

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON' BLE MS. JUSTICE J. UMA DEVI

CRIMINAL APPEAL No.95 OF 2013

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

The sole accused in Sessions Case No.425 of 2012 on the file of Principal Sessions Judge, Medak at Sangareddy, is the appellant herein. He was tried for an offence punishable under Section 302 I.P.C., for causing the death of one Pichakuntla Jyothi, on 21.11.2011 at 07.00 p.m., by pouring kerosene and setting her on fire. Vide judgment dated 10.01.2013, learned Sessions Judge, convicted the accused and sentenced him to suffer imprisonment for life and pay fine of Rs.10,000/- and in default to undergo rigorous imprisonment for two years. Challenging the same, the present appeal came to be filed.

2. The case of the prosecution as culled out from the evidence of prosecution witnesses are as under:

The accused is a resident of Nethajinagar, Bandlaguda, whereas the deceased was originally a resident of Sadasivapet. However, since two months prior to the date of incident, the accused and the deceased were residing in a rented house at Gouthamnagar, Patancheru. PWs.2 and 3 are neighbours of the accused and deceased.

On 21.11.2011, the Sub-Inspector of Police (PW9) received a message with regard to burn injuries from Gandhi Hospital. Pursuant thereto, he proceeded to the said place and recorded the statement of the injured. Ex.P9 is the statement of the injured. Basing on the statement recorded by PW 9, the C.I. of Police, Patancheru (PW10) registered a case in Crime No.399 of 2011 for the offence punishable under Section 307 IPC. Ex.P11 is the FIR. After registering the crime, PW10 handed over the case file to PW9. On receipt of case file, PW9 proceeded to the scene of offence and conducted a panchanama on the next day and also got photographed the scene of offence through PW1. Ex.P1 is the bunch of photographs. The scene of offence panchanama was conducted in the presence of PW4 and LW7. Ex.P4 is the scene of offence panchanama with sketch. At that time, MOs.1 and 2 namely one saree and burnt shirt were seized. Thereafter he issued a requisition to the concerned Magistrate for recording the statement of the injured. On receipt of the said information, PW7 the learned IX Additional CMM, Hyderabad, proceeded to Gandhi hospital and recorded the statement of the injured. Before recording the statement, preliminary questions were put to the deceased and after being satisfied with regard to the mental fitness and obtaining a certificate to that effect from the concerned doctor, he recorded the statement of the injured, which is placed on record as Ex.P7. On 24.11.2011, at about

07.00 a.m., PW9 received an intimation about the death of the deceased pursuant to which, he altered the Section of law from 302 IPC to 307 IPC. Ex.P10 is the altered memo. He then handed over the investigation to PW10, the CI of Police, who proceeded to Gandhi Hospital and conducted inquest over the dead body, in the presence of PW5 and LW9. Ex.P5 is the inquest report. During inquest, he recorded the statements of PWs.2 and 3 and then sent the body for post mortem examination. PW8 the Associate Professor in the Department of Forensic Medicine, Gandhi Medical College, Secunderabad, on receipt of requisition, conducted autopsy over the body of the deceased and issued Ex.P8 the Post Mortem Certificate. According to him, the cause of death was due to burns and its complications. On 09.03.2012, PW10 received information about the accused, who was discharged from the hospital and was present in the house at Bandlaguda. Immediately, he went there, apprehended the accused and recorded his confessional statement. Thereafter, PW10 brought the accused to the police station and took him to the hospital for further treatment. After collecting all the documents, he filed a charge sheet, which was placed on record as PRC No.30 of 2012 on the file of Additional Judicial Magistrate of First Class, Sangareddy.

After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.425 of 2012 on the file

of the Principal Sessions Judge, Medak at Sangareddy. Basing on the material on record, charge for an offence punishable under Section 302 IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

(vi) To substantiate their case, the prosecution examined PWs. 1 to 10 and got marked Exs.P1 to P13 and M.Os. 1 to 3.

(vii) After the closure of 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 or documentary evidence was adduced on behalf of the accused in support of his defence. Out of ten witnesses examined by the prosecution, PWs.2 and 3 did not support the prosecution case and were treated hostile.

(ix) Placing reliance on the dying declaration recorded by the Magistrate, which is placed on record as Ex.P9, the learned Sessions Judge convicted the accused. Challenging the same, the present appeal came to be filed.

3. Learned counsel for the appellant mainly submits that the statement of the injured which is placed on record as Ex.P9 is not the true version. According to the counsel, though the accused sustained injuries when he caught hold of her, the same is not found in the dying declaration. In view of the same, it is urged

that the prosecution has suppressed the true version of the case. He pleads that it cannot be said that the deceased sustained injuries because of the accused pouring kerosene and setting her on fire. It is further urged by the counsel that the possibility of deceased herself intending to commit suicide because of accused refusing to marry her cannot be brushed aside. Referring to the evidence of the investigating officer, more particularly, the answers given by him in the cross examination, it is urged that there is any amount of doubt as to how deceased sustained injuries, as controlled earth was not seized from the scene of offence and the saree and the shirt were not sent for forensic lab. He further submits that since the accused is said to have set fire to the legs of the deceased first, it can be said that he had no intention to cause the death of the deceased.

4. On the other hand, learned public prosecutor would contend that there are no reasons to disbelieve the dying declaration recorded by the Magistrate, when the same fulfills the requirements of Rule 33 of Criminal Rules of Practice. He submits that if the said dying declaration is to be accepted, the same can be made the basis to convict the accused. He further submits that there is no suppression of any material fact in the dying declaration, since the deceased may not be aware as to the nature of injuries sustained by the accused, to explain the same in the dying declaration. It is further pleaded that the question of

altering the nature of offence would not arise as the accused poured kerosene from the top and then set fire at the legs, leading the deceased engulfing in flames. Hence submits that the order of conviction recorded by the trial Court warrants no interference.

5. The point that arises for consideration is whether the accused is responsible for the death of the deceased?

6. PW2 is the person who collects rents on behalf of owner of the house where the accused and the deceased used to reside. He used to reside in the ground floor, while the accused and the deceased were living in the first floor. It is his version that on 21.11.2011, there was a quarrel pursuant to which, the deceased committed suicide by setting herself ablaze. He was treated hostile by the prosecution. Similarly, PW3, who works in the shop of PW2 at Patancheru, deposed that he came to know about the deceased committing suicide by setting herself on fire. He was also treated hostile and subjected to cross examination, wherein he denies the contents of the incident. Since the material witnesses, who have actually seen the incident did not support the prosecution case and were treated hostile, the only other material available is the dying declaration recorded by PW7. Ex.P9 is the statement of the deceased recorded by PW9 the SI of police, which formed the basis to initiate criminal action. Ex.P7 is the statement of the deceased recorded by the Magistrate. In Ex.P7

which was also signed by the deceased, it was stated that on 21.11.2011, at about 07.30 p.m., the accused came home in a drunken condition and abused her in filthy language. When she questioned him, the accused poured kerosene on her and set her ablaze. Later, she claims to have run away from the house. This was the first statement which was recorded immediately after the incident. Whereas, the second statement was recorded by the Magistrate on 22.11.2011, at about 10.30 p.m. Before recording the statement, the Magistrate put some preliminary questions and after being satisfied with regard to the mental condition of the injured, took the thumb impression of the injured and thereafter obtained certificate of the Doctor. In the statement, the deceased stated that since one month her husband was beating her without any reason, by consuming liquor and even on the previous day he beat her. When she questioned him about the reasons, he abused her. She further stated that even on the date of incident, he started beating her and when she questioned, he poured kerosene and set fire on her legs, pursuant to which the entire body was burnt. She claims to have extinguished the flames with carpets and then someone shifted her to hospital. To a question as to who is responsible for the incident, she states that her husband is responsible for the incident, as he poured kerosene and set her on fire. From this statement also, it is clear that on the date of incident, the accused came in a drunken condition, beat

and abused the deceased and when questioned, he poured kerosene and set her ablaze.

7. The second ground raised by the appellant is that the deceased is not coming forward with a true version of the case. According to her, even the prosecution did not explain as to how the accused sustained burnt injuries.

8. It is to be noted here that on 21.11.2011, at about 08.00 p.m., the accused got himself admitted in the Head Quarters hospital, at Sangareddy. The certificate issued by the said hospital, which is placed on record as Ex.P13, show that he sustained burn injuries at around 07.00 p.m. on 21.11.2011, when he was held by a burning female from behind. It was elicited in the cross examination of the investigating officer that the accused sustained injuries when the deceased caught hold of her. To a suggestion that the deceased herself set fire and also tried to kill the accused by catching hold of her, was denied by the prosecution. Apart from that, Ex.P13 the certificate issued by the hospital, the contents of which are not even disputed by the learned counsel for the appellant, categorically states that the accused sustained burn injuries when he was held by a female from behind. Therefore, this piece of evidence amply establishes the presence of the accused at the scene of offence. When once the presence of the accused at the scene of offence stands

established, the question that boils down to is whether the accused set the deceased on fire or whether the incident happened in a different circumstance. No material has been placed on record to prove that the incident happened in a totally different set of circumstances or that deceased tried to commit suicide, as suggested. When Exs.P9 and P7, the two dying declarations inspires confidence in the mind of the Court, the same can be made basis to hold that the accused is responsible for the incident in question. At this stage, learned counsel for the appellant tried to contend that the deceased has not stated in her statement about the accused sustaining burn injuries or that the accused trying to put off the flames from behind. The fact that the accused sustained burn injuries may not be to the knowledge of the deceased. It probably appears to be a case where after setting her on fire, the accused tried to escape which made her to catch him from behind. Non mentioning of the circumstances in our view may not throw any doubt on the two dying declarations, since it is not even the case of the accused that these two dying declarations were an outcome of tutoring or any of the neighbours or the family members of the deceased being present by her side or made her to speak in the manner narrated in the dying declaration. In both the dying declarations, the deceased categorically referred to the accused pouring kerosene and setting her on fire, leading to death. It is also to be noted that

probability of the deceased being not in the state of mind about mentioning as to what happened when she was in burns cannot also be ignored.

9. Further, while dealing with an issue whether the statement of the deceased can be made basis for conviction of the accused, the Apex Court in *Kushal Rao Vs. The State of Bombay*¹ held as under:

“There is no absolute rule of law, not even a rule of prudence that has - ripened into a rule of law that a dying declaration in order – that it may sustain an order of conviction must be corroborated by, other independent evidence. The provision of Section 32(1) of the Indian Evidence Act reads that a statement in the dying declaration as to the cause of death and the circumstances that brought it about relevant, is an exception to a general rule of exclusion of hearsay evidence and evidence untested by cross-examination. The special sanctity which the Legislature attaches to such a declaration must be respected unless such declaration can be shown not to have been made in expectation of death or to be otherwise unreliable and any evidence adduced for this purpose can only detract from its value but not affect its admissibility. Although a dying declaration has to be very closely scrutinized tested as any other piece of evidence, once the Court comes to the conclusion, in any particular case, that it is true, no question of corroboration arises”.

10. At this stage the learned counsel for the petitioner tried to contend that the incident in question was an outcome of a quarrel and that the nature of the offence requires to be scaled down.

¹ 1958 AIR 22

11. A reading of two dying declarations does not refer to any incident of quarrel between both of them. On the other hand, the accused, who used to quarrel, came home in a drunken condition, beat her on the previous day and when she questioned, he abused and threatened to kill her by setting her on fire. So saying, he took a kerosene tin, poured the same on the injured and then set her on fire near the legs. Therefore, the argument of the learned counsel for the petitioner that the incident in question was preceded by a quarrel and such offence requires to be scaled down to one under Section 304 IPC, cannot be accepted, as both dying declarations nowhere refer to quarrel between both of them. Merely because the deceased has questioned the accused about the conduct, one cannot say that there was a quarrel.

12. In view of the above judgment and having regard to the circumstances of the case, we see no reasons to interfere to the order under challenge.

13. Accordingly, the appeal is dismissed confirming the conviction and sentence dated 10.01.2013, passed in Sessions Case No.425 of 2012 on the file of the Principal Sessions Judge, Medak at Sangareddy.

14. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J.UMA DEVI

20.02.2018
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