

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL APPEAL No.587 of 2011

Between:

Chippa Mallesh

..Appellant/ Accused

and

The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

JUDGMENT PRONOUNCED ON: 22nd January, 2018

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of local
Newspapers may be allowed : Yes/No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes/No
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes/No
Judgment?

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

+ CRIMINAL APPEAL No.587 of 2011

% 22.01.2018

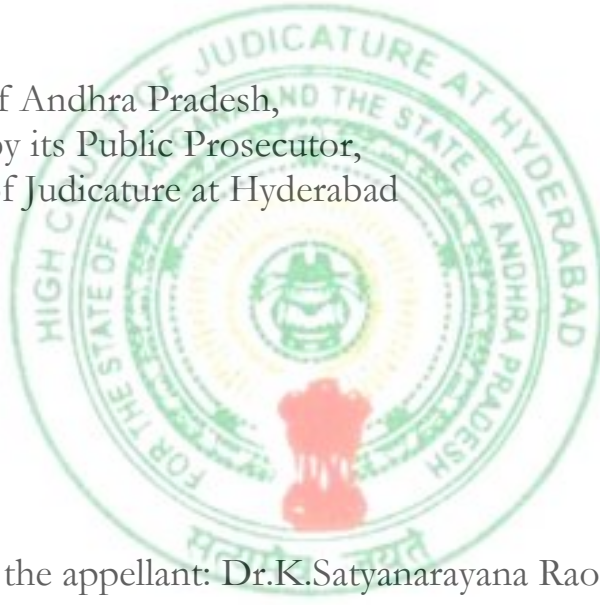
Chippa Mallesh

..Appellant/ Accused

Vs.

\$ The State of Andhra Pradesh,
 represented by its Public Prosecutor,
 High Court of Judicature at Hyderabad

..Respondent



! Counsel for the appellant: Dr.K.Satyanarayana Rao

Counsel for the respondent: Public Prosecutor (A.P.)

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>Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.587 of 2011

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Between:

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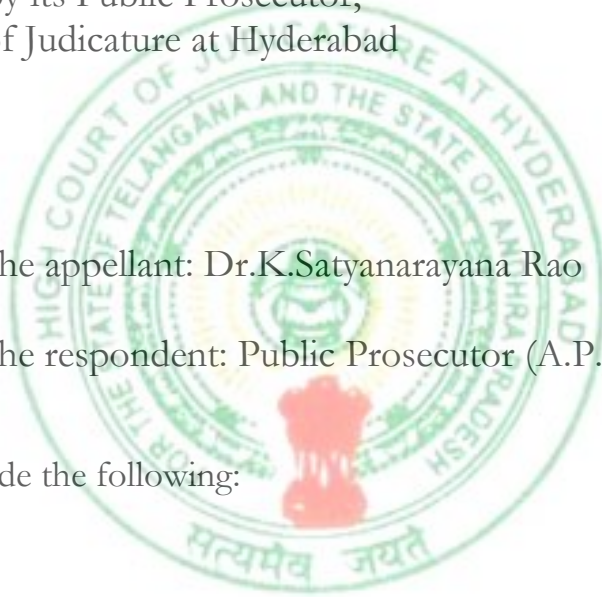
The State of Andhra Pradesh,
represented by its Public Prosecutor,
High Court of Judicature at Hyderabad

..Respondent

Counsel for the appellant: Dr.K.Satyanarayana Rao

Counsel for the respondent: Public Prosecutor (A.P.)

The Court made the following:



JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The sole accused in Sessions Case No.331 of 2010 on the file of learned III Additional District and Sessions Judge (Fast Track Court), Ranga Reddy District, filed this appeal against his conviction and sentencing for the offences punishable under Sections 302 and 498-A I.P.C. He was sentenced to rigorous imprisonment for life and to pay a fine of Rs.100/- and in default in payment of fine, to undergo simple imprisonment for one month for the offence punishable under Section 302 I.P.C. and further, to undergo rigorous imprisonment for two years and to pay fine of Rs.100/- and in default in payment of fine, to undergo simple imprisonment for one month for the offence punishable under Section 498-A I.P.C. Both the sentences were directed to run concurrently.

2. The case of the prosecution, in brief, is as follows:

(a) The appellant is the native of Kothapet Village, Kesampet Mandal, Mahabubnagar District. His wife *viz.*, Lakshmi (hereinafter referred to as 'the deceased') was the resident of Dhanwada Village of Mahabubnagar District. Their marriage was solemnised on 07.05.2006. P.Ws.1 and 2 – the in-laws of the appellant, were fruit vendors by profession and were staying at Malkajgiri. The appellant is a cook by profession. He also came down to Hyderabad for livelihood and was staying at Malkajgiri. The couple was blessed

with a male child, aged three years and a female child, aged 11 months, as on the date of the accident. The appellant owned a plot of 100 sq. yds. with a dilapidated house at Kothapet Village. The deceased and her parents used to force the appellant to transfer the said property in favour of his wife - the deceased. The appellant used to consume liquor daily and quarrel with the deceased and used to harass her both physically and mentally, on one pretext or the other. There were clashes between the couple on the aspect of transfer of the property. In that connection, the appellant used to harass his wife – the deceased.

(b) On 05.05.2010, at about 18.30 hours, the appellant came to his house in a drunken state. When the deceased insisted the appellant not to consume liquor and transfer the property in her favour, a quarrel ensued between them. Fed up with the attitude of the deceased, the appellant decided to eliminate her from his life and with a view to kill her, he took the kerosene bottle, poured the same on her and set her ablaze. During the struggle the left leg pant of the appellant also caught the flames, as a result of which, the appellant sustained burns on his left leg. The appellant came out of his house and informed P.W.2 over phone that the deceased set herself ablaze and thereafter, he fled away. P.Ws.1 and 2 rushed to the house of the deceased and shifted her to Gandhi Hospital,

Secunderabad, for treatment, where she succumbed to burn injuries at 08.00 hours on 08.05.2010.

(c) On 05.05.2010, at 20.15 hours, the Police of Malkajgiri Police Station (P.S.) received a telephonic message from the Enquiry Clerk, Gandhi Hospital, Secunderabad, stating that one patient *viz.*, Lakshmi was admitted in female burns ward and requested to get her dying declaration recorded. P.W.9 – the Head Constable, Malkajgiri P.S. was deputed for getting her statement recorded. Accordingly, he got Ex.P-5 statement of the deceased recorded by P.W.8 – learned V Additional Chief Metropolitan Magistrate, Hyderabad, besides himself recording her statement – Ex.P-6 at 22.10 hours, which was handed over to L.W.18 – B.Ramesh, Inspector of Police, Malkajgiri, for taking further action. Based on the statement recorded by P.W.9, L.W.18 registered crime No.183 of 2010 for the offences punishable under Sections 498-A and 307 I.P.C. at 00.30 hours on 06.05.2010 and P.W.10 took over the investigation, during the course of which, he recorded the statement of the deceased, visited the scene of offence at H.No.6-86, Old Malkajgiri and conducted scene of offence panchanama in the presence of mediators *viz.*, P.W.4 and L.W.7 – S.Bikshapathi and seized M.O.1 - one litre pet bottle filled with 1/4 litre kerosene, M.O.2 - half burnt polyester white colour saree, M.O.3 - half burnt black colour pant, M.O.4 - half burnt yellow

colour petty coat and M.O.5 – half filled match box of Joker make, from the scene of offence in the presence of the mediators.

(d) While the investigation was in progress, the deceased succumbed to burn injuries on 08.05.2010 in Gandhi Hospital, Secunderabad. Therefore, L.W.18 altered the Section of law to Sections 498-A and 302 I.P.C. During the course of investigation, a letter was addressed to P.W.11 with a request to hold inquest over the deadbody of the deceased, who expired within seven years of her marital life under suspicious circumstances. L.W.18 visited Gandhi Hospital along with P.W.10 and recorded the statements of P.Ws. 1, 2 and 3 and L.Ws.3 and 5 – Master Kenche Raju and Smt.K.Kousalya. P.W.11 visited Gandhi Hospital Mortuary Room and held inquest over the deadbody of the deceased in the presence of P.W.5 and L.W.9 – Saka Venkatesh, - the mediators. After inquest, the deadbody of the deceased was subjected to post-mortem examination. P.W.6 conducted autopsy over the deadbody of the deceased and issued Ex.P-3 - post-mortem report, wherein he opined that the death was caused by shock due to burns.

(e) On 17.05.2010 at 16.30 hours, the appellant was arrested and his detailed confessional statement was recorded in the presence of L.Ws.10 and 11 – Jangiti Raju and Arya Albert. As the

appellant also sustained burn injuries on his left leg, he was sent to hospital, wherein P.W.7 treated him.

3. As the plea of the appellant was one of denial, he was subjected to trial, during the course of which, the prosecution examined P.Ws.1 to 12 and marked Exs.P-1 to P-8. The appellant did not adduce any evidence on his side. On consideration of the oral and documentary evidence, the Court below has disposed of the sessions case in the manner as stated hereinbefore.

4. We have heard Dr.K.Satyanarayana Rao, learned counsel for the appellant, and the learned Public Prosecutor (A.P.) appearing for the respondent-State.

5. The learned counsel for the appellant has submitted that as there are no witnesses to the occurrence of the alleged offence, the dying declaration needs to be carefully scrutinized and that as there are material discrepancies between Ex.P-5 – the dying declaration recorded by P.W.8 – the Magistrate, and Ex.P-6 – the statement of the deceased recorded by P.W.9 – the Head Constable, the appellant is entitled to the benefit of doubt. The learned counsel has alternatively submitted that the conduct of the appellant i.e., in his pouring water after the incident in order to save the deceased and also informing P.W.2 about the occurrence constituting mitigating circumstances would reveal that the

appellant did not have the intention of causing the death of his wife – the deceased and that at the most, the offence committed by him falls under Part-II of Section 304 I.P.C.

6. The learned Public Prosecutor (A.P.) appearing for the respondent-State has opposed the above submissions of the learned counsel for the appellant and submitted that the alleged discrepancies between Ex.P-5 and P-6 are not material; that the contents of Exs.P-5 and P-6 are very natural and that in the absence of any material contradictions between the contents of the said documents and the oral evidence produced by the prosecution, the Court below has rightly relied upon Ex.P-5 in convicting the appellant for the offence punishable under Section 302 I.P.C. The learned Public Prosecutor has further submitted that there is sufficient evidence to show that the appellant harassed the deceased and therefore, he was also rightly convicted for the offence punishable under Section 498-A I.P.C.

7. We shall first deal with the charge for the offence punishable under Section 498-A I.P.C. Ex.P-6 – the statement of the deceased is the basis for registration of F.I.R. In the said statement, the deceased, *inter alia*, stated that the appellant used to consume liquor everyday and harass her both physically and mentally. Even in Ex.P-5 – the dying declaration, the deceased categorically stated that

during the four years of the wedlock, the appellant was constantly abusing and beating her and that recently he even pulled out and snapped the nuptial thread. P.Ws.1 and 2 – father and mother of the deceased, also supported the version reflected in Ex.P-6. This coupled with the fact that the deceased received fatal burn injuries leading to her death would prove the prosecution charge that the appellant subjected the deceased with cruelty within the meaning of Section 498-A(a) I.P.C. Therefore, we do not find any reason to interfere with the conviction and sentencing of the appellant for the offence punishable under Section 498-A I.P.C.

8. As regards the charge for the offence punishable under Section 302 I.P.C., Ex.P-5 being the earlier statement of the deceased recorded by P.W.8 – the Magistrate, the same is considered as the first dying declaration. P.W.8, after being satisfied that the deceased was in a sound state of mind, recorded the latter's statement. When P.W.8 put a question to the deceased as to how the incident had occurred, she had made a brief narration to the effect that at 6.30 p.m. on that day, the appellant came home in a drunken condition; that when she questioned him as to why he was not giving any money towards family expenses, the latter poured kerosene and lit fire on her and that considering her tender aged children, she herself put out flames. She further stated that when the neighbours informed her parents, the latter arrived there and

brought her to the hospital. She also stated that during the four years of her wedlock, the appellant has been consistently abusing and beating her and pulled out and snapped the nuptial thread. P.W.8 endorsed under the purported thumb impression of the deceased at the bottom of the statement that the patient was conscious, coherent and in a fit state of mind, while recording the statement. At about 22.45 hours, P.W.9 – the Head Constable recorded Ex.P-6 – the statement of the deceased, a perusal of which shows that the deceased was more elaborate in giving her statement. From a perusal of this statement, we do not find any material discrepancy between the said statement and Ex.P-5 – the dying declaration recorded by P.W.8 – the Magistrate, as regards the alleged offender and the manner in which the offence took place. The contents of both the statements as regards the commission of the offence of pouring kerosene and lighting fire are consistent without there being any contradiction. As in Ex.P-5, the deceased in Ex.P-6 also spoke to the fact of the appellant reaching home at 6.00 p.m. in a drunken state, quarrelling and beating her before pouring kerosene and lighting fire to her. However, as regards the intimation to her parents, she stated that the appellant informed her mother that her daughter (deceased) burnt herself. To this extent, we find contradiction between Exs.P-5 and P-6.

9. Dying Declaration is an exception to hearsay evidence. The philosophy behind this is that no person in contemplation of death would like to meet his Maker with a lie on his lips. Unless the statement of the victim appears unnatural or the same comes into conflict with the ocular or circumstantial evidence, its credibility is generally accepted. As observed hereinbefore, the contents of Ex.P-5 appear very natural and there is no reason to doubt its veracity. The appellant being the husband of the deceased, ordinarily, there could be no reason for the latter to falsely implicate him. Considering the fact that the appellant was in the habit of harassing the deceased having been addicted to drinking, there is no reason to doubt the version of the deceased as reflected in Ex.P-5. The circumstances leading to the occurrence also would show that being inebriated, the appellant appeared to have lost his temper when he was confronted by the deceased questioning his conduct of drinking and not giving money to meet the household expenses and committed the offence. The Court below has, therefore, rightly found the appellant guilty of causing the death of the deceased. However, the further question that needs to be considered is whether the act committed by the appellant constitutes murder or culpable homicide not amounting to murder. Section 300 I.P.C., which deals with murder, contains five exceptions. Exception 4 reads as under:

"Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner."

The facts of the case, in our view, squarely fall within the aforementioned exception. Even as per the deceased, when the appellant reached home in drunken condition, she confronted him as to why he was not giving money to meet the household expenses. In Ex.P-6, the deceased stated that a quarrel ensued between them before the appellant poured kerosene and set her ablaze. Thus, the facts borne out by Exs.P-5 and P-6 would clinchingly establish that a sudden quarrel took place between the appellant and the deceased and that in the heat of passion, the appellant set the deceased ablaze.

10. In order to know whether the act was committed with premeditation or not, we need to discuss the conduct of the appellant. It is the case of the appellant that while the deceased was trying to immolate herself, he put out the flames by sprinkling water. Though P.W.2 was not an eyewitness, she admitted in her cross-examination that the appellant sprinkled water. This statement remained unchallenged by the prosecution. It is also the case of the appellant that he himself informed about the incident of the deceased catching fire to P.W.2 - his mother-in-law.

While P.W.2 admitted this fact, even in Ex.P-6 statement made by the deceased, she stated so. This conduct of the appellant suggests that he did not have the premeditation of killing the deceased. Though the appellant had knowledge that the injury that may be caused is likely to cause death of his wife and even the intention which appeared to have sprouted up momentarily in the heat of passion, it cannot be said that he had a premeditation to cause death of the deceased. Moreover, nothing is brought on record by the prosecution that the appellant has taken undue advantage or acted in a cruel or unusual manner. Therefore, on the facts of the case, we are of the opinion that the act committed by the appellant constitutes culpable homicide not amounting to murder falling under Part-I of Section 304 I.P.C.

11. The next issue that requires to be considered is the quantum of punishment. The appellant killed his own wife, who was only aged 22. He behaved in an irresponsible manner by coming home in a drunken state and harassing the deceased everyday. He deprived his two children of the affection of their mother. Therefore, we are of the opinion that sentence of ten years imprisonment is appropriate to meet the ends of justice.

12. Accordingly, the conviction and sentencing of the appellant are modified to the one for the offence punishable under Part-I of Section 304 I.P.C. and the appellant is sentenced to suffer rigorous

imprisonment for ten years for the said offence instead of imprisonment for life for the offence punishable under Section 302 I.P.C. The conviction and sentencing for the offence punishable under Section 498-A I.P.C. and sentencing of fine for both offences are confirmed and the same shall concurrently run as directed by the Court below. The imprisonment already undergone by the appellant shall be set off under Section 428 Cr.P.C.

13. The Criminal Appeal is partly allowed to the extent indicated above.

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

22nd January, 2018

Note: L.R. copies to be marked.

(B/o)
GHN/JSK

