

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J.UMADEVI

CRIMINAL APPEAL No.242 of 2013

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

1) Accused Nos.1 and 3 in Sessions Case No.49 of 2012 on the file of the Judge, Family Court-cum-Additional District and Sessions Court, Prakasham Division, Ongole, are the appellants herein. Originally, accused Nos.1 to 3 were tried for the offences punishable under Sections 498-A and 302 read with 34 IPC. Pending trial accused No.2 died. By its judgment, dated 06.03.2013, the learned Sessions Judge, while acquitting accused Nos.1 and 3 for the offence punishable under Section 498-A IPC, convicted them for the offence punishable under Section 302 read with 34 IPC and sentenced them to suffer 'imprisonment for life' and to pay a fine of Rs.5,000/- each in default to suffer simple imprisonment for a period of three months.

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

i) Accused No.1 is the husband and accused No.2 is the mother-in-law of Rapathati Siva Parvathi (hereinafter referred to as "the deceased"). PW.1 is the father of the deceased while PW.2 is the sister of the deceased. The incident in the present case was on 15.07.2011 and the deceased died on 22.07.2011. It is stated that about six years prior to the date of incident the

marriage of the deceased was performed with accused No.1. At the time of marriage a sum of Rs.30,000/- cash was given as dowry. After marriage, accused No.1 set up his family at Lingamguntla. Accused Nos.2 and 3 were also residing along with the accused No.1. Both the couple lived happy life for a period of one year and thereafter accused No.1 used to harass the deceased demanding her to bring additional dowry. Unable to bear the harassment, the deceased came to the house of PW.1 and informed about the same. It is said that the deceased came to their house about five years after the marriage and continued to be in their house for a period of one year. Later accused No.1 took the deceased to his house stating that the marriage of his sister could not be settled due to her absence in their house. The act of accused No.1 taking the deceased to his house took place about one and half month prior to the incident. It is said that on one day, accused No.1 informed PW.1 that the deceased poured kerosene on herself and set fire and that he has admitted her in Ramanaidu Hospital, Kanigiri. Immediately thereafter, PW.1 and others went to the hospital and enquired the deceased, who informed them that accused Nos.1 to 3 beat her; accused No.3 poured kerosene and accused Nos.1 and 2 set on her fire. Since the village elders promised that they would get the deceased treated and hand over the deceased to him, no report came to be lodged. On the same day, the deceased was taken to Bollineni Hospital, Nellore and also to Narayana General Hospital, Nellore, wherein the hospital

authorities did not admit her as such she was shifted to Government Hospital, Nellore.

ii) PW.18, who is a private medical practitioner, states that on 15.07.2011 at noon time the injured with 90% burns was brought to his nursing home, gave first aid to her and advised to take her to any hospital for better treatment. PW.19-the Civil Assistant Surgeon, Head Quarters Hospital, Nellore, treated the injured on 15.07.2011 at 9.30 p.m., and issued Ex.P23 the medical certificate. PW.19 is the Civil Assistant Surgeon, Area Hospital, Kanigiri, who treated the injured and was present when PW.17-the Magistrate, recorded the dying declaration of the injured.

iii) On 15.07.2011 at about 9.30 a.m. PW.27 received intimation from Nellore Hospital, pursuant to which he proceeded to the hospital and recorded the statement of the deceased in the presence of doctor, in which she stated that on 15.07.2011 at about 9.30 a.m. her father-in-law, mother-in-law and her husband poured kerosene and set her on fire. Ex.P32 is the statement recorded by PW.27. PW.26-the II Additional Judicial Magistrate of First Class, Nellore, received requisition for recording the dying declaration of the injured. Immediately, proceeded to the hospital and with the assistance of the duty doctor (PW.24) and on being satisfied with the mental fitness of the injured, recorded the statement of the deceased. According to PW.26, the deceased stated that in the morning at 9.00 a.m. her father-in-law, mother-in-law and her husband beat her, then her mother-in-law poured

kerosene on her body and lit fire and that her husband also beat her and went away. According to her, the incident was committed on a premise that she carried tales to her husband against her sister-in-law and that her mother-in-law got suspicion that the deceased had illegal contacts with her father-in-law. Ex.P29 is the dying declaration recorded by PW.26.

iv) Later the deceased was taken to Government Hospital, Kanigiri. On 18.07.2011 at about 1.40 a.m. PW.17-the Junior Civil Judge, Kanigiri, received a requisition from the Area Hospital, Kanigiri, for recording the dying declaration of the injured. Immediately he proceeded to the hospital and with the assistance of the duty doctor identified the injured and on being satisfied with regard to the mental fitness of the injured, recorded the statement of the deceased. According to PW.17, the deceased stated that her husband and in-laws poured kerosene and set fire on 15.07.2011 at 9.00 a.m. Ex.P17 is the dying declaration.

v) On 18.07.2011 at about 2.00 a.m. while PW.28 was in H.M.Padu Police station, received an intimation from the Government Hospital, Kanigiri, about the admission of the deceased with burn injuries. Ex.P18 is the said intimation. Pursuant to which, he went to Government Hospital, Kanigiri. By the time he reached the hospital, the Magistrate has been recording the statement of the injured. After recording of the statement by the Magistrate, he recorded the statement of the injured in the presence of Medical Officer. Ex.P33 is the

statement. According to PW.28, the deceased stated to him that on 15.07.2011 at 9.00 a.m. while the injured was in her house, her mother-in-law poured kerosene and her father-in-law and her husband set fire to her. Basing on the said statement, he registered a case in Crime No.17 of 2011 for the offences punishable under Sections 498-A and 307 read with 34 IPC. Ex.P34 is the first information report. He once again visited the hospital and recorded the statement of PW.1 and others.

vi) PW.28, who registered the first information report continued with the investigation. He proceeded to the scene of offence and in the presence of PWs.12 and 13, prepared a panchanama of the scene, seized 5 litres plastic can containing kerosene, match box. He also prepared a rough sketch of the scene, which is marked as Ex.P36. According to him, he shifted the injured to Government Hospital, Ongole, from where he received the death intimation, which is placed on record as Ex.P15. On the basis of the same he altered the Section of law to 498-A and 302 read with 34 IPC and issued Ex.P37 the altered first information report.

vii) PW.29-the Inspector of Police, took up further investigation in this matter. On receiving the altered first information report, he sent requisition to PW.23-the Mandal Executive Magistrate, to conduct inquest over the dead body of the deceased. Accordingly, PW.23 conducted inquest over the dead body of the deceased in the presence of PW.14. During inquest, he

examined PWs. 1, 2 and others and recorded their statement. After completing the inquest proceedings, he sent the dead body for postmortem examination.

viii) PW.21-the Civil Assistant Surgeon, RIMS Hospital, Ongole, conducted autopsy over the dead body of the deceased and issued Ex.P22 the postmortem certificate. According to him, the cause of death was due to “Septicemia due to burns.”

ix) On 29.07.2011, on receipt of information, PW.29 along with PW.15 and another went to Lingamguntla village and arrested accused Nos.1 to 3. On interrogation, the accused are alleged to have confessed about the commission of offence. The confessional statements of the accused were recorded in the presence of PW.15. After collecting all the material, PW.29 filed a charge sheet before the Court of Judicial Magistrate of First Class, Kanigiri, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.49 of 2012.

3) On appearance, charges under Sections 498-A and 302 read with 34 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 its case, the prosecution examined PWs.1 to 29 and got marked Exs.P1 to P40 and MOs.1 to 4. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances

appearing against them, in the evidence of the prosecution witnesses, to which they denied. No oral evidence was adduced on behalf of the accused but Exs.D1 to D4 marked.

5) Out of 29 witnesses, PWs.3 to 13 turned hostile and did not support the prosecution case. Basing on the dying declarations coupled with the oral evidence of PWs.1 and 2, the learned Sessions Judge convicted accused Nos.1 and 3 for the offence punishable under Section 302 IPC. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellants mainly submits that there are no eye witnesses to the incident and the entire case rests on the dying declaration of the deceased. He further submits that since PWs.3 to 13 turned hostile, no credence can be given to the evidence of PWs.1 and 2, as they are interested witnesses. He further submits that in view of the inconsistent dying declarations of the deceased, conviction under Section 302 IPC is impermissible under law.

7) On the other hand, the learned Public Prosecutor would submit that the dying declarations recorded by the police and the Magistrate are sufficient to base a conviction.

8) The point that arises for consideration is whether the accused are responsible for the death of the deceased, if so, whether they are liable for punishment under Section 302 read with 34 IPC.

9) PW.1 is the father while PW.2 is the sister of the deceased. Their evidence shows that the marriage between the accused No.1 and the deceased took place about six years prior to the incident. At the time of marriage, a sum of RS.30,000/- was given as dowry and later the accused started harassing the deceased to get additional dowry. It is said that unable to bear the harassment, the deceased went to the house of PW.1 and stayed there for some time. One and half months prior to the incident, accused No.1 brought back the deceased to their house, as the sister of accused No.1 was not getting married due to absence of the deceased in their house. It is the evidence of PWs.1 and 2 that one day morning accused No.1 telephoned to PW.1 and informed that the deceased poured kerosene on herself and set fire, as such he took her to Ramanaidu Hospital, Kanigiri. Accordingly, PWs.1 and 2 went to the hospital and enquired the deceased, who disclosed that all the accused beat her on that day morning; accused No.3 poured kerosene on her while accused Nos.1 and 2 set her on fire. They did not give any report immediately as the villagers promised for providing better treatment and handing over the deceased to them.

10) Before dealing with the evidence of PWs.1 and 2, it is to be noted here that accused were acquitted for the offence punishable under Section 498-A IPC. Therefore, the evidence of PWs.1 and 2 is to be tested with the oral dying declarations made by the deceased before them at Government Hospital, Kanigiri. The first set of statements is those statements which the deceased

is said to have made before PWs.1 and 2. A reading of the evidence of PWs.1 and 2 would show that on receipt of information from accused No.1 about the deceased committing suicide by pouring kerosene, PWs.1 and 2 proceeded to Ramanaidu Hospital at Kanigiri, wherein the deceased disclosed to them that on that day morning all the accused beat her. Thereafter accused No.3 poured kerosene and accused Nos.1 and 2 set her to fire. PW.1 in his cross-examination admits that the information about the deceased sustaining burn injuries was informed to them by one Balaiah through telephone. The said Balaiah was not examined. Further, he admits that the accused took the deceased and admitted her in Ramanaidu Hospital and also in Government Hospital, Nellore and that he did not go there. It would be useful to extract the same, which is as under:

“It is true the accused took the deceased and admitted at Ramanaidu Hospital, Kanigiri and also at Government Hospital, Nellore and I did not go there.”

11) He further admits that the village elder by name Balaiah informed him on telephone stating that the deceased made an attempt to commit suicide by pouring kerosene and setting herself on fire and that the accused admitted her in the hospital. The relevant admission is as under:

“Village elder Balaiah informed me by phone that my daughter ie. deceased made an attempt to commit suicide by pouring kerosene and setting fire to herself and accused admitted her in the hospital.”

12) He further admits that after the death of the deceased, the dowry and buffalos which were given by them at the time of marriage were returned. He further admits that on the date of death of the deceased, there was a panchayat with regard to return of dowry and buffalos given by PW.1. He further admits that his wife, daughter and accused Nos.1 to 3 were with the deceased at Government Hospital, Nellore. According to him, the deceased was brought to Government Hospital, Kanigiri, as proper treatment was not given to the deceased at Government Hospital, Nellore.

13) As per the evidence of this witness, who is the father of the deceased, it is clear that he did not go to Ramanaidu Hospital, Kanigiri, where the deceased is alleged to have orally informed him as to how she sustained burn injuries. His version in chief-examination that it was the accused No.1, who informed him about the incident gets falsified in view of the admission made in the cross-examination that one village elder Balaiah informed him that the deceased made an attempt to commit suicide by pouring kerosene and setting herself on fire. Further, he categorically admits that his wife, daughter, accused Nos.1 to 3 were with the deceased at Government Hospital, Nellore. Therefore, there is any amount of doubt as to his presence by the side of the deceased at Kanigiri where the oral dying declaration is made.

14) Coming to the evidence of PW.2, in her cross-examination, she admits that one Balaiah made a call to her father

and informed about the incident and admission of the injured in the hospital. She denies making statement as in Ex.D4 to the effect that she did not go to Kanigiri. Therefore, it is clear that in the earlier statement recorded by the police during the course of investigation, PW.2 did not state that she went to Kanigiri where the deceased is alleged to have made oral dying declaration when enquired as to how she sustained burn injuries. Therefore, the admissions in the evidence of PW.2 coupled with the evidence of PW.1 throw any amount of doubt as to the two oral dying declarations said to have been made by the deceased before PWs. 1 and 2. On the other hand, the earliest information was that it was a case of suicide.

15) The next set of evidence is the four dying declarations alleged to have been recorded by the police and the magistrates. The first dying declaration was on 15.07.2011 at 10.00 p.m. recorded by PW.27-the head constable of Nellore I Town Police Station. Ex.P32 is the said statement. In the said statement the deceased is said to have stated that on 15.07.2011 at 9.30 a.m. her father-in-law, mother-in-law and her husband conspired to kill her and in that process they poured kerosene and set fire to her body. This statement which was recorded at 10.00 p.m. shows as if all the three accused poured kerosene and set fire to the deceased.

16) The second dying declaration was recorded by PW.26-the II Additional Judicial Magistrate of First Class, Nellore. This was at about 10.10 p.m. on 15.07.2011. In the said statement, the

deceased stated that on that day at about 9.00 a.m., due to suspicion by her husband, her mother-in-law poured kerosene and set fire to her body. Her husband also beat her and went out of the house. The statement which was recorded 10 minutes later, gives a total different version. Though in the earlier statement recorded at 10.00 p.m. deceased stated that all the accused poured kerosene and set fire to her, but in the second statement, she gives a clean chit to her father-in-law and husband. On the other hand, she pins down her mother-in-law by stating that she poured kerosene and set fire on her body. She further states that the cause for the incident her mother-in-law who suspected her of having illegal contacts with her father-in-law. A reading of these two dying declaration which were made on 15.07.2011 at about 10.00 a.m., and 10.10 a.m., show lot of variance not only with regard to the role of each of the accused but also with regard to the motive for which the offence was committed.

17) The next set of dying declarations were recorded on 18.07.2011, ie., four days after the injured was shifted to another hospital. The third dying declaration was recorded on 18.07.2011 at about 1.45 p.m. by PW.17-the Junior Civil Judge, Kanigiri. According to him, on 18.07.2011 at about 1.45 p.m. he received a requisition-Ex.P16 about the admission of the injured in the Area Hospital, Kanigiri. On receipt of the same, he proceeded to Area Hospital, Kanigiri and recorded her statement, which is placed on record as Ex.P17. As per the statement, which is said to have made nearly four days after her admission, the deceased stated

that her mother-in-law, father-in-law and husband conspired together; poured kerosene and set her on fire with a match stick and later she was taken to several places. She further states that she was alone in the house at that time. A reading of the statement would show she went back on what she stated before the II Additional Judicial Magistrate of First Class, Nellore, vide Ex.P29 and implicates all the three accused as responsible for the incident.

18) Within minutes thereafter, PW.28-the A.S.I. of Police, on receipt of intimation from the hospital about the admission of the injured at Kanigiri Hospital, recorded the statement, which is placed on record as Ex.P33, in which she again gives a total different version stating that her mother-in-law poured kerosene while her husband and father-in-law set fire to her. The said statement was also certified by the doctor stating that the patient was conscious and fit state of mind. It is to be noted here that this statement was recorded on 18.07.2011 which was made the basis for registering the crime.

19) In *State of Punjab v. Parveen Kumar*¹ the Apex Court while appreciating the credibility of two dying declarations, which were inconsistent with each other, held as under:

“10. While appreciating the credibility of the evidence produced before the Court, the Court must view evidence as a whole and come to a conclusion as to its genuineness and truthfulness. The mere fact that two different versions

¹ AIR 2005 SC 1277

are given but one name is common in both of them cannot be a ground for convicting the named person. The Court must be satisfied that the dying declaration is truthful. If there are two dying declarations giving two different versions, a serious doubt is created about the truthfulness of the dying declaration. It may be that if there was any other reliable evidence on record, this Court could have considered such corroborative evidence to test the truthfulness of the dying declarations. The two dying declarations, however, in the instant case stand by themselves and there is no other reliable evidence on record by reference to which their truthfulness can be tested. It is well settled that one piece of unreliable evidence cannot be used to corroborate another piece of unreliable evidence.”

20) A perusal of Exs.P.17 and P.33 and two dying declarations which were recorded on 18.07.2011 show that all of them are contrary to each other. As stated earlier in the dying declaration recorded by the Magistrate she states that all the accused poured kerosene and set fire, while in the second set of statement recorded immediately, thereafter she states that her mother-in-law poured kerosene while her husband father-in-law set fire together. From the four dying declarations recorded, two by the police and two by the Magistrates, none of them are consistent with each other. No two dying declarations recorded on the same day are consistent with each other. The discrepancy in the four dying declarations throws any amount of doubt on the truthfulness of the dying declarations, more so when the earliest information which was received by the parents of the deceased from the village elder was that of suicide.

21) Having regard to the judgment referred to above and in view of the inconsistency in all the dying declarations and the manner in which the declarations came to be made on two different dates, we feel that none of the dying declarations can be made the basis to hold the conviction though the Court can accept any one if it is found reliable and trust-worthy to convict the accused.

22) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/ accused Nos.1 and 3 in the judgment, dated 06.03.2013 in S.C.No.49 of 2012 on the file of the Judge, Family Court-cum-Additional District and Sessions Court, Prakasam Division at Ongole, for an offence punishable under Section 302 IPC read with 34 IPC are set aside. Consequently, the appellants/ accused Nos.1 and 3 shall be set at liberty forthwith, if they are not required in any other case or crime.

23) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE J. UMADEVI

15.03.2018
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