

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Criminal Appeal No.1181 of 2011

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

The sole accused in SC No.617 of 2009 on the file of the Additional Sessions Judge, Hindupur, is the appellant herein. He was tried for an offence punishable under Section 302 of IPC, for causing death of his wife by name Guvvala Vadde Sreedevi (hereinafter referred as 'deceased') on 02.05.2008 by pouring kerosene and setting her ablaze. By its judgment dated 05.05.2011, the learned Additional Sessions Judge found the accused guilty of the charge framed and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.100/- for an offence punishable under Section 302 IPC.

2. The case of the prosecution is as under:

PW.1 is the mother and PWs.2, 3 and 5 are the sisters of the deceased Guvvala Vadde Sreedevi. PWs.4, 6 and 7 are the relatives of PWs.1 to 3 and 5. PWs.8, 9, 10, 12 and 14 are the neighbours. All the material witnesses did not support the case of the prosecution and were declared hostile by the prosecution.

The marriage of the deceased was performed with one Guvvala Dharma Raju about four years prior to the date of incident. About one year prior to the date of incident, the husband of the deceased went to Goa for livelihood. At that time, the deceased is said to have developed illicit intimacy with the accused, as her husband left from the village. The accused continued the illegal intimacy by leaving his family and after some days, the deceased and accused used to quarrel with each other, as the accused informed the deceased that he would leave her.

On 02.05.2008 at about 11 p.m. the accused picked up a quarrel with the deceased saying that he has to go to his house and live with his wife and asked the deceased to go and die. Further the accused became angry, poured kerosene on the body of the deceased and set her on fire with a match stick, with an intention to kill her. On hearing the cries of the deceased, PWs.8, 9, 10, 12, 14, 17 and others came there and along with accused put off the flames. Thereafter, the injured (deceased) was shifted to the Government Hospital, Kadiri in 108 Ambulance. On the intervening night of 2/3.05.2008 at about 3 a.m., PW.25-the Assistant Sub Inspector of Kadiri Town PS, received Ex.P.26 intimation from the Government Hospital, Kadiri about the admission of the injured in the hospital. Immediately, he rushed to the hospital, noticed the victim with burn injuries and under going treatment. As the victim was conscious, he recorded her statement vide Ex.P.27, in the presence of duty doctor, who endorsed on the statement with regard to mental condition of the injured. Thereafter he read over the contents of Ex.P.27 to the injured to which she admitted it to be true and affixed her thumb impression. Later he sent Ex.P.26 intimation and Ex.P.27 statement to the Tanakal PS, on the point of jurisdiction.

On 03.05.2008 at about 2.20 a.m., PW.24, the Additional Judicial Magistrate of I Class, Kadiri, received Ex.P.24 medical intimation from the Government Hospital, Kadiri for recording the statement of injured. Immediately she rushed to the Government Hospital, Kadiri. After identifying the injured through the duty doctor PW.18, she put some preliminary questions to know the mental condition of the injured and on being satisfied, recorded the dying declaration of the injured, which is placed on record as Ex.P.25. The evidence of PW.25 further shows that on 03.05.2008 he received the death intimation of the deceased

vide Ex.P.28 from the Government Hospital, pursuant thereto, he sent the death intimation to Tanakal PS on the point of jurisdiction. Basing on the statement recorded by PW.25, PW.19-Sub Inspector of Police, Tanakal PS, registered a case in Cr.No.24 of 2008 for an offence punishable under Section 302 of IPC and issued FIR Ex.P.19. PW.26-the Circle Inspector of Police, Kadiri Rural, deposed that on receipt of the Ex.P.19 express FIR, he took up investigation and verified the investigation already done by PW.19. He, then visited the Government Hospital at Kadiri, and found the dead body of the deceased in the mortuary room. In the presence of PWs.15, 20 and 21, he held inquest over the dead body of the deceased. During inquest, he examined PWs.1 to 6 and recorded their statements. At the time of inquest, he seized MOs.10 to 14 vide Ex.P.31. After inquest, he sent the dead body for the post-mortem examination. PW.23 the Deputy Civil Surgeon, Government Hospital, Kadiri, deposed that on 03.05.2008 he conducted post mortem examination over the dead body of the deceased and issued Ex.P.23 the post-mortem certificate. According to him, the cause of death was due to *hypovolumic* shock due to extensive burns. PW.26 further deposed that he was informed that the accused was also taking treatment for the burn injuries sustained in the Government Hospital, Kadiri, hence, he posted a guard as surveillance. Again he left the hospital, reached the scene of offence, prepared Exs.P.29 and 30 the two rough sketches of the scene of offence *panchanama* in the presence of PW.16 and another. He also took the photographs of the scene of offence and seized MOs.1 to 9 under Ex.P.16 seizure mahazar, in the presence of PW.16 and another. He secured the presence of PWs.8, 12 and 13 and recorded their statements under Exs.P.8, P.12 and P.13 respectively. On 04.05.2008, he resumed the investigation, secured the presence of

PWs.7, 9, 10, 14 and 17 and recorded their statements under Exs.P.7, 9, 10, 14 and 17. On 24.05.2008, he received information from the guard constable that the accused was going to be discharged from the hospital; immediately, he secured the presence of PWs.18 and 22 the mediators and arrested the accused after interrogating him in their presence. On interrogation the accused is said to have confessed about the offence which was recorded under Ex.P.32. The evidence of PW.11-the doctor in Government Hospital, Kadiri would show that he treated the accused on 03.05.2008 for the superficial deep burns on both the hands up to wrists; he opined that the said injuries are simple in nature and issued Ex.P.11 the wound certificate. After completion of the investigation, PW.26 filed a charge sheet against the accused before the Court of Additional Judicial Magistrate of I Class, Kadiri, which was taken on file as PRC No.31 of 2009. On appearance of the accused, copies of documents were furnished to him as required under Section 207 Cr.P.C. and then committed the case to the Court of Sessions, under Section 209 Cr.P.C. as the offence alleged against the accused is triable by a court of Session.

3. On committal, the Additional Sessions Judge, Hindupur framed a charge against the accused for the offence punishable under Section 302 of IPC, read over and explained to him, to which he pleaded not guilty and claimed to be tried.

4. To prove its case, the prosecution examined PWs.1 to 26 and got marked Exs.P.1 to P.32 and MOs.1 to 14. After the closure of the evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating evidence appearing against him in the

evidence of the prosecution witnesses, to which he denied, but did not choose to examine any witnesses on his behalf.

5. Out of 26 witnesses examined by the prosecution, PWs.1 to 10, 14, 15, 17, 18, 20, 21 and 22 did not support the case of the prosecution and were declared as hostile. Relying upon the two dying declarations of the deceased, the learned Sessions Judge found the accused guilty for the offence punishable under Section 302 of IPC and sentenced him as stated supra. Aggrieved by the same, the present appeal came to be filed.

6. Heard the learned counsel for the appellant and the learned Public Prosecutor for the respondent-State.

7. The main ground urged by the learned counsel for the appellant is that all the witnesses, including the eye witnesses to the incident, did not support the prosecution case and they were treated as hostile and as the two dying declarations, are inconsistent with other, the learned Judge erred in convicting the accused basing on the two dying declarations. He would further contend that having regard to the inconsistency with regard to the nature of the dispute the two dying declarations, prays to allow the appeal by setting aside the conviction and sentence imposed against the appellant.

8. On the other hand, the learned Public Prosecutor would contend that though all the family members did not support the prosecution case, but having regard to the consistent version of the deceased in the two dying declarations with regard to the manner in which the deceased died, the prosecution was able to prove the guilt of the accused beyond reasonable doubt.

9. Since all the witnesses were declared hostile, the case rests on the two dying declarations Exs.P.24 and 27. Ex.P.27 is the statement of the deceased recorded by PW.25 and Ex.P.24 is the statement recorded by PW.24, the Magistrate. In the first dying declaration recorded by PW.25, the deceased stated that she got married about 4 years back with one Dharma and her husband used to look after her well. Her husband went to Goa for livelihood about a year back. From then onwards, she developed acquaintance with the accused and used to live under one roof. Since some days, the accused is not looking her well and used to pick up quarrels. On 02.05.2008 at about 11 p.m. the accused picked up a quarrel, with her suggesting her to die, so that he can go to his wife, so saying he took out kerosene, poured on her and set her on fire. As a result of which her entire body was burnt. Then the accused and some others put off the flames and brought her to the Government Hospital, Kadiri in 108 Ambulance.

10. From the statement of the victim, it is clear that about four years back her marriage took place with one Dharma and about a year ago her husband left to Goa in search of his livelihood. At that time, she developed acquaintance with the accused and started living with him. Since few days, the accused was not looking her well and used to pick up quarrels. On 02.05.2008 at about 11 p.m., there was a quarrel suggesting the deceased to die so that he can go and join his wife so saying, the accused took out kerosene and poured the same on the deceased and set her on fire. The statement also shows that the accused and others put off the flames.

11. Ex.P.25 is the statement recorded by PW.24, the Additional Judicial Magistrate of I Class, Kadiri. According to PW.24, after receiving

requisition Ex.P.24, from the duty doctor of Government Hospital, Kadiri for recording the dying declaration of Smt. Sreedevi of Tanakallau, she immediately proceeded to the Government Hospital, Kadiri and on being satisfied with the mental condition of the injured and after obtaining the endorsement of the duty doctor, recorded the dying declaration Ex.P.25 of the victim. As per the statement, on the date of incident at about midnight 12.00 hours, there was a dispute between herself and the accused and in that quarrel, the accused poured kerosene on her body and set fire. She further stated that the accused along with others brought her to the hospital for treatment. She further stated that her first marriage took place with one Dharma about four years back and after her first husband deserted, she married the accused a year back. She further stated that there was a quarrel on the date of incident, since the accused started disliking her. She also stated that immediately the neighbours and her husband (accused) came to her rescue. She stated that it was the accused, who admitted her in the hospital. After recording the statement, PW.24 read over the contents of the statements to the victim and obtained her thumb impression. Ex.P.25 is the statement.

12. A reading of the two statements make it clear that there was some quarrel between the accused and the deceased and in that quarrel, the accused is said to have poured kerosene on the body of the deceased and set her on fire. Thereafter, he himself brought the deceased to the Government Hospital. Further, the evidence on record would show that immediately after the incident, the accused was also admitted in the hospital on the same day and he was inpatient in the hospital for nearly twenty days. Basing on the evidence of PW.11, who treated the accused, learned counsel for the appellant tried to contend

that it was a case of suicide and after the death of the deceased, the accused has been falsely implicated in the case. But there is no evidence on record in support of the plea that the deceased committed suicide and while she was committing suicide, the accused tried to put off the flames. In fact there is no suggestion to the doctor that the nature of the injuries sustained by the deceased were suicide in nature. Therefore, the plea of the appellant-accused that it was a case of suicide cannot be accepted. As the accused himself admitted the deceased in the hospital and since the contents of the two dying declarations show that the accused also tried to save the life of the deceased, it can be said that after seeing the gravity of the situation, the accused tried to put off the flames and in that process, he sustained injuries. Even though the prosecution has not explained properly as to how the accused sustained burn injuries, but his presence along with the deceased at the time of offence stands established. The evidence on record further shows that prior to the incident, a quarrel was ensued between the accused and the deceased, pursuant thereto the accused poured kerosene and set the deceased on fire. Taking into consideration the contents of the two dying declarations with regard to the manner in which the deceased sustained injuries, it can be said that the accused having realised the situation after setting fire, tried to put off the flames, shifted the deceased to the Government Hospital. The fact of shifting the deceased to the hospital by the accused was reflected in the dying declaration recorded by PW.24-Magistrate.

13. In '*Kalu Ram vs. State of Rajasthan*¹', the apex Court held that that the appellant had not intended to cause injuries to the deceased, which she sustained due to his act, therefore the offence was brought

¹ (2000) 10 SCC 324

down from first degree murder to culpable homicide not amounting to murder. It was a case where the accused demanded ornaments from the deceased and when she refused, he got infuriated and poured kerosene. Realising the gravity of the situation, he himself tried to put off the flames in rescuing the deceased and in that process, the accused sustained injuries.

14. In the case on hand also, initially, the accused poured kerosene on the body of the deceased and set her on fire. Realizing the gravity, he tried to put off the flames and in that process, sustained injuries. The two dying declarations show that the deceased left the company of her first husband, who deserted her and thereafter, she developed illicit intimacy with the accused and both of them were living under one roof as husband and wife. The accused was also having wife, living separately. In a quarrel which ensued between them, the accused poured kerosene and set fire. Probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If really he had ever intended her to die, he would not have taken the extreme measure of putting off the flames. In that process, the accused also sustained injuries on his hands up to wrist, which is evident from the evidence of PW.11-doctor, who treated the accused and issued Ex.P.11 wound certificate. The fact that the accused tried to put off the flames along with the neighbours is evident from the statement of the deceased recorded by PW.24. Therefore, the act of the accused in trying to put off the flames cannot be brushed aside.

15. Having regard to the above circumstances, we are persuaded to bring down the offence from first degree murder to culpable homicide

not amounting to murder i.e., from Section 302 of IPC to Part II of Section 304 of IPC.

16. Accordingly, the criminal appeal is partly allowed and the conviction recorded against the appellant-accused vide judgment dated 05.05.2011 in SC No.617 of 2009 by the Additional Sessions Judge, Hindupur, for the offence under Section 302 of IPC is altered to one under Section 304 Part II of IPC and sentenced the appellant-accused to undergo rigorous imprisonment for five and half years (5½ years). The sentence regarding the fine imposed by the trial Court is confirmed. It is brought to the notice of this Court that during pendency of the appeal, this Court granted bail to the appellant-accused vide order in Crl.M.P.No.1951 of 2016 dated 28.11.2016. The bail bonds shall now stand cancelled and the appellant-accused is directed to surrender himself before the trial Court to serve out the remaining sentence, if any.

Consequently, miscellaneous petitions, if any, pending in this criminal appeal, shall stand closed.

C. PRAVEEN KUMAR, J

KONGARA VIJAYALAKSHMI, J

Date: 12.06.2018
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AND
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Date: 12.06.2018

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