

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

CRIMINAL APPEAL No. 43 of 2012

Date: 08th August, 2018

Between:

Guguloth Keemya

... Appellant/Accused

And

State of A.P., rep. by Public Prosecutor,
High Court, Hyderabad.

... Respondent/Complainant

COUNSEL FOR APPELLANT : Mrs. C. Vasundhara Reddy

COUNSEL FOR RESPONDENT: Public Prosecutor (T.S.)

THE COURT MADE THE FOLLOWING:

JUDGMENT: (per Hon'ble Sri Justice Gudiseva Shyam Prasad)

This criminal appeal is directed against the judgment dated 06.01.2012 in Sessions Case No.556 of 2010 on the file of Additional District and Sessions Judge (Fast Track Court), Khammam, at Kothagudem. The appellant-accused is convicted for the offence under Section 302 IPC and sentenced to imprisonment for life and to pay a fine of Rs.5,000/- and in default of payment, to suffer rigorous imprisonment for a period of six months.

2. The case of prosecution in brief is as follows:

On 05.11.2009, at 1730 hrs, the defacto complainant-Goguloth Sreenu, lodged a complaint in the Palavancha Town P.S, stating that he is the resident of Jagguthanda, Navabharat Paloncha, and the deceased-Goguloth Shanthi is the wife of his (late) brother-Balu, who expired about eight years back. After the death of his brother Balu, the deceased developed illicit intimacy with the accused-Goguloth Keemya. The accused used to come to the house of the deceased and harass her. On the fateful day i.e., 05.11.2009 at 1700 hrs, the defacto complainant and his wife heard cries of the deceased and when they rushed to the house of the deceased, they saw the accused coming out of the house and ran away. When the defacto complainant and his wife went into the house, they found that the deceased in flames. Meanwhile, Goguloth Jagan also came there and they all extinguished the fire. On enquiring the deceased about the incident, she told them that the accused used to harass her daily for money and if she refused,

he used to threaten her with dire consequences, and even on the fateful day the accused harassed her and demanded money and when she told that she does not have money, the accused said that he will kill her as she denied to give money; and so saying, he poured kerosene on her and set fire to her with matchstick. The deceased was taken in 108 Ambulance to Kothagudem Government Hospital for treatment.

3. On receiving the complaint, the ASI of Police (PW.19) registered a case in Crime No.299 of 2009 against the accused for the offence punishable under Section 307 IPC; and went to the hospital and recorded the statement of the deceased (Ex.P28). Thereafter, he visited the scene of offence, and seized the incriminating materials i.e., kerosene litre plastic bottle, one fired black colour blouse, kingfisher colour designed with white dots & yellow saree, one match box and four fired match box sticks; and secured the presence of two mediators and drafted the Crime Details Form, and visited the Kothagudem Government Hospital and recorded the statements of LWs.2 to 4 (PWs.2 to 4). , and thereafter the SI of Police (PW.20) took up further investigation.

4. On 05.11.2009, PW.17-III Additional Judicial Magistrate of First Class, received requisition from P.S. Palavancha Town, at 1:30 PM, to record the statement of the deceased. PW.17 went to the Government Area Hospital, Kothagudem, and after due certification of the duty doctor-PW.18 about the mental condition of the deceased

to give statement, the learned Magistrate recorded the statement of the deceased in the presence of the duty doctor-PW.18.

5. On 24.01.2010, at 10:00 hrs, one Jarpula Bansi (PW.6) came to the police station and lodged a written report in Telugu, stating that the deceased succumbed to the injuries on 24.01.2010 at 05:00 hrs, after she returned home after getting treatment from Mamata General Hospital, Khammam. Basing on the death intimation, PW.20 issued alteration memo (Ex.P30) altering the Section of Law from 307 IPC to 302 IPC; and conducted inquest panchanama over the dead body of the deceased and thereafter sent the body for postmortem examination.

6. PW.15-Dr.J.V.L. Sirisha, conducted postmortem examination over the dead body of the deceased and opined the cause of death as **“Septicaemia shock due to 88 to 90% burns”**.

7. After due investigation, the Circle Inspector of Police, Palavancha Town P.S., filed charge sheet against the accused before the III Additional Judicial Magistrate of First Class, Palavancha, for the offence punishable under Section 302 IPC.

8. The learned Magistrate took cognizance of the case and numbered it as P.R.C.No.13 of 2010; and as the case involved an offence under Section 302 IPC which is exclusively triable by Court of Sessions, committed the case to the Court of Sessions, Khammam, after due procedure contemplated under Section 209 Cr.P.C.

9. On committal, the learned Principal Sessions Judge, Khammam, numbered the case as Sessions Case No.556 of 2010, and made over the case to the V Additional District and Sessions Judge (FTC), Khammam, at Kothagudem, for disposal in accordance with law.

10. Heard the arguments of Smt. C. Vasundhara Reddy, learned counsel for the appellant-accused; and the learned Public Prosecutor representing the State.

11. Learned counsel for the appellant submitted that there are no eyewitnesses to the occurrence and the entire case is based on dying declarations i.e. Ex.P22 recorded by the Magistrate-PW.17, and Ex.P28 statement recorded by the investigating officer-PW.19. There is inconsistency between the two dying declarations as they are not corroborated by the testimony of the witnesses PWs.17, 18 and 19. The material witnesses PWs.1 to 9 did not support the case of prosecution and therefore their evidence is of no help to the case of prosecution. It is further submitted that there is discrepancy in the oral testimony of the witnesses and the dying declarations and therefore the accused is entitled to benefit of doubt.

12. Learned public prosecutor submitted that the trial Court has properly appreciated the evidence on record which are two dying declarations; one recorded by the learned Magistrate; and the other is the statement recorded by the investigating officer. The learned

Sessions Judge, placing reliance on the dying declarations, convicted the accused. Therefore, the appeal may be dismissed.

13. The prosecution examined PWs.1 to 22 and got marked Exs.P1 to P31, and material objects MOs. 1 to 4 to prove the charges against the accused under Section 302 IPC.

14. The impugned judgment of the trial Court reveals that it has dealt with all the defences raised by the accused before the trial Court, including the grounds urged in this appeal.

15. Before proceeding further, we would like to consider the contentions raised by the learned counsel for the appellant and the observations of the trial Court in that regard, as to whether they require any interference.

16. The entire case of prosecution is based on the two dying declarations. One recorded by the Magistrate, and the other is the statement recorded by the investigating officer. Ex.P22 is the dying declaration recorded by the learned Magistrate who was examined as PW.17. The translated version of the dying declaration of the deceased, Question No.6., reads as under:

“6. What happened, and how its happened?

Yesterday night Guguloth Keemya came in a drunken state and asked money then I stated that I am not having money then he bet me. Again he asked money in the morning then I refused. He poured kerosene on me and sent my children outside and bolted the doors and lit fire, then I made cries and came out he escaped from there. Guguloth Keemya is my maternal uncle by relation, he

is junior paternal uncle to my husband. He has been harassing me since my husband died, these facts known to all.

Then I asked her who is all?
She stated that all villagers.
Is there anything else?
Nothing.”

17. Ex.P-28 is the statement recorded by the Assistant Sub Inspector of Police, Palavancha Town Police station on 05.11.2009.

The statement reads as under:

“I am resident of Jagguthanda. I am eking livelihood by attending coolie work. My husband by name Guguloth balu died at about 8 years back. Since then I am living with my children. After death of my husband some days back I have illicit intimacy with my villager by name Guguloth Keemya who promised to look after me well. We lived happily for some time. Later he came to house in a drunken state and making galata, without any fault, and he harassing me to give money for drinking, my brother in law pacified the matter. Today i.e., 5-11-2009 he stayed at my house, early morning he came out and returned to house in a drunken state, and asked me money for drinking, then I said I have no money. Then he told me that when I asked money, you refused to give, by saying so at about 7 A.M. he poured kerosene upon me and lit fire in order to kill me, then I raised cries, and I caught him, but he give up my hand and ran away, by throwing me, meanwhile my brother in law Guguloth Sreenu and neighbor by name Guguloth Jagan, Angoth Muniya, extinguished fire by pouring water, then they asked me what happened, I narrated the same, meanwhile 108 Ambulance came there and I was shifted to Government Hospital, Kothagudem for treatment. Keemya tried to kill me intentionally and poured kerosene and lit fire.

Recorded by me.

Sd/- A.S.I.
Paloncha town, P.S.
Dt. 5-11-2009”

18. A perusal of Ex.P28 reveals there is no inconsistency with regard to the incident. There is no dispute with regard to the

relationship of the deceased and the accused Guguloth Keema, who is maternal uncle of the deceased and the junior paternal uncle of her late husband. In both the statements, the deceased stated that he used to harass her since the date of death of her husband and also about the cause of death. It is also pertinent to note that the defence has not brought out any contradictions in Ex.P22 and Ex.P28 in the evidence of any of the witnesses. No doubt PWs.1 to 9 did not support the version of the prosecution. Inconsistency or the contradictions in the above two statements were not elicited from the investigation officers PWs.20, 21 and 22. In the testimony of PW.19, the ASI of police, Palavancha Town P.S., who has received the complaint from PW.1, and registered a case in Crime No.299 of 2009, for the offence under Section 307 IPC, visited the scene of offence, and conducted the scene of offence panchanama, and seized the material objects MOs.1 to 4 under the cover of panchanama. Nothing is elicited in the cross examination of this witness in respect of either the contradiction or inconsistency between the statements of the deceased referred above.

19. It is also pertinent to note that the two dying declarations were recorded on the same day, one by the learned Magistrate, and the other by the investigation officer-ASI of Police, Palvancha Town P.S. PWs.1 to 10, who are the relatives of the deceased, did not support the version of prosecution.

20. PW.1 is the brother in law of the deceased who gave the complaint in police station basing on which the criminal law was set in motion. He stated in his chief examination that his sister in law poured kerosene on herself and lit fire due to unbearable stomach ache. He further stated that they took her to Government Area Hospital, Kothagudem, and later she was shifted to Mamata Hospital, and three months later she succumbed to burn injuries.

21. As per the testimony of PW.1, the cause of death was a suicide. PW.1 in his chief examination stated that when he asked his sister in law as to what has happened, she stated that as she was suffering with severe stomach ache, she poured kerosene on self and set fire. PW.1 even denied his giving report to the police, though he admitted his signature on the complaint Ex.P26 which is marked as Ex.P1. It is clear from this that PW.1 lodged a complaint to the police basing on which the investigation was commenced. Subsequent investigation reveals the accused poured kerosene and set fire to her as his demand of money was not met by her. The testimony of PW.2 who was a minor boy aged about 15 years, was on similar lines as that of PW.1 with regard to cause of death.

22. PW.3 is the co-sister of the deceased who stated that her house was situated opposite to the house of the deceased and at about 7:30 AM while the deceased came out of her house with burn injuries they took her to Government Area Hospital, Kothagudem, in 108 Ambulance. In fact, this witness was also treated as hostile as she did

not support what she had stated in her Section 161 Cr.PC statement about the cause of death and seeing the accused after the incident in the house of the deceased.

23. PW.4 is an independent witness, but he did not support the version of prosecution with regard to the illicit intimacy between the accused and deceased, and about the deceased informing him of the accused pouring kerosene on her and set fire.

24. PWs.5, 6, 7, 8 and 9 did not speak about the illicit intimacy between the accused and deceased and also about the cause of death.

25. We are of the considered view that PWs.1 to 9 have resiled from their Section 161 Cr.PC statements, given to the police due to the reasons best known to them. It is obvious from the dying declarations, Ex.P22 and Ex.P28 that the deceased unequivocally stated that the accused has poured kerosene and set fire to her as she did not give the money demanded by him. There was no necessity for the deceased to implicate the accused in commission of the offence, if he is innocent. The dying declarations clearly reveal the cause of death of the deceased. Therefore, the fact that PWs.1 to 9 turning hostile does not affect the case of prosecution as it is clear from their testimony that they are speaking falsehood against the dying declarations given by the deceased.

26. PWs.10 and 11 are the scene of offence panch witnesses. They did not support the version of prosecution with regard to the seizure

of material objects from the scene of offence. However, they admitted their signatures on Exs.P11 and P12 in the panchanama.

27. PW.19 has clearly deposed that he conducted scene of offence panchanama Exs.P10 and 11 and seized MOs.1 to 4. Therefore, there is no reason to disbelieve testimony of the investigation officer as there is no enmity between the investigating officer and the accused. The testimony of PW.19 is trustworthy with regard to the seizure of material objects from the scene of offence.

28. PW.22 has categorically stated that he examined PWs.6 to 9 and PW.16 and recorded their statement. PWs.6 to 9 have stated before him as in Ex.P17. He secured mediators PWs.10 and 13 and conducted inquest.

29. PW.14 is the medical officer who has issued Ex.P15 medical certificate stating that the deceased received grievous burn injuries of 54% and after she was discharged from the hospital, she was referred to surgicalward.

30. PW.15 is the medical officer of Community Health Centre, who has received requisition from the Circle Inspector of Police, Palavancha (PW.22), to conduct autopsy over the dead body of the deceased and on examination, he issued Ex.P16-PME report stating that the deceased died due to septicemic shock due to 88 to 90% burns eight to sixteen hours prior to PME examination.

31. The evidence of medical officers PWs.14 and 15 clearly reveals that the deceased was admitted in Mamata General Hospital at the first instance, when she died. PW.15 conducted PME over the dead body and opined that she died due to burn injuries. The trial Court has properly appreciated the evidence of medical officers, learned Magistrate and the investigation officers, and came to a right conclusion that the accused has committed the offence.

32. There is no material on record brought by the defence to doubt the version of the deceased in her dying declaration. The dying declaration recorded by the Magistrate and the police are natural and they are not suffering with any infirmities. Therefore, taking into consideration the two dying declarations, it can be safely concluded that the accused has caused the death of the deceased.

33. As regards the nature of the offence and sentence, the accused is no other than the relative of the deceased. Ex.P22 dying declaration clearly reveals that the accused was in a drunken condition at the time of the incident, and also beat her on the previous night. Again he asked for money and when she refused, he poured kerosene on her and set fire to her. In the background and the facts and circumstances of the case, it is obvious that the accused was in drunken condition on the previous night and demanded the deceased to pay money and as she did not pay, he committed the offence but he had no pre-meditated intention to kill the deceased. The killing is the consequence of the quarrel between them on the previous night in

drunken condition. It is not a pre-meditated murder. In fact, the deceased was living with him. She was meeting his demand of money.

34. Considering the fact that the victim has died after 4 months of the incident, we are of the opinion that the appellant might not have had a pre-meditated intention of causing her death and as per the evidence of PW-14, burns were only 54%, as a result of which, the victim has survived for 4 months.

35. The appellant is entitled for conversion of the offence from Section 302 IPC to Section 304 Part-I IPC, only if his case falls under any of the exceptions under Section 300 IPC.

36. In the background of the case, the case of the appellant falls under Exception (4) of Section 300 IPC which reads as under:

Exception 4: 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 having taken undue advantage or acted in a cruel or unusual manner.

Explanation: It is immaterial in such cases which party offers the provocation or commits the first assault.

37. In **Mirza Ghani Baig v. State of Andhra Pradesh**¹, this Court has observed that the Courts have to see whether the plea of drunkenness can be taken as defence for claiming acquittal or for

¹ (1997) 2 Crimes 19 (AP)

lessening sentence depends upon 'intention' and 'knowledge' of the accused.

38. In **Harendra Nath Mandal v. State of Bihar**², the Hon' ble Supreme Court held that before an accused is held guilty and punished under first part or second part of Section 304 IPC, a death must have been caused by the assailant under any of the circumstances mentioned in the five exceptions to Section 300 of IPC.

39. In the instant case, on the fateful day, he committed the offence under a heat of passion. It is not a pre-meditated murder as the deceased was admittedly in a drunken condition. It is stated in the dying declaration that on the previous night he was in intoxicated state, on the very next day morning he demanded money and when she refused, and then he poured kerosene which was available there, and set fire to her; therefore, it attracts the provision under exception (4) of Section 300 IPC.

40. Keeping in view the ratio laid down by the Hon' ble Supreme Court in the judgment in **Litta Singh v. State of Rajasthan**³, in the background of the facts and circumstances of the case, the conviction for offence punishable under Section 302 IPC is converted to Section 304 Part-I IPC.

² 1993 (1) Crimes 984

³ 2013 SC 2554

41. Having regard to the gravity of the offence, we are of the opinion that the appellant is liable to be sentenced to rigorous imprisonment for a period of 10 years.

42. Accordingly, the judgment of the V Additional District and Sessions Judge (FTC), Khammam, dated 06.01.2012 in Sessions Case No.556 of 2010, is modified by converting the conviction and sentencing of the appellant for the offence punishable under Section 302 IPC, into one under Section 304 Part-I IPC, and sentenced to undergo rigorous imprisonment for a period of 10 years. The fine imposed on the appellant is confirmed. The appellant shall forthwith surrender himself before the Superintendent, Central Jail, Warangal, for serving the remainder of sentence.

43. The appeal is, accordingly, partly allowed to the extent indicated above.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

08th August, 2018

MSB / Ksm

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

CRIMINAL APPEAL No.43 of 2012

(Order of the Division Bench delivered by
Hon'ble Sri Justice Gudiseva Shyam Prasad)



08th August, 2018

MSB / Ksm