

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL No.210 of 2012

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

Assailing the conviction and sentence imposed in S.C.No.261 of 2009 on the file of XIII Additional District and Sessions, Narasaraopet, Guntur, wherein the sole accused was tried, convicted and sentenced for the offence punishable under Section 302 IPC, the present appeal came to be filed.

2. The substance of charge against the accused is that on 30.12.2007 at about 07.00 p.m. at Panasathota, Narasaraopet, the accused caused the death of his wife Shaik Karimoon, by setting her on fire.

3. The facts as culled out from the evidence of the prosecution witnesses are as under:

(i) PW1, is the mother of the deceased, PWs.2, 3, 4 and 5 are the brothers of the deceased. PW6 is the father of the deceased, PW7 is the brother of the accused, PWs.8 and 9, are the neighbours of the deceased. PW10 is known to the accused and the deceased, PWs.11 and 12 are the residents of same street. All the above mentioned witnesses did not support the prosecution case and were treated hostile by the prosecution. Therefore, the entire case rests on the two dying declarations recorded by PWs.16 and 24. Before dealing with the two dying declarations, it is to be noted that the marriage between the accused and the deceased took place about ten years prior, but they did

not begot any children. The averments in the charge sheet would show that since a year after the marriage, the accused suspected the fidelity of the deceased on the ground that she was having illicit intimacy with her cousin and as such used to harass her physically and mentally. About nine months prior, the accused shifted his family to Panasathota and was residing at the house of PW8 on a monthly rent of Rs.300/- . It is stated that on 30.12.2007, PWs.2 and 18 came to the house of the deceased and invited her to attend the marriage of her relatives at Chilakaluripet. Since then, the accused subjected her to cruelty, stating that she was going to meet her lover. Having noticed the attitude of her husband, the deceased refused to attend the marriage function, though her husband asked her to attend the marriage. It is stated that on 30.12.2007 at 07.00 p.m., the accused assaulted the deceased, poured kerosene on her and set her on fire, due to which she sustained severe burns all over the body. On hearing the cries, some of the neighbours tried to put off the flames. Thereafter, the injured was shifted to Area Hospital, Narasaraopet.

(ii) PW15, the then Superintendent of Area Hospital, Narasaraopet, in his evidence states that on 30.12.2007 at about 08.00 p.m., the injured was admitted in his hospital with burn injuries and that he gave intimation to the police about the admission of the injured. He also sent an intimation to the Magistrate for recording the dying declaration. Ex.P15 is the hospital intimation given to the police. Pursuant to the said intimation, the police came down to the hospital and recorded the statement of the injured, which contains the endorsement of the doctor with regard to the mental fitness of the injured. Basing on the

statement recorded by PW16, the then Head Constable, Narasaraopet town Police Station, a case in Crime No.294 of 2007 came to be registered for an offence punishable under Section 307 IPC. Ex.P21 is the FIR. At the same time, PW20 the learned Magistrate who also received the intimation about the admission of the injured in the hospital, proceeded to the hospital and on being satisfied with regard to the mental condition of the injured and after obtaining the necessary fitness certificate from the doctor, recorded the dying declaration of the injured/ deceased. Ex.P27 is the dying declaration of the injured/ deceased. After receipt of the death intimation from the Guntur General Hospital, which took place on 10.01.2008, PW16 altered the Section of law from 307 IPC to Section 302 IPC. Ex.P23 is the altered FIR. PW17 the CI of Police took up further investigation in the matter. He visited the scene of offence on 31.12.2007, prepared a scene observation report, which is placed on record as Ex.P13 and also the rough sketch of the scene which is marked as Ex.P24. During the said process, he examined PWs.8,9,10,7 and others. After receipt of the altered FIR, PW17 conducted inquest over the body of the deceased. Ex.P14 is the inquest report. During inquest, he examined PWs.3, 4 and 5 and recorded their statements. Thereafter, the body was sent for post mortem examination. PW19 the then Assistant Professor of the Government Hospital conducted autopsy over the dead body and found 97% of the body surface area being burnt. According to him, the cause of death was due to burns. Ex.P26 is the post mortem examination report of the deceased. The material on record also shows that on the date of incident, at about 11.50 p.m., the accused also got himself admitted in the hospital with burn injuries. Ex.P19 is the wound

certificate issued in favour of the accused. After discharge from the hospital on 22.01.2008, the accused was arrested and sent to judicial custody. After completing the investigation, PW17 filed the charge sheet which was taken on file as PRC No.10 of 2008 on the file of Judicial Magistrate of First Class, Narasaraopet.

(iii) On appearance of the accused, copies of documents were furnished to the accused as contemplated under Section 207 of Cr.P.C. and on committal under Section 209 Cr.P.C., the same came to be numbered as S.C.No.261 of 2009.

(iv) Basing on the material available on record, a charge under Section 302 of IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

(v) In support of its case, the prosecution examined PWs.1 to 20 and got marked Exs.P1 to P27.

(vi) 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 or documentary evidence was adduced by the accused in support of his defence.

(vii) Relying upon the two dying declarations which gets corroboration from the evidence, the trial Court convicted the accused. Challenging the same, the present appeal came to be filed.

4. The learned counsel for the appellant/ accused mainly submits that in the absence of any averments against the accused in the dying

declarations recorded by the police and also by the Magistrate, the same cannot be made the basis to convict the accused. According to him, both the dying declarations are in-consistent with each other and as such it cannot be said with certainty that it was the appellant alone who was responsible for the death of the deceased. He further contends that since the accused also sustained burn injuries, possibility of he trying to extinguish the flames at the time when the deceased committed suicide cannot be ruled out. The same is opposed by the learned public prosecutor.

5. As seen from the record, the plea of the accused that the deceased attempted to commit suicide and that the accused sustained injuries, when he tried to extinguish the flames, was never the case of the accused. Neither it was suggested to the witness, nor did the witnesses speak about the same. Infact the doctor who conducted the post mortem examination was not asked as to whether the said injuries are homicidal or suicidal injuries. Even in the 313 examination, the accused never come forward with such a plea, except pleading innocence. Therefore, it cannot be assumed now that the accused sustained burn injuries when he tried to extinguish the flames on the deceased.

6. As stated earlier all the witnesses including the family members of the deceased did not support the prosecution case and were treated hostile by the prosecution. Therefore, the only evidence which remains to be considered are the two dying declarations recorded by PWs.16 and 18.

7. PW16 the Head Constable, first recorded the dying declaration which is placed on record as Ex.P16. A reading of the said statement clearly discloses that on 30.12.2007, the paternal uncle's son of the deceased came to their house, invited them to attend marriage of their relatives and then left the place. Since his departure, the accused started harassing the deceased physically and mentally. When she expressed her intention to go, the husband beat her. As such the deceased dropped the idea of going to the marriage, inspite of the accused later asking her to attend the marriage. However the accused went to attend the marriage. On the same day evening, after returning from the marriage, the accused is said to have beat the deceased, poured kerosene and set her on fire. On raising cries, she was shifted to Area hospital, Narasaraopet. She (deceased) categorically stated that the incident took place due to acts of the accused. This statement which was recorded by PW16 was made basis for issuance of a FIR. This declaration contains not only the endorsement of the doctor with regard to the mental fitness, but also the thumb impression of the deceased.

8. The next dying declaration was recorded by PW20, the learned Magistrate, which came to be marked as Ex.P27. In the said statement, the deceased-injured, reiterated the same version which she has stated earlier before PW16, with regard to the manner in which the incident took place. She categorically stated that it was the accused who poured kerosene and set her on fire. A reading of the two dying declarations do not indicate any inconsistency, as pleaded by the appellant. Infact, in both the dying declarations, it was categorically stated about the invitation extended by her relatives for the marriage and when the

deceased expressed her intention to attend the marriage, the accused beating her and thereafter in the night, when he returned from the marriage, pouring kerosene and setting her on fire. Since these two dying declarations are consistent and corroborative with each other, we have no hesitation to make the same the basis to convict the accused.

9. The learned counsel for the appellant tried to contend that, in view of the nature of the injuries sustained by the accused, the conduct of the accused cannot be doubted and the prosecution failed to explain as to how the accused sustained those injuries. It is not the case of the accused that he tried to extinguish the flames when the deceased attempted to commit suicide. On the other hand, Ex.P19 the wound certificate issued by the doctor, who was examined as PW15, states that on the date of incident, the husband of the deceased was brought to the hospital by his brother with injuries, said to have occurred on 30.12.2007 at 07.00 p.m. It was further stated in the said certificate that his wife hugged him in an attempt to prevent spread of fire which occurred in her house at about 07.00 p.m., on 30.12.2008.

10. From the above it is clear that the deceased hugged her husband, when she was in flames, as a result of which, the accused sustained burn injuries. Therefore, the plea that the prosecution failed to explain as to how the accused sustained injuries cannot be accepted and the plea of the accused that he sustained injuries while trying to extinguish flames on the deceased also appears to be incorrect.

11. In view of the above, there is no error apparent or infirmity in the reasons assigned by the trial Court for convicting the accused.

12. Accordingly the appeal is dismissed confirming the conviction and sentence dated 25.08.2011, passed in Sessions Case No.261 of 2009 on the file of the XIII Additional District and Sessions Judge, Narasaraopet, Guntur.

13. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T. AMARNATH GOUD

10.04.2018
vhb

