

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SMT JUSTICE T.RAJANI

**CRIMINAL APPEAL No.355 of 2012**

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

1) The sole accused in Sessions Case No.344 of 2008 on the file of II Additional District and Sessions Judge at Mahabubnagar, is the appellant herein. He was tried for an offence punishable under Section 302 IPC for causing the death of one Kunti Hanmanolla Neelamma (hereinafter referred to as D-1) and Gurka Mahadevamma (hereinafter referred to as D-2) by setting them on fire on 27.01.2008.

2) The facts in issue are as under:-

P.W.1 is the mother of Neelamma (D-1). The accused is the husband of Gurka Mahadevamma (D-2), whose house is at a distance of 50 feet from the house of Neelamma. Since all the witnesses turned hostile, it would be useful to refer to the two Dying Declarations to find out the cause of death of the deceased. Before referring to the Dying Declarations, the material on record would show that about 7 years prior to the incident, the marriage of D-2 took place with the accused. Out of wedlock, they were blessed with a male and a female child. The male child expired, but the female child, was aged about 8 months, as on the date of incident. On 27.01.2008, the accused asked

D-2 to wash the clothes and take the goats for grazing, but she did not follow his instructions, on which he bore grudge against D-2. At about 9.30 p.m., after having dinner, the co-daughter-in-law of the D-2 took her daughter to church. After some time, D-2 went to the church, brought her daughter back and went to sleep by the side of her husband. At that time accused is said to have picked up a quarrel, took a kerosene tin poured the same on D-2 and tried to set fire D-2. But she escaped from his clutches and ran to the house of her caste person/D-1. The accused is said to have followed her, entered the house of D-1 and set her on fire by throwing a match-stick, as a result of which D-2 caught flames and sustained burn injuries. On hue and cries of D-2, D-1 who tried to put off the flames, also received burn injuries. Then the neighbours extinguished the flames of D-1 and D-2 and shifted both of them to the Government Civil Hospital, Makthal in 108 Ambulance, from where they were referred to Government Headquarters Hospital, Mahabubnagar for better treatment. The record shows that on 28.01.2008, basing on the information given by the Hospital authorities about the admission of the deceased in the hospital, the S.I. of Police, Magnoor Police Station rushed to the hospital and recorded the statement of D-2, basing on which he registered a case in Cr.No.5 of 2008 under Section 307 IPC. On receipt of hospital intimation, P.W.18-the Judicial Magistrate of First Class, Prohibition and Excise Court, Mahabubnagar

immediately proceeded to District Headquarters hospital, Mahabubnagar and recorded the statement of D-1 (Neelamma) after obtaining the necessary endorsement of the Medical Officer with regard to the mental condition of the deceased. Ex.P-19 is the Dying Declaration of D-1, which was recorded on 28.01.2008 at 9.16 a.m. He also received a requisition from Incharge outpost, Government Headquarters Hospital, Mahabubnagar, requesting him to record the Dying Declaration of Mahadevamma (D-2), who is the wife of the accused. Ex.P-20 is the medical intimation given by the Hospital authorities and Ex.P-23 is the Dying Declaration of D-2. While undergoing treatment, D-1 succumbed to burn injuries on 01.02.2008, whereas D-2 died on 13.02.2008. On 02.02.2008, P.W.19 the Inspector of Police on receipt of death intimation, altered the section of law from 307 IPC to 302 IPC. Ex.P-25 is the alteration memo. He, then visited the Government Headquarters Hospital and in the presence of P.W.15 and L.W.11 conducted inquest over the deadbody of D-2. Ex.P-26 is the inquest panchanama of D-2. P.W.16 the Civil Assistant Surgeon, Govt. Head Quarters Hospital, Mahaboobnagar, conducted post-mortem over the dead body of the deceased No.1 and issued Ex.P-15-the Post Mortem report. According to the Doctor, the cause of death was due to shock, secondary to septicemia due to burns. P.W.17, the Civil Assistant Surgeon, Govt. Head Quarters Hospital, Mahaboobnagar, conducted autopsy over the dead body of

the deceased No.2 and issued Ex.P-16-the Post Mortem report. According to the Doctor, the cause of death was due to shock due to septicemia due to 55% to 65%. After collecting the FSL report, Post Mortem reports and the Dying Declarations, P.W.19 filed the charge-sheet against the accused before the court of Judicial Magistrate of First Class, Narayanpet, which was taken on file as P.R.C.No.27 of 2008, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., upon which, the same came to be numbered as S.C.No.344 of 2008.

3) Basing on the material available on record, a charge under Section 302 IPC came to be framed, read over and explained to the accused, to which he pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 20 and got marked Exs.P-1 to P-33 and MOs.1 to 7. Out of the 20 witnesses examined by the prosecution, P.Ws.1 to 8, 10 to 15 did not support the prosecution case and were treated hostile by the prosecution. 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 on behalf of the accused.

5) After considering the oral and documentary evidence on record, the Sessions Judge convicted the accused for the offence of which he was charged. Challenging the same, the present appeal is filed.

6) The main ground urged by Smt. A.Gayatri Reddy, learned counsel for the appellant is that in the absence of any oral evidence, the Dying Declarations, cannot be made the basis to convict the accused. She further submits that the two Dying Declarations made by D-1 and D-2, recorded by P.W.18 would show that the incident was an outcome of a sudden quarrel and as such the nature of offence requires to be scaled down. In other words, the main argument of the counsel is that having regard to the contents of Dying Declarations, it has to be inferred that the accused had no motive and intention to cause the death of the deceased. She also submits that since the death was preceded by a quarrel and as it was accidental, the nature of offence may be scaled down to one under Section 304-II IPC.

7) From the arguments advanced, it appears to us that the counsel seeks alteration of the nature of offence basing on two circumstances viz., i) that the accused having no motive and intention to cause death and ii) the death of D-1 being accidental.

8) As observed earlier, out of the 20 witnesses examined, P.Ws.1 to 8, 10 to 15 did not support the prosecution case and were treated hostile by the prosecution. The only evidence that is available on

record is Dying Declarations of D-1 and D-2 made before the Magistrate and one statement of D-2 made before the Police Officer, which form the basis of First Information Report.

9) Insofar as the first circumstance regarding the motive and intention of the accused to cause death of D-2, it is to be noted that the first D.D. (statement) of D-2, who is the wife of the accused, recorded by the S.I. of Police, states that on 27.01.2008 she did not wash cloths and did not take goats for grazing. In the night at about 9.00 p.m., after all the members of the house had meals, her sister-in-law Padma took her daughter to the Church. Later, she also went there, brought her baby back and went to sleep by the side of her husband. But her husband did not allow her to sleep by his side as he was in a angry mood. When she insisted to sleep by his side, her husband took a plastic can containing kerosene, poured the same on her head and tried to set her fire with match stick. Apprehending danger, she ran out of her house, to the house of her caste woman Maremma w/o. Narsappa. Her husband (the accused) also followed her, lit a match-stick and threw it at her in the house of D-1, as a result of which she caught in flames. One Neelamma (D-1) w/o. Sabbanna came to put off the flames but she also sustained burn injuries. Immediately the villagers called the Ambulance and shifted both of them to the Hospital for treatment.

10) A reading of the 161 Cr.P.C., statement of D-1, would show that she caught fire when she tried to put off the flames on D-2. Insofar as the manner in which D-2 was set ablaze, it was stated that when the accused tried to set D-2 on fire with lighted match stick, she (D-2) escaped and ran to the house of D-1. The accused followed her, entered the house of D-1 and then threw a lighted match-stick on her.

11) Therefore, the argument of the learned counsel for the appellant that accused had no intention to cause death, may not stand, for the reason, that if really, the intention of the accused was only to threaten her, he would have left her after pouring kerosene, but he would not have followed her with a match-box, light a stick in the house of D-1 and then set her fire. The scene observation panchanama would also reveal that the house of D-1 was at a distance of nearly 50 feet from the house of D-2. The accused followed the deceased to that distance and after entering the house of D-1, threw a lighted match-stick on D-2, who was by the side of D-1. Having regard to the above, it cannot be said that he had no intention to cause the death of the deceased. In fact the Dying Declaration of D-2 also shows that even at his house, the accused after pouring kerosene tried to set her on fire with a match-stick, but D-2 escaped and ran to the house of D-1.

12) The next circumstance relied upon are the two Dying Declarations recorded by the Magistrate.

13) The first D.D. of D-1, which is placed on record as Ex.P-19, was recorded by the Magistrate on 28.01.2008. In the said Dying Declaration, the D-1 stated that she came to her parents' house to attend Jatara. Before night one Mahadevi (D-2) came to their house and her clothes were drenched with kerosene. She was very frightened. In the meanwhile, her husband followed her to her house and stood at a distance of 2 yards. Within no time, he took up a match box, light the match stick and thrown it towards Mahadevi(D-2). Consequently, she caught fire. As D-1 was by the side of said Mahadevi, the flames also caught on her clothes and her backside body, legs and hands received burn injuries. Then D-1 and D-2 raised cries for help which attracted the attention of neighbours, who brought the Ambulance and took them to Hospital for treatment. In this D.D., D-1 categorically states that on the date of incident, D-2 came to her house with drenched clothes of kerosene, followed by the accused and from a distance of two yards, he threw a matchstick on D-2, as a result of which, D-2 got engulfed in flames and as D-1 was by the side of D-2, she also caught fire. Due to fear, they raised cries, which attracted the attention of the neighbours. This D.D. of D-1 shows that she caught fire as she by the side of D-2 and tried to save her. Insofar as the flames on D-2 are concerned, she categorically stated that the accused came to the house and threw the match-stick on D-2 from a distance of two yards.

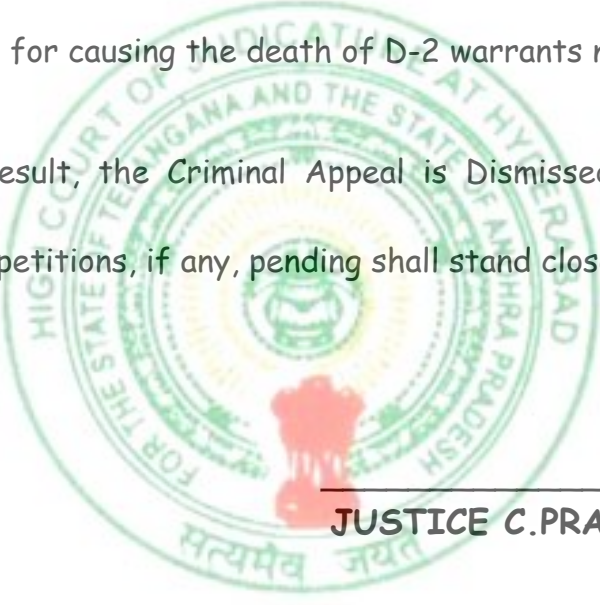
14) Coming to the second Dying Declaration recorded by the Magistrate, the deceased Mahadevi (D-2) categorically states that on that night, while she was cooking rice; and again she stated that at about 8.30 p.m., she along with her neighbours went to a church and returned back to their house. At the time of going to bed, while she was talking with her husband, her husband during the course of discussion, poured kerosene on her. Being frightened she came out of the house. Then her husband followed her by lighting a match stick and threw the lighted match stick on her, due to which she sustained burn injuries all over the body. Immediately she raised cries and then she was brought to the Hospital in a Ambulance. The said D.D. also shows that on the date of incident the accused poured kerosene on D-2 and due to fear she came out of the house and then the accused threw a lighted match stick on her body, which lead to she catching flames.

15) These three Dying Declarations (two recorded by the Magistrate and one recorded by S.I. of Police), consistently show that the accused poured kerosene, chased D-2 when she came out of the house to protect herself, and then threw a lighten match stick on her, thereby causing the death of D-2. In fact the learned counsel for the appellant did not dispute with regard to the manner in which the incident took place, but mainly pleaded as to the nature of offence committed by the accused. But, taking into consideration the manner

in which the accused set fire, it can be said that there was motive and intention to cause the death of D-2.

16) In the absence of any separate charge being framed under Section 301 IPC, we feel that it is not safe to convict the accused for the said offence for causing the death of D-1. However, having regard to the manner in which the accused caused the death of D-2 it can be safely said that there is motive and intention to cause the death of D-2. Accordingly, the conviction and sentence imposed by the trial court for causing the death of D-2 warrants no interference.

17) In the result, the Criminal Appeal is Dismissed. Consequently, miscellaneous petitions, if any, pending shall stand closed.



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JUSTICE C.PRAVEEN KUMAR

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JUSTICE T.RAJANI

Dt:03.08.2018  
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