

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

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.759 of 2012

20.11.2018

Between:

Bandari Srinivas

..Appellant

and

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

..Respondent

Counsel for the appellant: Mrs.A.Gayatri Reddy

Counsel for the respondent: Public Prosecutor (T.S.)

The Court made the following:



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

The sole accused in Sessions Case No.29 of 2008 on the file of learned IV Additional Sessions Judge, Ranga Reddy District, filed this criminal appeal against judgment, dated 15.03.2012, whereby he was convicted for the offences punishable under Sections 498-A and 302 I.P.C. and sentenced to suffer rigorous imprisonment for three years and also to pay a fine of Rs.100/- and in default of payment of fine, to suffer simple imprisonment for two weeks for the former offence and to suffer imprisonment for life and also to pay a fine of Rs.100/- and in default of payment of fine, to suffer simple imprisonment for two weeks for the latter offence. Both the sentences were directed to run concurrently.

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

(i) Smt.B.Laxmi (hereinafter referred to as 'the deceased') and the accused were the wife and husband. On 30.07.2007, having received the intimation from Maithri Hospital, Ameerpet, Hyderabad, P.W.11 – the Sub-

Inspector of Police, Madhapur Police Station, visited the said hospital at 14.30 hours and recorded the statement of one B.Laxmi (hereinafter referred to as 'the deceased'), wherein she stated that her husband – the accused, used to harass her frequently in intoxicated state and used to abuse herself and her mother; that on 29.07.2007, at about 8.00 p.m., the accused came to the house in a fully drunken state and abused her in filthy language and threatened her to go to her parents' house; that later, she poured kerosene on her body; that the accused instigated her to set fire and saying so, he threw the match box at her and that the deceased set fire to herself. Meanwhile, the neighbours rushed to the spot, extinguished the flames and shifted the deceased to Maithri Hospital, where she was admitted and that as such, the deceased requested P.W.11 to take necessary action.

(ii) Based on the statement of the deceased, P.W.14 – the Inspector of Police, Sanathnagar Police Station, registered a case in crime No.275 of 2007 under Section 498-A I.P.C. and entrusted the investigation to P.W.11.

(iii) During the investigation, P.W.11 visited the scene of offence, conducted panchanama of the scene in the presence of P.Ws.7 and 10, seized the empty plastic kerosene tin, cap of the plastic tin, Joker match box and partly burnt polyester saree pieces, which were found at the scene and also took the photographs of the scene and caused enquiries. The dying declaration of the deceased was got recorded by P.W.12 – learned I Additional Chief Metropolitan Magistrate, Nampally, Hyderabad. P.W.11 examined L.Ws.4 and 5 – Jathin Drav and Bogi Yadagiri respectively, and P.W.6 and recorded their statements. On 10.10.2007, P.W.11 examined P.Ws.3 to 5 – the children of the deceased, and recorded their statements. L.W.1 – Kum.B.Divya, who was the younger daughter of the deceased, stated that her father – the accused, who was addicted to liquor, used to harass her mother – the deceased in intoxicated state, used to beat her mercilessly and also used to abuse her and their grandmother without any considerable reason; that on 29.08.2007, at about 8.00 p.m., the accused returned to the house in intoxicated state, beat

the deceased and also abused her; that due to humiliation and harassment of the accused, the deceased, in order to change his attitude, poured kerosene on herself in the bath room, but the accused closed the door and threw lighting match stick on the deceased through the ventilator in order to kill her, due to which, the deceased received burn injuries; that meanwhile, on hearing hue and cry of the deceased, the neighbours rushed and extinguished the flames and shifted her to Maithri Hospital, Ameerpet, where she was admitted and from there, she was shifted to Owaisi Hospital, Hyderabad, for treatment.

(iv) Based on the above statement, P.W.11 added Section 307 I.P.C. in addition to Section 498-A I.P.C. and took up the further investigation. While the investigation was in progress, on 12.08.2007 in the morning, an intimation was received from Owaisi Hospital that the deceased succumbed to burn injuries while undergoing treatment on 12.08.2007 at 12.00 a.m., upon which, P.W.11 altered the provisions of law from Sections 498-A and 307 I.P.C. to Sections 498-A and 302 I.P.C., took up the further

investigation. He examined P.Ws.1 and 2, who were the mother and brother of the deceased respectively, recorded their statements, held inquest over the dead body of the deceased in the presence of L.Ws.11 and 12 – Smt.Vallepu Chandrakala and Thotla Anjaneyulu respectively, and subjected the dead body of the deceased for post mortem examination. Subsequently, P.W.14 – the Inspector of Police, Sanathnagar Police Station, took up the further investigation of the case, caused enquiries and verified the investigation done by P.W.11.

(v) On 13.08.2007, P.W.14 arrested the accused, recorded his confessional statement in the presence of P.W.8 and L.W.14 – Nyalkal Sangappa, and remanded him to judicial custody. P.W.9 – the Assistant Professor in Forensic Department, Gandhi Medical College, who conducted autopsy, over the dead body of the deceased, opined that the deceased died due to burns.

(vi) The investigation revealed that the deceased was the resident of Waddera Basthi, Fathenagar. The accused was her husband. P.Ws.1 and 2 were the mother and

brother of the deceased; that the marriage of the deceased was solemnized with the accused on 27.05.1995; that they had three children – P.Ws.3 to 5; that the accused was working as Lathe machine worker and was addicted to liquor; and that he used to harass the deceased and her mother – P.W.1 frequently in intoxicated state, used to beat her mercilessly and also used to abuse her and her mother without any considerable reason. That on 29.08.2007, at about 8.00 p.m., the accused returned to the house in intoxicated state, beat the deceased and also abused her; that due to humiliation and harassment of the accused, the deceased, in order to change his attitude, poured kerosene on herself after going into the bath room; that immediately, the accused closed the door of the bathroom from outside and threw the lighting match stick on the deceased through the window of the bathroom, due to which, the deceased received burns and on her hue and cry, L.Ws.4 and 5 – Jathin Draw and Bogi Yadagiri respectively, and P.W.6 rushed to the spot and extinguished the flames; and that the accused with the help of the neighbours shifted the deceased to Mythri Hospital, Ameerpet, from where she

was shifted to Owaisi Hospital, Hyderabad, for treatment. While undergoing the treatment, the deceased succumbed to burns on 12.07.2007 at 12.00 a.m. Thus, the investigation established that the accused committed the offences punishable under Sections 498-A and 302 I.P.C. P.W.14, accordingly, laid charge sheet against the accused.

3. Based on the charge sheet filed and the material collected during the investigation by the Police, the Court below framed the following charges.

“Charge (1):

You married Laxmi on 27-5-2005 you were blessed with son and two daughters. From the beginning of your marriage, you addicted Alcohol and come home in drunken condition use to abuse her and beat her and use to ask her to go away from your house and to her parents home. On 29-7-2007 at about 8.00 P.M. you come to as usual in drunken condition abuse her and beat her and asked her go away from your home. Thereby you committed an offence punishable under Section 498-A of the Indian Penal Code and within my cognizance.

Charge (2):

You married Laxmi on 27-5-2005 you were blessed with son and two daughters. From the

beginning of your marriage you addicted Alcohol and come home in drunken condition use to abuse her and beat her and use to ask her to go away from your house and to her parents home. On 29-7-2007 at about 8.00 P.M. you came to as usual in drunken condition abuse her and beat her and asked her go away from your home. Then she poured kerosene on her body and you abused her and throw away match box on her and asked her to lit fire. Due to angry, she lit fire on her body and the neighbours put off the fire and admitted her into the hospital and there she died. Thereby, you committed an offence punishable under Section 302 IPC.”

4. As the plea of the appellant was one of denial, he was subjected to trial, during which, the prosecution examined P.Ws.1 to 14, got Exs.P-1 to P-15 marked and produced M.Os.1 to 3. On behalf of the appellant, no evidence was let in. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as stated hereinbefore.

5. Though the occurrence allegedly took place in the house during the night on 29.08.2007, at around 11.00 p.m. and P.Ws.3 to 5 – the children of the appellant and the deceased, were at the house, all of them turned hostile.

There was no other eyewitness to the occurrence. The only other incriminating evidence produced by the prosecution before the Court below is Ex.P-13 - the dying declaration recorded by P.W.12 – the learned Magistrate and Ex.P-14 – the statement of the deceased recorded by P.W.13 – the Head Constable.

6. As the aforementioned two documents constitute the main basis for the case of the prosecution, it is necessary for us to refer to and discuss the contents thereof.

(a) Ex.P-14 was the earliest statement of the deceased recorded by P.W.13 – the Head Constable, at 2.30 p.m. on 30.07.2007. The deceased stated therein that the appellant used to come to home in a drunken state and abuse her and her mother in vulgar language; that on 29.07.2007 at about 8.00 p.m., he returned home in heavily drunken state and started abusing the deceased and demanding her to leave to her parental home and that thereupon, she poured kerosene on herself. She further stated that the appellant continued to abuse her and threw the match box at her asking her to die by setting herself

ablaze and that in a momentary rage, she lit fire to herself with a match stick by taking it out from the match box. She further stated that immediately, the neighbours came and put out the flames and she was admitted in the hospital.

(b) Ex.P-13 was recorded by P.W.12 - the learned Magistrate, at 6.00 p.m. on 30.07.2007. From the contents of the said document, we find a marked improvement in the version of the deceased. While reiterating her earlier statement to the effect that following the abuses by the appellant, the deceased poured kerosene on herself, contrary to what she stated in Ex.P-14, she stated that her husband lit fire with a match stick and threw it on her and as a result, she caught flames.

7. When we carefully analyze Exs.P-13 and P-14, it is clearly evident that the deceased changed her version as to who lit fire. When there are two inconsistent statements, it is always safer to accept the earliest statement for as the time passes by, there is every scope for tutoring of the victim by the family members. In this view of the matter, it is to accept the version of the deceased as reflected in

Ex.P-14 rather than relying upon Ex.P-13. The Court below has failed to consider Exs.P-13 and P-14 in a proper perspective and erroneously found the appellant guilty of murder. If we accept the version of the deceased given out in Ex.P-14, the offence committed by the appellant falls under Section 306 I.P.C. i.e., abetment to commit suicide and not under Section 302 I.P.C. The conviction of the appellant is, accordingly, altered for the offence under Section 306 I.P.C. from Section 302 I.P.C.

8. As regards the sentence to be imposed upon the appellant, the son and daughter of the appellant are present in the Court. The appellant's son has stated that he is studying M.Com., and the daughter has stated that she is studying second year intermediate course. Both of them have informed the Court that except their father, they do not have any other family member to support them, both financially and emotionally. In the light of these mitigating circumstances, we are of the opinion that interests of justice would be best served if the sentence on the appellant is

reduced to the period already undergone. However, the fine imposed by the Court below is confirmed.

9. As regards the offence punishable under Section 498-A I.P.C, in Exs.P-13 and P-14, the deceased clearly stated that the appellant used to come home drunk and abuse herself and her mother in filthy language. Even P.Ws.1 and 2 – the mother and brother of the deceased respectively, also supported the version of the deceased. Therefore, we do not find any reason to reverse the judgment of the Court below to the extent of the offence relating to Section 498-A I.P.C. and the sentence imposed on him for the said offence.

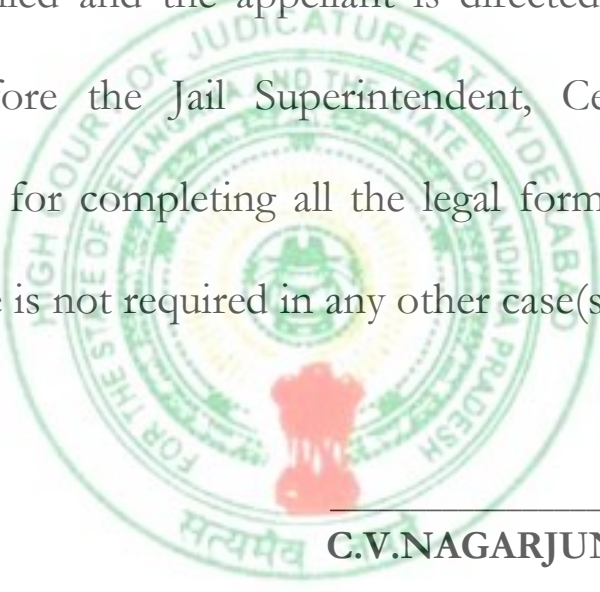
10. In the result, the Criminal Appeal is partly allowed. Judgment, dated 15.03.2012, in Sessions Case No.29 of 2008 on the file of learned IV Additional Sessions Judge, Ranga Reddy District, is modified as under.

(i) The conviction recorded against the appellant for the offence punishable under Section 302 I.P.C. is converted to that under Section 306 I.P.C., the sentence is

reduced to the period already undergone by him and imposition of fine amount is confirmed.

(ii) The conviction and sentence recorded against the appellant for the offence punishable under Section 498-A I.P.C. are confirmed.

The bail bonds of the appellant shall, accordingly, stand cancelled and the appellant is directed to surrender himself before the Jail Superintendent, Central Prison, Cherlapally, for completing all the legal formalities for his release, if he is not required in any other case(s) or crime(s).



C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

20th November, 2018
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