

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

CRIMINAL APPEAL No.593 of 2011

Between:

Ponna Prathapa @ Aasin,
S/o P.Adinarayana

... Appellant

And:

State of A.P., repled by Public
Prosecutor, Hyderabad.

... Respondent

JUDGMENT PRONOUNCED ON 23.01.2018

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

HON'BLE MRS JUSTICE KONGARA VIJAYA LAKSHMI

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes/No
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes/No

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE KONGARA VIJAYA LAKSHMI

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE MRS JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.593 of 2011

% 23.01.2018

Between:

Ponna Prathapa @ Aasin,
S/o P.Adinarayana

..... Appellant

And:

\$ State of A.P., repled by Public
Prosecutor, Hyderabad.

.....Respondent

< Gist:

> Head Note:

! Counsel for the appellant: Mr. D.Kodandarami Reddy

^ Counsel for the respondent: Public Prosecutor (AP)

? Cases Referred:

1980 (Supp) SCC 769

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE MRS JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.593 of 2011

Date:23.01.2018

Between:

Ponna Prathapa @ Aasin,
S/o P.Adinarayana

..... Appellant

And:

State of A.P., repto by Public
Prosecutor, Hyderabad.

.....Respondent

Counsel for the appellant: Mr. D.Kodandarami Reddy

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

The sole accused in Sessions Case No.111 of 2010 on the file of the learned Additional Sessions Judge, Hindupur, filed this Criminal Appeal feeling aggrieved by judgment, dated 05.05.2011, whereby he was convicted for the offence under Section-302 IPC and sentenced to suffer life imprisonment and also to pay a fine of Rs.100/-.

The case of the prosecution, in brief, is as follows:

The deceased is the daughter of P.W-1. P.Ws.2 and 3 are the brother and sister of P.W-1 respectively. All the private prosecution witnesses and the appellant are residents of Kadiri Town, Anantapur District. The appellant belongs to Hindu community and the deceased belongs to Muslim community and both fell in love with each other. On coming to know about their love affair, P.Ws.1 to 3 converted the appellant into Muslim community and performed their marriage as per the Muslim Customs. The appellant used to harass the deceased, due to which, she came back to her parents' house 15 days prior to the incident. That on 10.10.2009, at about 6 pm., the appellant came to his in-laws house, took the deceased to his house and after some time, he started quarrelling with the deceased, took kerosene stove, poured kerosene on the deceased and lit her on fire. In that process, the appellant also received burn injuries.

Meanwhile, P.W-4 and others came there and the deceased was shifted to the Government Hospital, Kadiri.

On 10.10.2009, at 9.15 pm., after receiving the hospital intimation, P.W-13-Judicial Magistrate of First Class, Kadiri recorded the dying declaration of the deceased-Ex.P-13. On 10.10.2009, at 10.45 pm., P.W-14-Assistant Sub-Inspector of Police, Kadiri Police Station received Ex.P-15-MLC Intimation from the Government Hospital, Kadiri; that he immediately, rushed to the Hospital and recorded the statement of the deceased marked as Ex.P-16; that at 00.30 hours, on 11.10.2009, based on the statement of the deceased, he registered a case in Crime No.204 of 2009 of Kadiri-II Town Police Station for the offences under Sections-498-A and 307 IPC and issued Ex.P-17-Express FIR to all the officers concerned; and that he went back to the Government Hospital and recorded the statements of P.Ws.1, 2 and 3. Ex.P-19 is the statement of the deceased recorded under Section-161 Cr.P.C. That on 11.10.2009, at about 8 am., P.W-14 recorded the statement of P.W-4, inspected the house of the appellant situated at Gangireddipalle Colony, Kadiri and prepared a rough sketch of the scene of offence-Ex.P-18; that at the scene of offence, he seized MOs.1 to 4; that Ex.P-20 is the Seizure panchanama drafted in the presence of P.W-7 and L.W-10-

A.Venkatanarayana; and that on 12.10.2009 at 12.30 pm., P.W-14 received the death intimation-Ex.P-21 from the Government Hospital, Kadiri and altered the Section of law in the F.I.R. from 307 IPC to 302 IPC. On 12.10.2009, at about 4.50 pm., P.W-11-Civil Assistant Surgeon, Government Hospital, Kadiri conducted autopsy over the dead body of the deceased, issued Ex.P-11-Post-mortem certificate and opined that the deceased died due to Hypovolenic shock on account of extensive burn injuries of 70%. On 12.10.2009, P.W-15-Circle Inspector of Police, Kadiri Urban Circle, received the altered F.I.R-Ex.P-22 and sent a requisition to the Mandal Executive Magistrate, Kadiri (P.W-12) to hold inquest over the dead body of the deceased, who, accordingly, conducted inquest over the dead body of the deceased on 12.10.2009 at 12 noon. On 24.10.2009, at 10 am., P.W-16 arrested the appellant and found burn injuries on him. After the completion of investigation, P.W-16 filed the charge sheet.

As the plea of the appellant is one of denial, he was subjected to trial.

During the trial, the prosecution has examined P.Ws.1 to 16, marked Exs.P-1 to P-23 and produced M.Os.1 to 4. On behalf of the defence, no evidence was adduced.

On appreciation of the oral and documentary evidence, the lower Court has disposed of the said Sessions Case in the manner as noted hereinbefore.

We have heard Mr. D.Kodandarami Reddy, learned counsel for the appellant, and the learned Public Prosecutor for the State of Andhra Pradesh.

Learned counsel for the appellant has submitted that though P.Ws.1 to 10 have turned hostile, the lower Court has committed a serious error in convicting the appellant for the offence under Section-302 I.P.C. He has further submitted that the admitted facts on record would reveal that the appellant himself has suffered burn injuries, which would clearly indicate that in the process of his trying to rescue the deceased, he sustained those injuries; that the appellant has taken the deceased to the hospital which would also show that he neither had the intention of causing burn injuries nor, in fact, caused such injuries to the deceased; and that burns were suffered by the deceased accidentally. Learned counsel alternatively urged to convert the conviction of the appellant into the one under Section-304 Part-I or Part-II I.P.C.

Opposing the above submissions, the learned Public Prosecutor for the State of Andhra Pradesh submitted that Ex.P-13-Dying Declaration recorded by P.W-13-Magistrate

sounds very natural and that, therefore, even in the absence of corroboration by the private prosecution witnesses, who were evidently won over by the defence, the lower Court has rightly convicted the appellant for the offence under Section-302 I.P.C. and imposed the sentence of life imprisonment on him.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the record.

It is no doubt true that P.W-1-the mother, P.W-2-the maternal uncle and P.W-3-the maternal aunt of the deceased have turned hostile along with the remaining private prosecution witnesses, viz., P.Ws.4 to 10.

Though the statement of P.W-1 was recorded by the Police under Section-162 Cr.P.C., during her cross-examination by the prosecution, she denied having given such statement. However, the falsity of her stand could be exposed during her cross-examination on behalf of the accused, wherein she stated that she filed a false case against the appellant at the instance of somebody, who advised her that if she files a false case, she will get money from the Government. This prevaricating statement of P.W-1 would clearly show that she has retracted her earlier version that the appellant has caused the death of her daughter. Therefore, no credibility whatsoever can be given to P.W-1 and

other private prosecution witnesses examined by the prosecution, who were evidently won over by the appellant.

The law is, however, well settled that if the dying declaration of the deceased, which is treated as an exception to hearsay evidence, is natural and the same is not a result of tutoring, the Court can convict the accused even without any corroboration. (*See State of U.P. Vs. Ramsagar Yadav*¹ and *Sham Shankar Kankaria Vs. State of Maharashtra*²).

As rightly opined by the lower Court, the case of the prosecution can be sustained based on Ex.P-13-Dying Declaration of the deceased. A perusal of this document would show that on 10.10.2009, P.W-13-Judicial First Class Magistrate, Kadiri, recorded the statement of the deceased a few hours after she was admitted in the Government hospital. The statement given by the deceased is precise, candid and forthright. When she was questioned by the Magistrate, after disclosing his identity and after being satisfied about her mental fitness to give statement, as to how she suffered burns, she stated that she was married to the appellant two years back; that the appellant is engaged in the occupation of running an auto; that he used to drink alcohol and beat her everyday; that on the fateful day, at about 7 pm., he poured kerosene on her person

¹ 1985 (1) SCC 552

² 2006 (13) SCC 165

and lit her on fire; and that, at that time, nobody else was present at the scene of offence. She has further stated that on being advised by the neighbours, the appellant has taken her to the hospital.

Learned counsel for the appellant submitted that as the deceased has not narrated the facts that were recorded in Ex.P-16 in her Ex.P-13-statement, these two documents cannot be relied upon. We are afraid, we cannot accept this submission.

In *Surajdeo Osha & Others Vs. State of Bihar*³, the Supreme Court while dealing with the brief dying declaration, held that the shortness of the statement itself appears to be the guarantee of its truth.

We find that Ex.P-16-statement recorded by P.W-14 is more elaborate. Therefore, pitted against each other, Ex.P-13, being brief, would prevail over Ex.P-16 as, the same is shorn off unnecessary details and looks natural without any embellishments.

The theory of the defence that the deceased has caught fire by accidental blasting of the kerosene stove is falsified by the observations recorded in Ex.P-20-Seizure Panchanama, wherein it is *inter alia* stated as under:

“On observation of kerosene stove which is fallen at the scene of offence, there are six wicks arranged in

³ 1980 (Supp) SCC 769

the stove having 11” in height 31” perimeter and in its centre, one burner is arranged. The lid of the kerosene stove is open and kerosene smell is emanating from it. Kerosene stove is empty. The said Investigating Officer A.S.I.352 seized kerosene stove, burnt saree piece, burnt petticoat piece, burnt jacket piece and burnt ash in the presence of we the elderly persons and drafted this scene observation and seizure mahazarnama.”

The above reproduced observations, which remained unimpeached, would falsify the stand of the defence reflected through the testimony of the prosecution witnesses who turned hostile, that the fire has broken out due to blasting of the kerosene stove.

As regards the submission of the learned counsel for the appellant that Ex.P-14-Intimation of Accidents and Injuries to Magistrate/Police would show the alleged cause as “fire accident”. As rightly submitted by the learned Public Prosecutor, it is to be noted that as the appellant has accompanied the deceased at the instance of the neighbours, it is quite probable that he himself would have given the false reason to the hospital authorities that the injuries were sustained by the deceased on account of fire accident. The deceased being 19 years of age at the time of the incident and having married the appellant after love affair, after ensuring that the appellant changes his religion

into Islam, absolutely has no axe to grind against her husband to come out with a false version in Ex.P-13.

As regards the alternative submission of the learned counsel for the appellant, the evidence on record would clearly show that it is only the appellant who caused the burn injuries to the deceased and therefore, he is guilty of culpable homicide. As a natural corollary, he is liable for conviction for murder under Section-300 I.P.C., unless the act committed by him falls under one or more exceptions of Section-300 I.P.C.

Learned counsel for the appellant made an effort to bring the act of the appellant under Exception-4 of Section-300 I.P.C., which reads as under:

“Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender’s having taken undue advantage or acted in a cruel or unusual manner.”

In order that the act of the accused falls under the said Exception, the following ingredients must be cumulatively satisfied, viz., (1) the culpable homicide is committed without premeditation, (2) the act is committed in the heat of passion in a sudden fight or a sudden quarrel, and (3) the offender has not taken undue advantage or acted in a cruel or unusual manner.

Neither the appellant has come out with the defence either through oral testimony or at least in his Section-313 Cr.P.C. examination, that he has committed the act in a sudden fight in the heat of passion or upon a sudden quarrel. By mere absence of premeditation without the other two essential ingredients, as noted above, being satisfied, the act of culpable homicide would not fall under Exception-4 of Section-300 I.P.C. No doubt, the appellant may not have had premeditation. The facts that he brought the deceased to his house from the house of the latter's parents, poured kerosene on her and set her on fire would show that he had the intention of causing injuries to the deceased with the knowledge that in ordinary course of events, the injuries would cause her death. Therefore, when the intention and knowledge on the part of the appellant were proved, he is liable to be convicted for the offence of murder as he failed to satisfy the ingredients of Exception-4 of Section-300 I.P.C.

In the light of the above facts and circumstances of the case, we are of the opinion that the lower Court has rightly convicted the appellant for the offence under Section-302 I.P.C. and sentenced him to suffer imprisonment for life. Hence, we do not find any reason to interfere with the judgment of the lower Court. The appeal is, accordingly, dismissed. The bail bonds of

the appellant are cancelled. The appellant must forthwith surrender himself before the Superintendent of Jail, Central Prison, Kadapa, for serving remaining sentence of life imprisonment.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE KONGARA VIJAYA LAKSHMI

23rd January, 2018

Note.

LR copies to be marked.

B/o

DR

