

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

CRIMINAL APPEAL No.701 of 2011

Between:

Between:

Guguloth Bhaskar and another

..Appellants

and

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

..Respondent

JUDGMENT PRONOUNCED ON: 13th March, 2018

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

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

1. Whether Reporters of local
Newspapers may be allowed : Yes/No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes/No
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes/No
Judgment?

C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**
AND
THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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Vs.

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

..Respondent

! Counsel for the appellants: Mr.S.Madan Mohan Rao

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

<Gist :

>Head Note:

? Cases referred:

1. (1985) 1 SCC 552

2. (1983) 1 SCC 211

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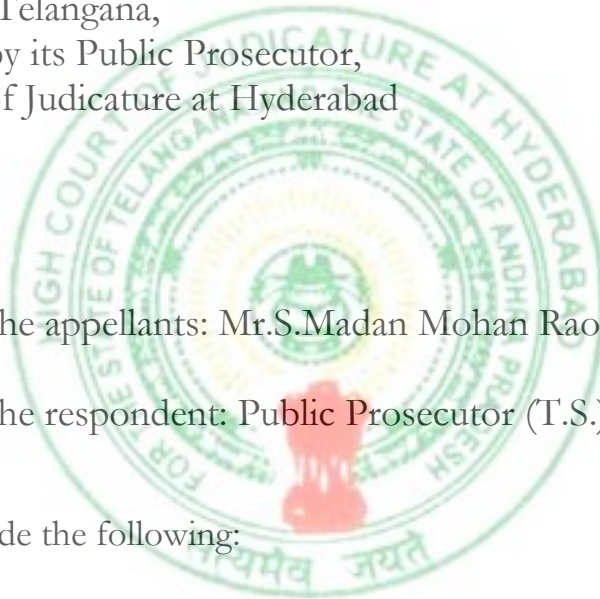
The State of Telangana,
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..Respondent

Counsel for the appellants: Mr.S.Madan Mohan Rao

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

The Court made the following:



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

Accused Nos.1 and 2 on the file of learned V Additional District and Sessions Judge (Fast Track Court), Khammam at Kothagudem, filed this appeal, feeling aggrieved by judgment, dated 30.06.2011, in S.C. No.458 of 2010, whereby they were convicted for the offences punishable under Sections 498-A and 302 of the Indian Penal Code (I.P.C.), and sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.1,000/- each and in default of the payment of fine, to undergo imprisonment for a period of three months each for the offence punishable under Section 498-A I.P.C.; and each to undergo rigorous imprisonment for life and to pay a fine of Rs.3,000/- and in default of payment of the fine, to undergo imprisonment for six months for the offence punishable under Section 302 I.P.C.

2. For convenience, the appellants are hereinafter referred to as accused Nos.1 and 2.

3. The case of the prosecution as reflected from the charge sheet is as follows.

P.W.1, who is the complainant, is a coolie and resident of Ramanarsaiah Nagar, in Konijerla Mandal. Accused No.1 is a

coolie and auto trolley driver and accused No.2 is a coolie and both the accused are the residents of Annarupadu Village of Julurpad Mandal, and husband and mother-in-law respectively of one Guguloth Susheela @ Susena (hereinafter referred to as 'the deceased'). That on 23.10.2009 at 23.30 hours P.W.1 – the father of the deceased gave Ex.P.1 - report in Julurpad Police Station stating that about three years back they performed the marriage of their daughter i.e., the deceased, with accused No.1, that they lived peacefully for one year and that thereafter, the accused started harassing the deceased mentally and physically. Due to the unbearable harassment, the deceased used to come to the house of P.W.1 and narrate the harassment and that two or three times P.W.1 along with the elders took his daughter back to accused No.1 and warned him. On 21.10.2009, the accused severely beat the deceased alleging that she was not giving birth to children and that therefore she should not stay in their house. Later, they took the deceased to a RMP Doctor - T. Venkateswara Rao and provided medicine to her. On 23.10.2009 at about 17.00 hours accused No.2, after returning from cotton field work, abused the deceased in filthy language stating that she was barren and was not blessed with children and that if she dies accused No.1 would marry another lady. Saying so, accused No.2 poured

kerosene on the deceased, accused No.1 held her firmly and accused No.2 set the deceased on fire, due to which she received burn injuries and was admitted in the Government Hospital, Kothagudem for treatment. P.W.1, accordingly, requested to take action against the accused as per law.

4. Based on the report given by P.W.1, P.W.19 – the Head Constable of Julurupad Police Station registered a case in Crime No.101 of 2009 under the head ‘woman burning’ and took up the investigation. During the course of investigation, P.W.19 visited the scene of offence, secured two mediators, observed the scene of offence and drafted the crime details form. He also seized one maroon colour plastic kerosene bottle, burnt pieces of red colour saree and one match box from the scene of offence, examined and recorded the statement of P.W.1 in Part II Case Diary. Subsequently, P.W.23 – the Sub-Inspector of Police of Julurupad Police Station took up the investigation, and visited the scene of offence. He caused enquiries and examined and recorded the statements of P.Ws.2 to 4. On 31.10.2009 P.W.23 received the dying declaration of the deceased from P.W.20 – the Magistrate, who recorded the dying declaration and based on the same, P.W.23 altered the section of the offence from ‘woman burning’ to the one under Sections 498-A and 307 I.P.C. On 02.11.2009 at

07.00 hours, after receiving the death intimation of the deceased he again altered the section of offence to the one under Section 498-A and 302 I.P.C. and issued express memos. After receiving the altered Memo, P.W.24 – the Circle Inspector of Police, Kothagudem Rural Police Station, at Julurupadu along with P.W.23 visited the scene of offence i.e., the house of the accused at Annarupadi Village, where the body of the deceased was kept. On requisition, P.W.17 – the Tahsildar, Julurupad held inquest over the dead body of the deceased in the presence of L.Ws.16 and 17 – Maloth Alli and Korra Tulisya and P.W.16 – the mediators and later, the dead body was subjected to post-mortem examination by a team of doctors - P.W.18 and L.W.22 – Dr.Rajesh as the death of the deceased occurred within three years of her marriage under other than normal circumstances. P.W.24 examined and recorded the statements of P.Ws.4 to 11. The accused were arrested on 13.11.2009 at 12.00 hours and sent to judicial remand by P.W.24. The Medical Officers - P.W.18 and L.W.22, who held autopsy over the dead body of the deceased and issued P.W.21 - post-mortem report, opined that the cause of death is due to septicemic shock and hypovolemic shock occurred due to burns. Thus, the accused committed the offences

punishable under Sections 498-A and 302 I.P.C. Accordingly, the charge sheet was filed.

5. Based on the charge sheet filed and the material collected by the Police, the Court below framed the following charges:

FIRSTLY,

That you A1 and A2 one year after the marriage of A1 with the deceased Susheela were started harassing said Susheela physically and mentally and that you A1 and A2 on or about the 21-10-2009 severely beat the deceased Susheela subjected such woman to cruelty by harassing the deceased on the ground she was not given birth to children as such she should not stay in your house and that you thereby committed an offence punishable under Sec.498-A of the Indian Penal Code and within my cognizance.

SECONDLY,

That you A1 and A2 on or about the 23rd day of October, 2009 at about 1700 hours at Annarupadu (V), mother-in-law of you A2 abused the deceased Susheela in filthy language stating that she was barren and did not bless with any children, if she dies her son would marry another lady by saying so you A1 caught hold the deceased and you A2 poured kerosene and lit fire on the deceased as a result she sustained burn injuries and died in the hospital, while undergoing treatment, that you thereby committed an offence punishable U/s.302 of the Indian Penal Code and within my cognizance.

6. As the plea of the accused was one of denial, they stood trial during which, the prosecution examined P.Ws.1 to 24, got Exs.P-1 to P-36 marked and produced M.Os.1 to 4. No evidence was adduced on behalf of the defence. On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as referred to above.

7. This case is mainly based on Ex.P-26 – the dying declaration of the deceased recorded by P.W.20 –III Additional Judicial First Class Magistrate, Kothagudem. As there were no eyewitnesses to the incident and the circumstantial witnesses P.Ws. 2 to 8 along with P.W.10, 11, 13, 14 and 15 having turned hostile, the Court below has based the conviction on the aforementioned dying declaration. As held by the Supreme Court in a catena of decisions, where the dying declaration appears truthful and natural and made voluntarily, it does not require any corroboration (See **State of U.P. vs. Ram Sagar Yadav**¹ and **Ramawati Devi vs. State of Bihar**²). We have to therefore, see whether Ex.P-26 – the dying declaration inspires confidence in the Court.

8. The unfortunate incident had taken place on 23.10.2009, at about 5.00 p.m. The deceased was admitted in the hospital at about 7.30 p.m. as evident from the deposition of P.W.21. P.W.20 reached the hospital at 9.50 p.m. and recorded the statement (dying declaration) of the deceased. The defence has not suggested to P.W.20 that any of the relations of the deceased were present at the time of recording of the dying declaration. The evidence of P.W.20 shows that except his Attender and the

¹ (1985) 1 SCC 552

² (1983) 1 SCC 211

duty Doctor, no one-else was present by the side of the deceased when Ex.P-26 was recorded. P.W.20, after being satisfied that the deceased was in a fit mental condition to give statement, proceeded to record the dying declaration. P.W.21 – the Doctor certified the fit mental state of the deceased before Ex.P-26 was recorded. Even after recording of Ex.P-26, P.W.21 certified, which was marked as Ex.P-32, to the effect that the patient was conscious, coherent and in a fit state of mind while recording her statement.

9. Let us now consider the contents of Ex.P-26. The true translation of Ex.P-26 is to the following effect.

“For the last two days, my husband was beating me severely. My mother-in-law scolded me. Today evening, at about 5.00 p.m. my mother-in-law poured kerosene on and set fire to me. My husband watched the same and kept quiet. On noticing the same, my co-sister raised an alarm, whereupon the neighbours arrived. I put out the flames myself by jumping into a water tub. Thereafter, all the people together brought me to the hospital. My mother-in-law used to scold me terming me as barren.”

10. If we closely analyze the contents of Ex.P-26, it reveals that it is devoid of exaggerations, embellishments and embroideries. The first part of the dying declaration makes a brief reference to what transpired for two days preceding the unfortunate incident.

The next part refers to the incident in proper and the third part deals with the effort the deceased made by herself for putting out the flames and her admission into the hospital. The last part refers to the factum of accused No.2 scolding the deceased on the ground that she did not bear children. If the deceased had the intention of implicating everyone, she could have attributed specific overtacts to accused No.1 as well as to her co-sister. She did not do so. Though accused No.1 was beating the deceased for two days prior to the incident, she did not impute any part to him such as his holding the deceased or pouring kerosene and setting fire. She also did not allege abetment or instigation of accused No.2 by accused No.1. The straight and simple manner in which the deceased had made her statement would convince us to hold that it was a frank and fair disclosure of true events.

11. As regards accused No.2, we are not left with any iota of doubt that she was the one who caused the death of the deceased by pouring kerosene and setting the deceased on fire. With regard to the role of accused No.1, it is clearly proved from the contents of Ex.P-26 that he was beating the deceased for two days prior to the occurrence. Therefore, he is guilty of committing the offence punishable under Section 498-A I.P.C. As regards the charge

under Section 302 I.P.C., as noticed from the charge sheet filed by the Police, except an allegation that accused No.1 hatched a plan to kill the deceased, no specific overtact was attributed to him. On the contrary, it was alleged that it was accused No.2, who poured kerosene as well as lit fire to the deceased in the presence of accused No.1. The Court below, however, charged accused No.1 with catching hold of the deceased while accused No.2 pouring kerosene and lit fire on her. In its judgment, the Court below did not hold that the part of the charge framed by it *viz.*, that accused No.1 caught hold of the deceased as proved. It has convicted accused No.1 also under Section 302 I.P.C only on the ground that his silence reveals his intention to cause the death of the deceased and not on the ground that he hatched a plan along with accused No.2 to kill the deceased. Indeed, both the accused are not charged for the offence punishable under Section 34 I.P.C. Therefore, the common intention cannot be attributed to accused No.1. The view of the Court below that silence of accused No.1 must be understood as his having the intention to kill his wife, in our opinion, is erroneous. Merely because accused No.1 remained silent, he cannot be attributed with the intention of murdering his wife. A person may remain silent due to various reasons and circumstances. From the

evidence on record, it appears that accused No.2 is of adamant character, who was harassing the deceased for not bearing children. It would quite well be that accused No.1 may not be in a position to prevent his mother – accused No.2 from perpetrating the crime on his wife. In the absence of a charge that he shared common intention with accused No.2, it is not permissible for the Court to attribute the intention to him to kill his wife.

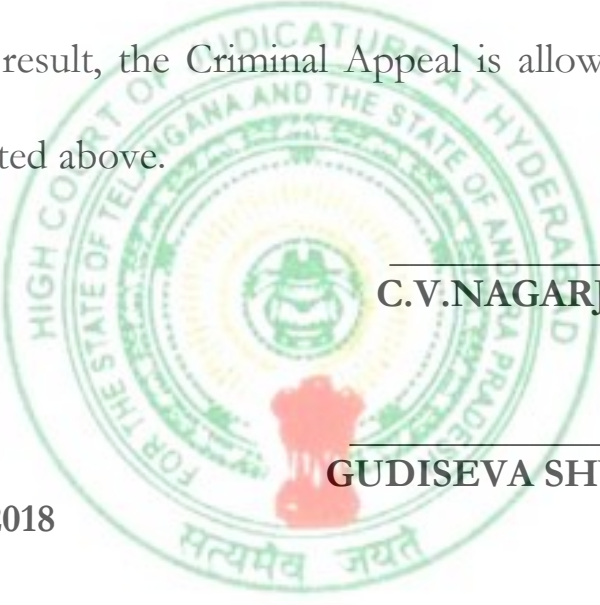
12. We are, therefore, of the opinion that the Court below has wrongly convicted appellant No.1/accused No.1 for the offence punishable under Section 302 I.P.C. Accordingly, that part of the judgment of the Court below alone is set aside, while confirming the rest of the judgment regarding the conviction of appellant No.1/accused No.1 for the offence punishable under Section 498-A I.P.C. and the sentence and fine imposed on him and also the conviction of appellant No.2/accused No.2 for the offences punishable under Sections 498-A and 302 I.P.C. and the respective sentences and fines imposed on her.

13. A perusal of the record shows that the appellants/accused Nos.1 and 2 are presently on bail, *vide* this Court's order, dated 21.11.2016, in Crl.A.M.P.No.1820 of 2016 and they are also present in the Court at the hearing. Therefore, their bail bonds

shall stand cancelled and they shall forthwith surrender before the Jail Superintendent concerned for serving the remainder of the sentences.

14. Since it seems that appellant No.1/accused No.1 has already undergone the sentence period for the offence under Section 498-A I.P.C., after his surrender as above, he shall forthwith be set at liberty, if he is not required in any other case(s) or crime(s).

15. In the result, the Criminal Appeal is allowed in part to the extent indicated above.



C.V.NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

13th March, 2018

Note:

1.Issue copy to the Jail Superintendent concerned, forthwith.

2.L.R. copies to be marked.

(B/o)
GHN

