

* THE HON'BLE SMT JUSTICE T.RAJANI

+ Criminal Appeal No.840 of 2008

% Dated : 15.03.2018

Bathula Swarana Kumari

..... Appellant

AND

\$ State of A.P.

..... Respondent

! Counsel for Appellant : Mr. Andhugula Ramesh Babu

^ Counsel for Respondents : Public Prosecutor (Telangana)

< GIST :

> HEAD NOTE :

? Cases referred :



SMT. JUSTICE T.RAJANI**Criminal Appeal No.840 of 2008****JUDGMENT:**

This criminal appeal impugns the judgment of the Principal Sessions Judge, Khammam in S.C. No.511 of 2007 dated 03.03.2008 by virtue of which, the said Court convicted the appellant for the offence punishable under Section 304 Part II of IPC and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.200/- and in default to undergo simple imprisonment for a period of one month.

The facts, in brief, are as follows:

The accused is the concubine of the deceased. She was married to a person hailing from Chitoor and had two children. The accused and her husband used to eke-out their livelihood by doing tailoring. The deceased was residing at Venkateswara Colony, Badrachalam and used to visit the house of accused to get his clothes stitched and as such developed acquaintance with the accused and thereafter, it turned into illicit intimacy between them. On perceiving the illicit intimacy of his wife, husband of the accused deserted the accused and he had been residing separately with his two children. The accused was being maintained as a concubine by the deceased and the welfare of the accused was being looked after by him. He used to visit her during nights and used to come drunk and leave the place in wee hours. They used to quarrel and beat each other often, and in the month of December, 2006, the deceased shifted his legally wedded wife and other family members to Shanthinagar and shifted the accused to Rajeevnagar Colony, Bhadrachalam. The wife of the deceased came to know about the relationship between the deceased and the accused and differences arose between them, due to which, the deceased restricted his movements and reduced his visits to the house of the accused and was also not attending

on the family of the accused, as earlier. There used to be quarrels between the deceased and the accused.

As the things stood thus, on 18.03.2007 at about 9 pm., the deceased came to the house of the accused while she was chitchatting with the house owners. After a little while, the accused picked up a quarrel and in the process of the quarrel, there was exchange of heated words and the deceased suspected the chastity of the accused due to which, she became wild and determined to do away with the life of the deceased and immediately she picked up a kerosene tin and poured it on the body of the deceased and set fire with match stick. In that process, her saree was also caught fire. She somehow put off the flames and the deceased ran out by raising cries and then the house owners, accused and neighbours poured water on the deceased and extinguished the flames. The deceased made a phone call to his wife, on which, she came and shifted the deceased to the hospital.

Based on the statement of the deceased, which was recorded while he was at the hospital, the case was registered in Crime No.47 of 2007 for the offence under Section 307 IPC. Later the said Section was altered to Section 302 IPC, on the death of the deceased. After due investigation, charge sheet was laid against the accused for the same offence.

The case was committed to the Sessions jurisdiction and the Sessions Court, after conducting trial of the case, during the course of which, 14 witnesses were examined, on behalf of the prosecution, and 15 documents and 4 material objects were marked. Section 313 Cr.P.C. examination was done, with regard to the incriminating circumstances appearing against the accused and she denied the truth of the evidence and did not adduce any evidence on her behalf. After considering the evidence material on record, the learned trial Court convicted and sentenced the accused as stated hereinabove.

Against the said judgment, the present appeal is preferred on the grounds that the lower Court ought to have seen that the ingredients of the Section 304 Part II are not made out; the lower Court ought to have seen that the deceased received burn injuries on his face and neck and there was no occasion to give his confession statement; the lower Court ought to have seen that signature was available in the hospital records; the lower Court ought to have seen that the deceased sustained burn injuries while making chicken curry.

The case has been coming up for hearing, since the date of the admission i.e. 07.07.2008 but the appellant never appeared before the Court to submit her arguments, nor did her counsel. After the case underwent as many as eight adjournments, on 13.03.2018, as the appellant did not still appear, the case was reserved for judgment.

Heard the learned Public Prosecutor and perused the material placed on record.

Based on the grounds of appeal the following points are framed for determination:

- 1) *Whether the statement of the deceased suffers from any legal infirmities and whether the reliance placed on the same by the trial Court is erroneous.*
- 2) *Whether the guilt of the accused for the offence under Section 304 Part II IPC stands proved beyond all reasonable doubt.*
- 3) *Whether the judgment of the lower Court is sustainable.*
- 4) *To what result.*

POINT No.1:- The statement of the deceased was recorded by the Executive Magistrate, after obtaining due certification from the duty Doctor. He was also examined as P.W.1. He spoke about the procedure that he adopted in recording the statement. The cross examination, except making a suggestion that the deceased was unconscious and that P.W.1 did not record dying declaration of the deceased, does not bring out any fact, which would render the procedure adopted by the P.W.1, in recording the statement, erroneous. Hence, there need not be any reason for not relying on the said statement, which is marked as Ex.P.1. The deceased stated therein that as on the date of the incident at 9 pm., he went to the house of the accused, who is a kept mistress to him since ten years, she made a galata with regard to his not coming to her house and poured kerosene from the can and set fire with match box. He further stated that he has been maintaining her since ten years and that since few days, he was not going to her house and he was busy in his business accounts. On the fateful day, he went to her house and she made galata, with regard to his not coming to her house and poured kerosene on him and set fire. He further stated that he came out immediately and the accused also followed and extinguished the flames. He further stated that his wife Ramalaxmi came there and brought him to the Government hospital.

P.W.2, who is the Doctor, who examined the deceased and found 60% to 70% burn injuries on the body, stated that he was present when P.W.1 recorded the dying declaration of the deceased. Now it has to be seen whether the other evidence and the answers given by the deceased in 313 examination would throw any doubt on the truthfulness of the statement of the deceased.

P.W.3 is the wife of the deceased. Her evidence shows that the deceased left the house at about 6 pm., on 18.03.2007, which is the date of the incident and at about 10:30 pm., she received a phone call from the deceased, informing her that the accused poured kerosene on him and set fire and he requested her to come to the house of the accused, on which, she rushed to the house of the accused and saw the deceased with burn injuries. She shifted him in an auto, to a private hospital and as a Doctor was not available there, she shifted him to Government hospital, Badrachalam. After admitting in the Government hospital, she informed the same to the brother of the deceased. The deceased was later shifted to a private hospital, where he succumbed to the injuries. The cross examination of P.W.3 does not show that any effort was made to elicit any fact, which would belie her evidence. Only suggestions were given that the deceased did not telephone to her and that she did not go to the house of the accused. A strong corroboration comes from the evidence of P.W.3, to the statement of the deceased, with regard to the deceased calling her over phone and her going to the house of the accused and shifting him to the hospital.

P.W.4, who is an auto driver speaks about P.W.3 engaging his auto to shift the deceased to a hospital. Hence, his evidence also lends strong support to both the statement of the deceased and the evidence of P.W.3.

P.Ws.5 and 6 were declared as hostile by the Prosecution.

P.W.5 is the landlord of the house where the deceased and the accused resided. P.W.5 completely turned hostile while P.W.6, who is the wife of P.W.5, stated that on the date of incident she heard cries from the portion of the accused, she observed flames but she did not identify the person who was on flames. Due to fear, she raised cries and went inside the house and advised both, accused and deceased, to leave their house. The evidence of P.W.6 would show that the incident, nevertheless,

occurred in the house of the accused, thereby lending support to the statement of the deceased and the evidence of P.W.3.

P.W.8, who is a Doctor running the hospital for the last 15 years, stated that the deceased was brought to his hospital with burn injuries where he succumbed to the injuries.

P.W.9 is a witnesses in whose house the accused and the deceased, resided for some period.

P.W.13 is the Circle Inspector of Police, Bhadrachalam, who arrested the accused and recorded confession and based on her confession, M.O.4, partly burnt saree, was seized. The above evidence would clinchingly prove that the statement of the deceased is true, as it draws corroboration from the evidence of the above witnesses, with regard to the circumstances stated by the deceased.

The case sheet, which was produced by the accused, at the time of her examination, under Section 313 Cr.P.C., allegedly containing the signature, was appreciated well by the lower Court. That apart, the statement of the deceased itself shows that the accused also tried to put off the flames. But, however, her effort to put off the flames or her admitting the deceased in the hospital does not in any manner reduce the gravity of the offence committed by her. The lower Court, by appreciating the case law, has rightly arrived at a conclusion that the act of the accused falls under Section 304 Part II IPC but not under Section 302 IPC. When the statement of the deceased is free from any doubt, the law is well settled, that it can form sole basis for the guilt of the accused. Accordingly, this Court opines that the statement of the deceased does not suffer from any legal infirmities and placing reliance on the same by the trial Court is not erroneous.

POINT No.2: Hence, in view of the discussion, under point No.1, this Court opines that the guilt of the accused for the offence punishable under Section 304 Part II IPC stands proved beyond all reasonable doubt and it does not find any reason to set aside the impugned judgment.

POINT No.3: In view of the above all, the impugned judgment is sustainable.

Point No.4: In the result, this Criminal Appeal is dismissed.

However, from a perusal of the proceedings of this Court, the accused is on bail from 07.07.2008 on wards and therefore, the accused is directed to surrender herself before the learned trial Court immediately to undergo the remaining period of sentence. It is needless to mention that benefit of Section 428 of Cr.P.C. shall be extended to the accused.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

Date: 15.03.2018
LSK

JUSTICE T.RAJANI

Note: 1. L.R. copy to be marked.

2. Office to send the copy of the judgment to the trial Court immediately.

B/o.
LSK

