

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
&
THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRIMINAL APPEAL No.145 of 2012

Date: 10.09.2018

Between:

Ahmed Patel

....Appellant/ Accused No.1

And:

State of A.P.rep.by the
Public Prosecutor,
High Court, Hyderabad

...Respondent

Counsel for the Appellant: Mr.C.SHARAN REDDY
For Smt.C.VASUNDHARA REDDY

Counsel for respondent : Sri C.PRATAP REDDY,
PUBLIC PROSECUTOR (TG)

The Court made the following:



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CRIMINAL APPEAL No.145 of 2012

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

Accused No.1, in Sessions Case No.355 of 2009, on the file of the II Additional District & Sessions Judge (FTC), Sangareddy, filed this Criminal Appeal, feeling aggrieved by his conviction for the offence punishable under Section 302 IPC and sentencing to life imprisonment and also to pay a fine of Rs.1,000/- and in default of such payment to undergo simple imprisonment for three months.

2. The case of the prosecution, as set out in the charge sheet, is briefly stated hereunder:

PW 1 is the brother of Smt.Bismilla Begum (hereinafter referred to as "the deceased). About 8 years back to the incident, he performed the marriage of the deceased with Accused No.1, and at the time of marriage, they gave 8 tolas of gold and Rs.40,000/- cash apart from house articles towards dowry. The deceased was blessed with three daughters, due to which, Accused No.1 and his mother Accused No.2 were dissatisfied for lack of a male issue. Thereafter, both the accused started harassing the deceased for additional dowry and also they demanded for an Auto. As the deceased failed to fulfill his lust, on 10.02.2009 at 3 p.m, Accused No.1 quarrelled with the deceased, poured kerosene on her body and set fire, due to which, the deceased sustained severe burn injuries. PW 3 and one Smt.Rahmathunnisa Begum rescued the deceased from the flames and shifted her in 108 Ambulance to the Government Hospital, Zaheerabad and there from, she was shifted to Gandhi Hospital, Secunderabad. On 11.02.2009 at 07.00 hours the deceased succumbed to burn injuries. On 11.02.2009 at 13.30 hours, PW 1

lodged Ex.P1 complaint with the concerned police. After completion of the investigation, PW 18 filed the charge sheet.

3. Basing on the charge sheet filed and the material collected during the investigation, the court below has framed the following charges:

FIRSTLY: That you A1 and A2 being the husband and mother-in-law of the deceased Bismilla Begum subjected her to cruelty and thereby you A1 and A2 committed an offence punishable under section 498-A IPC and within my cognizance.

SECONDLY: That you A1 and A2 on 10.02.2009 at about 4.00 p.m. harassed the deceased Bismilla Begum at your house at Lingampally village and you A1 poured kerosene on her and set fire with a burning match stick and caused her burn injuries which resulted in her death and thereby you A1 and A2 committed an offence punishable under section 302 r/w.34 IPC and within my cognizance.

The above charges were read over and explained to Accused Nos.1 & 2 in Telugu, for which they pleaded not guilty.

4. As the plea of the accused was one of denial, they were subjected to trial, during which, the prosecution has examined PWs 1 to 18, got Exs.P1 to P18 marked and produced M.Os.1 and 2. On behalf of the defence, DWs 1 and 2 were examined and Exs.D1 and D2 were marked.

5. On appreciation of both oral and documentary evidence, the court below has acquitted Accused No.2 and convicted and sentenced Accused No.1, in the manner, as noted hereinbefore.

6. At the hearing, Mr.C.Sharan Reddy, learned counsel, representing Smt.C.Vasundhara Reddy, learned counsel for the appellant/accused No.1, has submitted that the whole case of the prosecution suffers from severe inconsistencies casting a serious doubt on it. He has argued that PW 1, who gave Ex.P1 report, categorically stated therein that the deceased, who is his sister, has suffered burns accidentally while she was cooking, but he has

shifted his stand in the court and deposed that the appellant killed his sister. He has referred to and relied upon Ex.D1 case summary sheet showing that the victim was brought to Gandhi Hospital at 9.30 p.m, while in Ex.P12 requisition given to PW 14-Magistrate, who recorded the dying declaration, he has informed that at 20.15 hours he received telephonic message from Gandhi Hospital that the victim was admitted in the Hospital. He has further submitted that the Doctor, who certified that the patient was conscious and fit to give a statement, however, deposed in the Court as DW 1 that the B.P and Pulse rate of the deceased were not recordable showing that the patient was not stable. He has finally submitted that in the face of the aforementioned inconsistencies and shortcomings in the case of the prosecution, the court below ought not to have convicted the appellant solely based on the dying declaration.

7. Sri C.Pratap Reddy, learned Public Prosecutor (TG), has opposed to the above submissions and sought to sustain the judgment of the court below.

8. We have carefully considered the respective submissions of the learned counsel for both the parties and perused the record.

9. In Ex.P1 report given by PW 1, the brother of the deceased, he has stated that at around 3 p.m on 10.02.2009 the saree of the deceased caught fire accidentally while cooking, that at 7 a.m on 11.02.2009 she has died due to burns and that he does not have any suspicion about the cause of the death. However, in his evidence given as PW 1, he has changed his version and deposed that he gave report to the police at 10 p.m and from there he has gone to the hospital to see his sister, who informed him that the appellant poured kerosene on her and lit fire with a match stick, and that she has also stated to him that her statement was recorded by the Magistrate.

The prosecution did not produce any evidence to show that PW 1 has given the report at 10 p.m on 10.02.2009. On the contrary, the police have endorsed on the report that it was received at 13.30 hours on 11.02.2009. Thus, there is a serious inconsistency on the stand taken by PW-1 in his report and the evidence as to the cause of death of the deceased.

10. In Ex.D2, the case sheet maintained by Zaheerabad Government Hospital, in which, the victim was first admitted, the cause of burns was shown as suicide attempt. DW 2, the Doctor, who worked in Zaheerabad Government Hospital, deposed that she has mentioned history of suicidal attempt by the victim in the case sheet. She has also stated that she has issued Ex.D2 certificate. Nothing of material could be elicited from this witness by the prosecution to suggest that she has wrongly recorded the cause of death. Thus, there are three different versions before us, viz., the alleged suicide attempt by the victim as per Ex.D2, accidental burns as per Ex.P1, and death due to homicide as per Ex.P13 dying declaration.

11. Undoubtedly, in Ex.P13 dying declaration, it was recorded that the victim has given statement to the effect that the accused were harassing her and that at 4 p.m on the fateful day, appellant/Accused No.1 has beaten her, poured kerosene, and set fire to her. DW 1 has certified that patient was conscious and coherent throughout while giving statement. However, in his evidence, he has stated that on 10.02.2009 when he examined the patient, he noted that B.P and Pulse rate are not recordable, and that when pulse and B.P were not recordable, her condition was not stable. He has further deposed that at the time of examination of the patient, PW 1 was present, that he was informed that her condition is critical and that she may die at any time. He further deposed that she cannot speak normally since she was in shock. Unfortunately, the prosecution has not confronted PW 1 with

endorsement made by him in Ex.P13 dying declaration that the patient is conscious and coherent throughout while giving statement. It was also not suggested to him by the prosecution that his testimony that B.P and Pulse rate of the patient were not recordable and that she was not stable was false or that he is retracting his stand to help the accused.

12. Dying declaration is treated as an exception to hearsay evidence, as it is believed that a person will not meet his maker with a lie in his mouth. It is believed that the fear of death impels a person to speak truth and only the truth. For these reasons courts assign utmost sanctity to dying declarations. But when the dying declaration is pitted on one side and all other evidence is pitted on the other side, if the later is such that it makes the version of the victim in dying declaration improbable or inconsistent, it gives rise a serious doubt in the mind of the court as to whether which of the versions is correct. In such a case, the accused is entitled to the benefit of doubt.

13. When PW 1 himself has initially depicted the cause of death as accidental, that itself would discredit his trustworthiness. Added to this, from the evidence of DW 1 which remained unchallenged, a serious doubt arises as to whether the victim was really in fit condition to make a statement. All these circumstances in our opinion create a serious doubt in the case of the prosecution. In our opinion, the prosecution has failed to establish the case beyond all reasonable doubt.

14. In the light of the above discussion, the Criminal Appeal is allowed. The judgment under appeal is set aside. The fine amount, if any, paid by him shall be refunded to him. The appellant/Accused No.1 shall be set at liberty forthwith, if he is no longer required in any other case.

As the appellant/Accused No.1 is on bail, he is directed to surrender himself before the Superintendent, District Jail, Sangareddy, Medak District, for completing the formalities for his release, if he is not required in any other case or crime.

(C.V.NAGARJUNA REDDY, J)

(GUDI SEVA SHYAM PRASAD, J)

Date: 10.09.2018
Dsr

