judge convicted the appellant and sentenced him to suffer imprisonment for life and also to pay fine of Rs.10,000/-, in default to suffer simple imprisonment for six months for the offence punishable under Section 302 IPC.

2. The facts in issue are as under:

(i) PW1 is the father of the deceased, while PW2 is the son of PW1. PW3 is the elder brother of PW1. The accused is none other than the husband of the deceased.

(ii) The marriage between the accused and the deceased took place six years prior to the incident. Both of them lived happily for a period of one year. Subsequently, disputes arose between the accused and his family members and thereafter the accused and his wife shifted to Hyderabad and then to Mansanpally. It is

stated that under the influence of alcohol, the accused used to harass the deceased. Four months prior to the date of incident, there was a quarrel between the accused and the deceased on the ground that the accused was playing cards, consuming alcohol and not giving coolie amount to meet household expenses. On the intervening night of 8th and 09.04.2008, the accused is said to have poured kerosene on the deceased and set her ablaze. Immediately, the injured came out of the house and started raising hue and cries. On hearing the same, PWs.3 and 6 came out and extinguished the flames, called an ambulance and shifted the injured to Tandur Government Hospital. On 09.04.2008, at about 02.00 p.m., PW3 proceeded to Basheerabad Police Station and reported about the admission of the injured in the hospital. Immediately, thereafter, PW9 proceeded to the Government hospital, Tandur, recorded the statement of the injured at about 02.30 p.m. and obtained her thumb impression. Basing on the said statement, a case in Crime No.26 of 2008 came to be registered for an offence punishable under Section 307 IPC. Ex.P5 is the statement of the injured. Ex.P6 is the FIR. Thereafter, PW9 gave a requisition to PW5 – MRO, Basheerabad, to record the dying declaration of the injured. On receiving the requisition, PW5 proceeded to the hospital and recorded the statement of the injured, which is placed on record as Ex.P2. The material placed on record further shows that after registering the crime, PW9 proceeded to Navalga village, conducted scene of offence panchanama in the presence of PW6 and others. Ex.P4 is

the scene of offence panchanama. During the said proceedings, he seized MO.1 – empty plastic kerosene tin. He also recorded the statement of PW4. On 01.05.2008, he received an intimation about the death of the deceased in the hospital, pursuant thereto, he altered the section of law from Section 307 IPC to Section 302 IPC and issued Ex.P7 the altered memo. Thereafter, PW5, the Tahsildar conducted inquest over the body in the presence of panchayathdars and then sent the body for post mortem examination. PW10 the Civil Assistant Surgeon at District Hospital, conducted autopsy over the body. Ex.P8 is the post mortem examination certificate. According to him, the cause of death was due to 90% kerosene burns. PW11 continued with the investigation. After affecting the arrest of the accused and collecting necessary documents, a charge sheet came to be filed, which was taken on file as PRC No.34 of 2008 on the file of Judicial Magistrate of First Class, Tandur, Ranga Reddy District.

(iii) On appearance of the accused, copies of the documents were furnished to him, as per Section 207 Cr.P.C., and later the case was committed to the Court of Sessions, under Section 209 Cr.P.C., wherein it came to be numbered as S.C.No.192 of 2008.

(iv) On consideration of material placed on record, the charge as stated above came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

(v) To substantiate their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P8 and M.O.1.

(vi) After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses. He denied the same, but, however, did not adduce any evidence in support of his plea.

3. Basing on the two dying declarations recorded by the ASI and MRO, coupled with oral dying declaration made, the trial Court convicted the accused and sentenced him to a term of imprisonment referred to above. Assailing the same, the present appeal came to be filed through legal aid.

4. Learned counsel for the appellant would contend that though there are two dying declarations implicating the accused with the crime, but the same are inconsistent with regard to the manner in which the incident took place and also the circumstances which lead to the incident. He would further contend that in the absence of any declaration by the doctor that the deceased was in a fit state of mind while giving dying declaration, the said dying declaration cannot be made the basis to convict the accused. He further submits that though the crime was registered in the month of April, 2008, but no effort was made to get the statements of PWs.1 and 2 recorded till the death of the deceased. In the absence of any explanation for

delay in recording the statements of PWs.1 and 2, learned counsel for the appellant would submit that no credence can be given to the version of the prosecution witnesses. In any event, he would submit that the incident is an outcome of a quarrel between both the parties and having regard to the fact that the accused tried to put off the flames, the nature of offence requires to be scaled down.

5. On the other hand, learned public prosecutor would contend that though PWs.1 and 2 were examined after the death of the deceased, but the statement of the deceased recorded after the injured was admitted in the hospital can be made the basis to convict the accused. He further admits that in the absence of any incriminating material being elicited in the cross examination of the investigating officer and the MRO, the judgment under challenge warrants no interference.

6. The point that arises for consideration is whether the accused was responsible for the death of the deceased and if so whether he is liable for conviction under Section 302 IPC?

7. As seen from the record, the incident in question is said to have occurred on the intervening night of 08/09.04.2008, but the deceased died on 01.05.2008 due to 90% burn injuries. There are no eye witnesses to the incident in question, but PWs.3 and 4 were examined to speak about putting off the flames, when the deceased came out of the house raising cries. At the same time, it is also to be noted that two dying declarations were recorded,

one by the police officer and another by the MRO on a requisition given by the police. Ex.P2 is the dying declaration recorded by PW5-MRO, whereas, Ex.P5 is the statement recorded by the police. It is also to be noted that though the deceased was alive for nearly 21 days, no steps were taken to get the dying declaration recorded by the Magistrate. Before proceeding with the oral evidence, we would like to refer to the two dying declarations said to have been given by the deceased. The first declaration – Ex.P5 was on 09.04.2008 at about 02.30 p.m. before PW9 the then ASI, Tandur, which formed basis for issuance of the FIR. In the said dying declaration, the deceased stated that on 08.04.2008 at about 02.00 p.m., the husband of the deceased returned home and after having lunch, the deceased asked his husband to keep Rs.100/- with him and return the balance amount to her, for which the accused beat her and the same led to a quarrel between both of them. It is stated that at that time the accused left the house and again returned back at 09.30 p.m. in a drunken condition and quarreled with her. Thereafter, at about 12.30 hours in the night while the deceased was sleeping, her husband took the kerosene can, poured the same on her and set her on fire with a match stick. She then started raising cries and ran out of the house. PWs.3 and 4 came out and extinguished the flames, called for an ambulance and got her admitted in the hospital.

8. From the above statement, it appears that there was quarrel in the intervening night, wherein both of them beat each other and thereafter, the accused left the house. In the night at about 09.30 p.m., he returned home consuming alcohol and both of them again quarreled and beat each other. Thereafter, while the deceased was sleeping, he is said to have poured kerosene and set her on fire.

9. Coming to the second dying declaration recorded by the MRO – Ex.P2, which was recorded pursuant to the requisition by the ASI, the deceased stated that about 1 ½ year ago, she got married to the accused and started residing with him at Masanpally village, Basheerabad Mandal. It is stated that since marriage, both of them used to quarrel on petty issues. On 08.04.2008, when the husband of the deceased brought Rs.300/-, she asked him to give Rs.350/- towards the family expenses, for which he was ready to give only upto Rs.300/-. There was exchange of words between them. In the said incident, the accused is said to have taken away her pusthe, mettalu, without her permission. At about 01.00 a.m., while she was sleeping, the accused poured kerosene on her, pursuant to which she woke up. It is her version that she never thought that the accused would set her on fire. Immediately, the accused set her ablaze with a match stick. On hearing her cries, her husband (accused) poured water on her and put off the flames. It is stated that the sister of the deceased opened the door and she came out of the

house. Thereafter, she was taken to the Government hospital in 108 ambulance.

10. From the statement recorded by PW5, it is clear that on 08.04.2008, though her husband brought Rs.300/-, the deceased insisted him to give Rs.350/- and there were exchange of words between both of them. Later, at about 01.00 a.m., the accused poured kerosene and set her on fire. On hearing cries, her husband poured water and tried to put off the flames. The evidence of PW5, who recorded the said statement, shows that though he recorded the statement of the deceased, did not obtain endorsement of the doctor, to find out the mental condition of the deceased. He did not also make any endorsement on the dying declaration as to the fitness of the deceased in making the statement. He further admits that Ex.P2 which is recorded by him is not in his hand writing. He further admits that by the time he went there to record the dying declaration, the relatives were also present and they have identified the declarant and shown the deceased to PW5. From the evidence of PW5, it shows that though he claims to have recorded Ex.P2, the writing on Ex.P2 were not of him. That means he has not written it and a third person was present, which throws any amount of doubt with regard to the contents of the dying declaration, moreso, when he failed to take the endorsement of doctor, who was present in the hospital, when he went there to record the dying declaration.

Infact, the trial Court also rejected the said statement, but still relied upon the evidence of PWs.3,4 to base a conviction.

11. It is to be noted here that PWs.3,4, and 5 were not eye witnesses to the incident. PW3, who is the paternal uncle of the deceased, in his evidence, states that when the deceased came out of the house with flames, he put off the flames with the help of one Sayappa, by using a Bontha. According to him, the accused fled away from the place. In the cross examination, he admits that he did not witness the accused pouring kerosene on Jaggamma. He further admits that about 20 to 30 neighbours assembled, when the injured came out with flames, making hue and cry. He further admits that he could not stop the accused while he was leaving the place and also admits that he did not give any report to the police against the accused, immediately after the incident. Similar is the evidence of PW4, who in his evidence deposed that on the day of incident, at about 12.00 midnight, he heard some sounds from the house of PW3, went there and found the injured coming out of the house in flames. He claims to have put off the flames with the help of a towel. Later, she was shifted to Tandur Government Hospital. He further admits in the cross examination that he did not witness any galata or quarrel between the accused and his wife, as he was inside the house. He further states that his statement was recorded by the police in the hospital, immediately after admission of the injured in the hospital. He further admits that

he was not examined by the police at any time. From the evidence of these two witnesses, it is clear that none of them witnessed the incident and both of them tried to put off the flames. In his evidence PW3 deposed usage of bontha to put off the flames. PW4 in his evidence states that he tried to put off the flames with the help of a towel. Apart from that the evidence of investigating officer-PW11 would show that the statements of PWs.1 and 2 were recorded on 01.05.2008 i.e., subsequent to the death of the deceased, though the case was registered on 09.04.2008. PW9 also recorded the statements of PWs.3 and 4 and all the statements were available in the Court. PW11 further stated that in the statements recorded by him, PWs.3 and 4 referred to accused fleeing away, on seeing PWs.3 and 4, but the same does not appear in the statements recorded by ASI from PWs.3 and 4. From the admissions elicited in the evidence of PW11, a doubt arises with regard to the conduct of the accused as projected by the prosecution. Though prosecution tried to contend that the accused tried to run away from the scene of offence, but the evidence of PW11 is otherwise. Even otherwise, the evidence of PWs.3 and 4 is only with regard to putting of flames. None of them questioned the deceased as to how she sustained burn injuries nor did the injured disclosed to PWs.3 and 4 as manner in which, she sustained burn injuries.

12. Though prosecution is now relying upon the statement recorded by ASI, which is placed on record as Ex.P9, but the same was never made the basis to establish the guilt of the accused.

On the other hand, the trial Court proceeded on oral evidence of PWs.1 to 4 to establish the guilt of the accused. Insofar as evidence of PWs.1 and 2, it is to be noted that though the investigating officer proceeded to the scene of offence, immediately after the incident, never made any effort to record the statements of PWs.1 and 2. On the other hand, their statement came to be recorded for the first time after the death of the deceased i.e., on 01.05.2008. No explanation is forthcoming from the prosecution as to why they kept quite without recording their statements prior to the death of the deceased. This circumstance alone is sufficient to exclude the evidence of PWs.1 and 2 from consideration.

13. Coming to the statement recorded by PW9 which formed the basis to register FIR, it is to be noted here that the said statement does not contain any left thumb impression of the injured at the end of the statement, though it is mentioned as "*itlu LTI of the injured*". For the reasons best known, no thumb impression of the injured was taken in the said statement. That being the position, the said statement cannot be treated as dying declaration and hence a suspicion would arise with regard to the contents of the said statement.

14. In view of the above said circumstances, we feel that there is absolutely no legal material to connect the accused with the crime.

15. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused, in the judgment dated 10.01.2013, in Sessions Case No.192 of 2008, on the file of the Additional District and Sessions Judge, Vikarabad, for the offence punishable under Sections 302 of 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.

JUSTICE C.PRAVEEN KUMAR

JUSTICE ABHINAND KUMAR SHAVILI

Date: 12.02.2018
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