

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.34 of 2013

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

1) The sole accused in Sessions Case No.60 of 2010 on the file of the VII Additional Sessions Judge, Kakinada, is the appellant herein. He was tried for the offences punishable under Section 302 IPC, for causing the death of his wife by name Pragada Venkata Dhana Padmavathi (hereinafter referred to as "the deceased") on 08.11.2009 at 12.00 noon. Vide judgment, dated 30.11.2012, the learned Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.200/-, in default to suffer simple imprisonment for a period of one month for the offence punishable under Section 302 IPC.

2) The facts as culled out from the evidence of the prosecution witnesses are as under:

i) PW.1 is the mother of the deceased, PW.3 is the daughter-in-law of PW.1, PW.4 is the brother of the deceased while PW.6 is the daughter of the deceased. The marriage between the accused and deceased took place about 15 years prior to the date of incident. Out of wedlock they blessed with one daughter. Initially both the couple lived at Kristapuram for five years. As the accused was beating the deceased in drunken state,

both of them were brought to Veeravaram village and a separate house was set up by them. It is said that the deceased used to advise the accused not to consume alcohol as he was suffering with ill health but the accused did not heed to said request and continued to beat her as and when he was in drunken state. The accused was eking out his livelihood by doing agricultural labour work, and used to leave the house in the morning and return back around 12.00 noon and again go to work at 2.00 p.m. and return by 6.30 p.m. It is said that on 08.11.2009 at about 12.00 noon the accused returned home in drunken state and quarreled with his wife. When she questioned him as to why he is spoiling his health by consuming alcohol, the accused is said to have quarreled with her, poured kerosene and set her on fire. On hearing the cries of the deceased, who came out of the house with flames, PW.2, who is residing opposite to the house of the accused and PW.3, who lives in another street came to the house and noticed the deceased in flames. They poured water and put off the flames. When enquired, the deceased is said to have told them that when she advised her husband not to consume alcohol as he is suffering with ill health, he quarreled with her, poured kerosene and set her on fire. The persons, who gathered there called for an ambulance and later shifted the deceased to Government General Hospital, Kakinada. The intimation about the incident and also admission of the deceased in Government General Hospital, Kakinada, was given to PW.1, who is the mother of the deceased. Immediately, she along with others proceeded to the hospital and enquired the

deceased as to how she sustained burn injuries. On 08.11.2009 while PW.10-the head constable, who was incharge of outpost at Government Hospital, Kakinada, received an intimation (Ex.P10) about the admission of the injured in the hospital, proceeded towards the hospital and recorded the statement of the injured, which is placed on record as Ex.P11. Basing on Ex.P11 PW.11, the A.S.I. of Police, registered a case in Crime No.122 of 2009 for the offence punishable under Sections 307 and 498-A IPC. Ex.P12 is the first information report. Thereafter, he proceeded to the hospital, examined the injured and also recorded the statements of PWs.1 and 6. Later, he proceeded to the scene of offence, prepared an observation report and also drafted a rough sketch in the presence of PW.7 and another. Ex.P5 is the observation report and Ex.P13 is the rough sketch. At the scene he seized MOs.1 to 3.

ii) On 08.11.2009 at about 4.45 p.m., PW.8-the Special Mobile Magistrate, Kakinada, received a requisition to record the statement of the injured. Immediately thereafter he proceeded to the hospital and recorded the statement of the injured at 4.55 p.m. After complying with the statutory requirements as required under law, he recorded the dying declaration of the deceased, which is placed on record as Ex.P8. The proceedings were concluded at 5.25 p.m.

iii) On 10.11.2009 PW.11 received intimation about the presence of the accused at his house. Accordingly, he proceeded to the house of the accused, arrested him and kept under

surveillance. On 14.11.2009, PW.11 received intimation about the death of the injured from the Government Hospital, Kakinada, under Ex.P14. Basing on the same, he altered the section of law to one under Section 302 IPC. Ex.P15 is the altered first information report. Further investigation in this case was taken up by PW.12-the Inspector of Police. On receipt of altered first information report, PW.12-the Inspector of Police, proceeded to the Government General Hospital, Kakinada and conducted inquest over the dead body of the deceased in the presence of PW.7 and others. Ex.P6 is the inquest report. During inquest, he examined PWs.1, 4, 5 and others. He also got the body photographed under Exs.P1 to P3. Later, the body was sent for postmortem examination.

iv) PW9-the Assistant Professor, Forensic Department, Rangaraya Medical College, Kakinada, conducted autopsy over the dead body of deceased and issued Ex.P9-the postmortem certificate. According to him, the cause of death was “due to septic and toxic condition as a result of first degree burnt injuries of 48% of total body surface area”. After completing the investigation, PW.12 filed the charge sheet, which was taken on file as P.R.C.No.55 of 2009 on the file of the Judicial Magistrate of First Class, Prathipadu, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal the same came to be numbered as S.C.No.60 of 2010.

3) On appearance, charge under Sections 302 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P16 and MOs.1 to 3. After the closure of 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 the prosecution witnesses, to which he denied. No oral evidence was adduced but Exs.D1 and D2, relevant portion of 161 Cr.P.C. statement of PW.5 and the Photostat copy of the last page of inquest was marked on behalf of the accused.

5) After considering the oral and documentary evidence on record, the trial Court convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that no reliance can be placed on the evidence of PW.6, who is the daughter of the deceased and accused as her version is an outcome of tutoring. It is further contended by her that the statement of the deceased recorded by the police during the course of investigation was suppressed and if the said statement was brought on record truth would have come on record. She further admits that in view of inconsistency in two dying declarations and in the

absence of any other evidence connecting the accused with the crime, the judgment of conviction warrants interference.

7) On the other hand, learned Public Prosecutor would contend that even if the evidence of PW.6 is excluded from consideration still there are two dying declarations given by the deceased coupled with the oral dying declarations made before PWs. 1, 3 and 4. It is urged that the dying declarations made by the deceased are consistent and the same are sufficient to base a conviction. He further submits that the plea of the accused that he came to the house in a drunken condition should not carry much weight as the protection under Section 86 of IPC will not be available merely because the accused was in drunken condition.

8) Now the point that arises for consideration is whether the accused is responsible for the death of the deceased, and if so, whether he can be convicted for the offence punishable under Section 302 IPC.

9) As stated earlier, the prosecution is relying not only on the two dying declarations recorded by the Magistrate and the head constable of the outpost of the hospital, but also on the oral evidence of PWs. 3 to 6 to show that the accused was in the habit of beating the deceased frequently and even on the date of incident he came home in drunken condition, quarreled with the deceased when she questioned about consuming alcohol, then poured kerosene and set her on fire.

10) Admittedly, PW.1 is not an eye witness to the incident nor was she present in the house of the accused and deceased at the time of the incident. According to her, the marriage between the deceased and accused took place about 15 years prior to the date of incident. Both of them lived together at Kristapuram for five years. As the accused was beating the deceased regularly in drunken condition, both of them were brought to Veeravaram village, where they set up a separate family. According to her, on the date of incident, one Venkateswara Rao (PW.2) informed her about the incident. Pursuant to which PW.1 and others proceeded to the Government Hospital, Kakinada, and enquired with the deceased as to how she sustained injuries, wherein she explained as to how she sustained burn injuries. Though PW.1 was cross-examined at length, nothing material came to be elicited except suggesting that the deceased sustained burn injuries accidentally. Apart from that, it was also suggested to PW.1 that the accused was not present in the house at the time of the incident, but the same was denied. To a suggestion that the accused has been implicated at the instance of political rivalry in the village, so as to grab the property of the accused was denied by her.

11) PW.2, who is related to PW.1, did not support the prosecution case and was treated hostile by the prosecution, but in his chief evidence he categorically states that he lives opposite to the house of the accused. On the date of incident at about 1.00 p.m. he came to home for lunch. At that time, the deceased came out with flames from their house proclaiming that "Annayyo

Chachipoyanu". Immediately thereafter, he took water in the bucket and poured on her. According to him, the deceased alone came out from the house. He also speaks about calling for an ambulance and shifting the injured to Government Hospital, Kakinada. As his statement is not consistent with the earlier version given, he was treated hostile by the prosecution.

12) PW.3, in her evidence, while deposing about the earlier history of the accused and deceased living at Kristapuram for five years, setting up of a family at Veeravaram and also about accused beating the deceased in drunken condition, states that on 08.11.2009 at about 12.00 noon, she heard the cries of the deceased and came near to the house of the accused. She noticed the deceased in flames on the road. According to her, herself, PW1, PW.2 and her husband put off the flames by pouring water. When enquired, the deceased told them that when she advised her husband not to drink as he was suffering with ill health, he poured kerosene and set her on fire. It was also suggested to her that there were some disputes about the property. To a suggestion that the accused was not present in the house on that day was denied by her. It was also suggested to her that the accused leaves the house in the morning and returns in the evening and on the date of incident he was not present in the house, but the same was denied. To a suggestion that the accused used to look after the deceased well was also denied. It was also suggested to her that there was a fire accident while the deceased was cooking food and

taking advantage of the same, a false case was foisted, was also denied.

13) In his evidence, PW.4 deposed as under:

"I am resident of Veeravaram and doing cultivation. I got two sisters, who are married. My elder sister Pragada Dhana Padmavathi, was married with the accused present before the Court, about 15 years back, who is resident of Kristapuram. The accused used to do agricultural labour work. My sister and accused resided at Krishnapuram, for about 5 years. The accused used to bet my elder sister in drunken state. On advise of elders, they were asked to shift to Veeravaram. Accordingly, they were shifted to Veeravaram and residing. Even at Veeravaram the accused did not change his attitude, for about 10 years, but they gave birth to one Durga Devi. On 08.11.2009 between 12.00 to 1.00 p.m. the accused came in drunken state and raised dispute at the house. When the deceased questioned why he is drinking as his health being spoiled. Then the accused by saying that "Neenu tagesti vaste emite lanja ne babu ki cheppukunte cheppuko", poured kerosene, lit fire and thrown her out. I came back from the land at 2.00 p.m. and came to know that deceased being shifted to Kakinada Government Hospital. PWs.1,3, and others followed the deceased. I went to hospital in the evening at 5.00 p.m. The deceased was in hospital for 5 days. I am also present at the time of inquest. The accused is responsible for death of the deceased."

14) The suggestions as given to PWs.1 and 3 were also given to PW.4, which were denied by him.

15) Coming to the evidence of PW.6, who is the daughter of the accused and deceased, it is as under:

“My father used to bet my mother in drunken state every day. My mother was killed by my father at our house. At that time I am in the school. I came to house at 12.30 p.m. and I noticed my mother with flames on the cement road. One Suri uncle (LW.5), Balaram (LW.3), Alivelu Manga (PW.3), my grand mother Vijaya Lakshmi (PW.1), Venkateswara Rao (PW.2) were there and let off the flames, by pouring water. My mother was shifted to hospital, Kakinada, PWs. 1,3 and LW.3 (Balaram) followed my mother. On the next day I went to the hospital. I was examined by the police. My mother was alive for five days. We will use firewood and kerosene for cooking food. MO.1 is the saree piece wear by mother on the day. MO.2 is the tin in which we will keep kerosene. Now I am residing in the house of PW.1. My father is responsible for the death of my mother. By the date of incident I am studying U.K.G.”

16) But however, in the cross-examination, she deposed that she came to the office of public prosecutor for two days along with PW.1 and she was tutored to give evidence. A reading of the evidence of PW.6 would show that she was not an eye witness to the incident and that her version was an outcome of tutoring in the office of public prosecutor. Hence, we feel that it is not safe to rely on the evidence of PW.6.

17) From the oral evidence referred to above, it is clear that none of them have seen the accused pouring kerosene on the deceased and setting her on fire. PWs.2 and 3 in their evidence

deposed that on hearing the cries they came towards the house of the accused and noticed the deceased on the street with flames. They poured water and put off the flames. When questioned, the deceased claims to have stated that when she requested the accused to stop consuming alcohol in view of his health, he poured kerosene and set her on fire. Their evidence also discloses that the accused was in the habit of beating the deceased when he was in drunken condition.

18) Coming to the two dying declarations said to have been recorded by the head constable and the Magistrate, the first statement was said to have been recorded by the Magistrate. PW.8-the Special Mobile Magistrate, Kakinada, started recording the statement of the deceased at 4.55 p.m. and concluded at 5.25 p.m. The same is placed on record as Ex.P8. In the said statement, the deceased stated that since last one week in the night time the accused used to come to home in drunken condition and scold her. It is further stated that her husband used to behave like that when he is in a drunken state. According to her, on the date of incident at about 12.00 noon the accused came home in drunken condition, scolded her, poured kerosene, lit match stick and set her on fire. She came on to the road asking Chittibabu to save her.

19) The second dying declaration, which was recorded by the head constable posted at the outpost of the hospital, which

formed the basis for issuance of first information report reads as under:

“ Today ie. 08.11.2009 in the noon time at 12.00 clock he came in drunken state. When I asked that you are ill health why you take drink, he raised dispute for that and further stated who ever came belonged to you I am not cared them and so saying picked up the kerosene from the room and poured and lit fire with match stick and pushed me outside. When I raised cries due to flames, courtesy brother Geddham Chittibabu came and tried to put off the flames my husband Srinivas came and angrily asked him why you are trying to put off the fire and burnt from right fingers up to knee (Mocheyee) right hand upto knee, back side upto buttocks from navel up to abdomen burnt and the skin was removed higher and tether. And burnt two legs, wrists and pustule. On hearing that my husband poured kerosene on my body, lit fire, my mother Gaddam Vijayalakshmi, came to me and my mother Geedam Vijayalakshmi, Gedddam Balaram, Geddham Suribabu, wife of Balaram Alivelumanga Devi took me in 108 ambulance to Kakinada G.G.H. for treatment and joined me in the hospital. Doctor joined me and giving treatment. When police asked I stated the above contents to the police. On reading I heard and it is O.K.”

20) From a reading of the two statements, it is clear that the accused came to the house in drunken condition. According to the deceased, when he questioned him as to why he is consuming alcohol when his health is not permitting, the accused is said to have poured kerosene and set her on fire. Insofar as the version

set out in Ex.P11, with regard to questioning PW.2 and others as to why they put off the flames, about the presence of persons along with the deceased while shifting her to the hospital, the same was not reflected in the statement recorded by the Magistrate. But however, the fact that the version with regard to accused setting the deceased on fire in drunken condition when she questioned his behavior, is consistent not only in the two dying declarations but also in the oral dying declarations made by the deceased before PWs. 1, 3 and 4.

21) At this stage, learned counsel for the appellant would contend that during the course of investigation, the A.S.I. recorded the statement of the injured, but the same has been suppressed. It is to be noted here that the said statement was recorded during the course of investigation which does not contain the signature of the injured. Therefore, the said statement cannot be treated as dying declaration, which view of ours get fortified from the judgment of the Apex Court in *Rafique @Rauf Vs. State of Uttar Pradesh*¹. Even if the said statement is excluded as in-admissible as it cannot be treated as a dying declaration, the two written dying declarations coupled with the oral dying declarations made before the family members and neighbours establish that it was the accused alone who was responsible for the incident.

22) The next question that falls for consideration is “whether the accused can be held liable for an offence punishable under Section 302 IPC.”

¹ AIR 2013 SC 2272

23) Admittedly, the oral as well as the documentary evidence, which has been referred to above, clearly indicate that the accused was in a habit of beating the deceased only while he was in a drunken condition. In fact, the statement of the deceased recorded by the Magistrate would clearly establish the same, which reads as under:

“My husband behaved like that when he is in a drunken condition”

24) From the statement of the deceased made before the Magistrate, it is clear that the accused used to beat the deceased only when he is in drunken condition. It is true that merely because the accused was committing the offence while in a drunken state, he would not be entitled to any benefit.

25) In *Santosh v. State of Maharashtra*² the Apex Court while referring to the judgment of the Apex Court in *Kalu Ram v. State of Rajasthan*³ reiterated the principle that the element of inebriation, when it is present in a case, may be taken into consideration as it considerably alters the power of thinking. It was further held that where the intention to kill is present, the act amounts to murder and where such intention is not present, the act amounts to culpable homicide not amounting to murder and that in order to determine whether the offender had the intention or not, each case must be decided on its own facts and circumstances. The Apex Court also held that “the ratio that could

² (2015) 7 SCC 641

³ (2000) 10 SCC 324

be culled out from the foregoing judgments is that mere drunkenness cannot be pleaded as a ground for acquittal of the charge of murder. It is only in cases, where the drunkenness was such that the offender was incapable of forming an intention and have a knowledge that his act was likely to cause death, that drunkenness may be taken as a defence and depending upon the facts and circumstances of each case, the Court will have to take a decision.”

26) From the judgments of the Apex Court referred to above and also the judgment of this Court in *Mohamed Jahangeer Vs. The State of A.P.*⁴ it is clear that mere drunkenness cannot be pleaded as a ground for acquittal of the charge of murder.

27) But, in the instant case, the incident in question is said to have been taken place on 08.11.2009 and the deceased died after five days “due to septic and toxic condition, as a result of first degree burn injuries on 48% of total body surface area”. Admittedly, as on the date of incident, the accused came home in drunken condition and when the deceased questioned him as to why he is consuming alcohol when his health is not good, there appears to have been a quarrel, pursuant to which the accused poured kerosene and set her on fire. The fact that the accused used to quarrel with the deceased and beat her only while he was in a drunken condition stands established not only through the oral dying declarations made before PWs.1, 3 and 4 but also in the dying declaration recorded by the Magistrate. Situation somewhat

⁴ (2016) 10 SCJ Online (AP) 218

similar to the case on hand. came up for consideration in *Mohamed Jahangir case* (4 supra). In the said case also the deceased significantly stated that the accused quarreled and harassed her when he is drunk. Basing on the statement of the deceased, the Court held as under:

“From this statement of the deceased, it could be deciphered that the appellant, who appears to be a good natured person in normal course, loses his control if he is drunk and evidently, he may not be conscious of what he would be doing when he is drunk. The fact that he was fully drunk on the fateful night stood proved by the statement of the deceased made in her dying declaration. Though the appellant may not have had the intention of causing the death of the deceased, he would have had at least the knowledge of causing the bodily injuries which are likely to cause her death. In these facts and circumstances of the case, we are of the opinion that this is a fit case where the appellant is liable to be convicted for the offence punishable under Section 304 Part I IPC.”

28) As stated above, even in the instant case, the accused used to beat the deceased while he was in a drunken condition and not otherwise. Admittedly, he was drunk at the time of incident. Having regard to the judgment of this Court in *Mohamed Jahangir* (4 supra) we feel that it is a case where the accused may not be having any motive or intention to cause the death of the deceased. Therefore, we feel that it is a fit case where the nature of offence can be scaled down from 302 IPC to 304 Part-I IPC.

29) Accordingly, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No.60 of 2010 on the file of the VII Additional Sessions Judge, Kakinada, for an offence punishable under Section 302 IPC is altered to one under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to imprisonment for a period of ten years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ accused shall be set at liberty forthwith on completion of ten years rigorous imprisonment, if not required in connection with any other case.

30) As a sequel to it, miscellaneous petitions, if any, pending shall stand closed.



C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

25.01.2018
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