

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.62 OF 2013

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

1) The sole accused in Sessions Case No.343 of 2011 on the file of the Sessions Judge, Guntur, is the appellant herein. He was tried on two charges for the offence punishable under Section 302 IPC for causing the death of Thathapudi Ratna Kumari (hereinafter referred to as "D1") and Thathapudi Mariya Das (hereinafter referred to as "D2"). By its judgment dated 04.06.2012, the learned Sessions Judge, convicted the accused and sentenced him to suffer "imprisonment for life" and to pay a fine of Rs.5,000/- for causing murder of his wife Ratna Kumari and further sentenced him to suffer "imprisonment for life" for causing murder of his son Mariya Das and to pay fine of Rs.5,000./-. Both the sentences were directed to run concurrently.

2) The facts as culled out from the evidence of the prosecution witnesses are as under:

i) D1 is the wife while D2 is the son of the accused. PW.1 is the father of D1, while PW.2 is the cousin of PW.1 and PW.3 is the wife of PW.2. PW.4 is the father of PW.2 and maternal uncle of D1. PW.7 is the mother of D.1. The marriage of the accused and D1 took place about six years prior to her death. Both of them set

up their family at Karlapalem village, in a house, which was nearby to the house of PW.1. It is said that the accused used to harass D1 in a drunken state. Out of wedlock they were blessed with two children by name Vignesh and Mariya Das (D2). On 01.07.2009 PW.1, his wife and grand son Vignesh went to Stuvartupuram to the house of their younger daughter. At that time PW.1 received a phone call from PW.2 informing him that the accused poured petrol and set fire to D1. Immediately, he rushed to the village and shifted all the injured to the Government Hospital, Bapatla in 108 ambulance. The doctor advised him to shift the injured persons to Government General Hospital, Guntur, as their condition was not good.

ii) On receipt of intimation about the admission of the injured in Government Hospital, Bapatla, PW.19-the Sub-Inspector of Police, Chandole Police station, proceeded to Government Hospital, Bapatla and recorded the statement of PW.1. Basing on which he registered a case in Crime No.46 of 2009 for the offence punishable under Section 307 IPC and issued Ex.P16-the first information report. On the same day at about 6.30 p.m., PW.19 visited the scene of offence and prepared an observation report in the presence of PW.8. Ex.P2 is the observation report. He also got prepared a rough sketch of the scene, which is placed on record as Ex.P17. At the scene of offence, PW.19 is said to have recorded the statements of PWs.1 to 4. On 02.07.2009, he received the death intimation of D2. Accordingly, he altered the section of law

from 307 to 302 IPC and issued Ex.P18-the altered first information report.

iii) PW.20-the Inspector of Police, who took up further investigation in this matter, visited the scene of offence and verified the investigation done by PW.19. He then held inquest over the dead body of D2 in the presence of PW.5 and others. Ex.P19 is the inquest report of D2. Thereafter, the body of D2 was sent for postmortem examination. PW11-the Assistant Professor, Forensic Medicine, Guntur Medical College, Guntur, conducted postmortem examination over the dead body of D2 and issued Ex.P4-the postmortem certificate. According to him, the cause of death of D2 was "shock due to burns".

iv) While things stood thus, on 01.07.2009 at about 3.50 p.m., PW.15-the Additional Junior Civil Judge, Bapatla, received a requisition from Government Hospital, Bapatla, to record the dying declaration of D1. Pursuant to which she proceeded to the hospital and recorded the statement of D1. Ex.P10 is the statement of D1 recorded by PW.1. On the same day, PW.15 also tried to record the statement of the accused, who sustained burn injuries, but could not do so as the accused did not respond to her questions. On 20.08.2009 ie. nearly 1 ½ month after the incident, D1 died. Pursuant to which, PW.20 proceeded to the hospital and conducted inquest over the body of D2 in the presence of PW.9. Ex.P3 is the inquest report of D1. Thereafter, the body of D1 was sent for postmortem examination.

v) PW.12-the Assistant Professor, Department of Forensic Medicine, Guntur Medical College, Guntur, conducted autopsy over the dead body on 20.08.2009 and issued Ex.P5-the postmortem certificate. According to him, the cause of death was “due to burns”.

vi) PW.21, who took up further investigation in this matter, visited the Government General Hospital, Guntur and found the accused with burn injuries. As he was in-patient, he could not affect his arrest. Subsequently on discharge of the accused on 18.01.2010, he was arrested. Ex.P7 is the wound certificate of the accused.

vii) After completing the investigation, PW.21 filed the charge sheet, which was taken on file as P.R.C.No.31 of 2010 on the file of the Additional Junior Civil Judge, Bapatla, who inturn committed the case to Sessions Division under Section 209 of Cr.P.C. On committal the same came to be numbered as S.C.No.343 of 2011.

3) On appearance, two charges under Section 302 IPC, for causing the death of his wife and son, came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 21 and got marked Exs.P1 to P20 and MOs.1 and 2. 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) Placing reliance on the evidence of PWs.2 to 4 coupled with the dying declaration of D1, the trial Court convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellant mainly submits that the circumstances under which the incident happened throws any amount of doubt with regard to manner in which the prosecution was projected the case. According to her, as the accused also sustained burn injuries and was in-patient in the hospital for nearly six months, itself is sufficient to show that the plea taken by the accused is correct. Referring to the answer given by the accused to Question No.5 in his 313 Cr.P.C. examination, wherein he stated that when D1 tried to commit suicide by pouring kerosene on herself, he tried to put off the flames and sustained injuries, she would contend that the said version appears to be correct having regard to the other circumstances placed on record. In any view of the matter she would contend that if really the intention of the accused was to kill the deceased by pouring petrol as alleged, definitely he would not have made any effort to put off the flames. Since the burn injuries sustained by the accused are so severe, which made the Magistrate to record the dying declaration of the

accused also, she would plead that the case do not fall within the parameters of Section 302 IPC.

7) Learned Public Prosecutor opposed the same contending that the oral evidence of PWs.2 to 4 coupled with the two dying declarations being consistent with each other, the argument of the learned counsel for the appellant that the accused is innocent of the offence, cannot be accepted. According to him, the accused sustained injuries when immediately after the incident the deceased caught hold of the accused with a view to prevent him to set her fire which lead to he sustaining injuries. Therefore, the explanation which is now put forward by the accused that it was a case of suicide cannot be accepted. He would further submit that nothing is suggested to the doctor to show that the burn injuries on the body of D1 are suicide in nature.

8) The point that arises for consideration is whether the accused is responsible for the death of his wife and son.

9) The fact that the accused sustained burn injuries is not in dispute. The evidence on record shows that the accused was in-patient in the hospital from the date of incident till he was discharged in the month of January, 2010. Therefore, the presence of the accused at the scene stands established. The only question that arises for consideration is whether it is a case of homicide or suicide, as pleaded by the accused.

10) As stated earlier, PWs.2 to 4 are the eye witnesses to the incident. PW.2 in his evidence deposed that the marriage of

D1 was performed with the accused, about six years prior to her death. His house and the house of PW.1 are opposite to each other. According to him the house of accused is also opposite to his house and separated by two houses of PW.1. The accused used to harass D1 in drunken state from the date of marriage. Some times, D1 used to go to her parents house unable to bear the harassment and beating. On 01.07.2009 PW.1, his wife and Vignesh, went to Stuvartupuram in the morning hours. PW.2, his wife and his mother witnessed the accused poured petrol over the body of D1, who was holding D2. After pouring petrol, the accused set her on fire. According to him, due to pressure, few drops of petrol fell on the body of the accused, because of which he also sustained burn injuries. PW.2 categorically states that himself, his wife and mother extinguished the flames to rescue D1 and D2, thereafter called 108 ambulance and also informed to PW.1. In the cross-examination, he admits that about 100 persons gathered at the scene at the time of incident. All the people gathered at the scene belonged to same caste. To a suggestion that the relationship between his family and the family of the accused are strained was denied by him. It was further suggested that when PW.1 insisted the deceased to lead a marital life with the accused the deceased committed suicide taking advantage of absence of PW.1 and his wife, but the same was denied.

11) From the evidence of PW.2 it appears that the plea of the accused was suicide. The suggestions referred to above show that on the date of incident as none were present in the house, the

deceased committed suicide by pouring petrol on herself and when the accused tried to rescue her he sustained injuries.

12) Coming to the evidence of PW.3, who is the wife of PW.2, her evidence too is in line with what PW.1 has stated. According to her, the accused and D1 were quarrelling and on seeing the incident, herself and her mother-in-law raised cries and on hearing cries about 50 people gathered there. To a suggestion that the deceased committed suicide was denied by her.

13) PW.4 is the mother of PW.2 and mother-in-law of PW.3. According to her, the accused used to harass D1 in drunken state, as he was addicted to alcohol. On the date of incident, while D1 was sitting in veranda by holding D2 in her hand, the accused came there, poured petrol and set fire. Immediately herself and PW.2 went there and extinguished the flames. According to her, PW.2 telephoned to 108 ambulance and also informed PW.1 about the incident. It was also suggested to her that D1 committed suicide but the same was denied.

14) The other material which is placed on record to connect the accused with the crime is the dying declaration recorded by PW15-the Additional Junior Civil Judge, Bapatla. According to PW.15 on 01.07.2009, she received a requisition from Government Hospital, Bapatla, for recording the statement of D1. Immediately she proceeded to the hospital at Bapatla and went to the room where victim was being treated, put some questions and after being satisfied with regard to her mental status, took the

endorsement of the doctor and then recorded the statement. According to her, the deceased informed her that on the date of incident while she was in front of the house with her son, her husband poured kerosene and when she made an attempt to resist her husband, her husband lit fire to her body. At that time her mother-in-law was also present. Her evidence also shows that on the same day she tried to record the statement of Yesuratnam (accused), but could not do so as the accused did not respond to her questions.

15) A perusal of the dying declaration recorded by PW.15 would show that on the date of incident, while she was at her house carrying her child, her husband poured kerosene over her head and when she tried to escape, the accused set her on fire. At that time her mother-in-law was also present in the house. It appears that immediately after making the statement and putting the thumb impression, the injured went into an un-conscious state.

16) Insofar as Ex.P11 is concerned, though number of questions were put to him, the accused did not answer any one of the questions but he was looking towards PW.15 without giving any answers.

17) As stated earlier, from the above evidence it is clear that the presence of the accused at the scene cannot be disputed.

18) The issue is whether it was a case of homicidal or suicide.

19) The plea taken by the accused is that, on the date of incident neither PW.1 nor his wife were present at the house and since PW.1 insisting D1 to join her husband, she poured petrol on her body and set herself to fire. If the said version as pleaded by the accused is true, then no explanation is forthcoming as to how the child sustained burn injuries. If the evidence of PWs.2 to 4 coupled with Ex.P10 are looked into, it would show that on the date of incident while D1 was carrying D2 and was in front of her house, the accused poured petrol on her from top and set fire. All the three witnesses tried to explain the injuries sustained by the accused by stating that some drops of petrol fell on the body of the accused, as a result of which he sustained burn injuries. If the evidence of PW.14, who treated the accused, is looked into, it shows that the accused sustained deep burn injuries over face, neck, front of chest, back of right shoulder. The doctor found 40% of thermal burns on the body of the accused. Few drops of petrol even if they fall on the body of the accused, definitely he could not have sustained burn injuries to such an extent, which made him to take treatment as an in-patient in the hospital from 01.07.2009 to 18.01.2010. If the dying declaration is looking into, the same is silent as to how the accused sustained burn injuries. The version set up by the prosecution with regard to manner in which both the deceased sustained burn injuries appears to be improbable, for the reason that if the suggestions put to the witnesses are taken into consideration it only reflects as to how D1 sustained injuries without any reference to D2. But at the same

time it is also to be seen that the accused also sustained grievous injuries. Though in 313 Cr.P.C. examination the accused tried to say that when the deceased committed suicide he tried to save her by putting off the flames, he sustained injuries, but as observed earlier there is no explanation how the child sustained burn injuries.

20) The fact that the accused used to quarrel with D1 and beat her while he was in a drunken condition stands established through the evidence of PWs.2 to 4. Situation somewhat similar to the case on hand came up for consideration in *Mohamed Jahangeer Vs. The State of A.P.*¹ In the said case also the deceased significantly stated that the accused quarreled and harassed her when he is drunk. Basing on the statement of the deceased, the Court held as under:

“From this statement of the deceased, it could be deciphered that the appellant, who appears to be a good natured person in normal course, loses his control if he is drunk and evidently, he may not be conscious of what he would be doing when he is drunk. The fact that he was fully drunk on the fateful night stood proved by the statement of the deceased made in her dying declaration. Though the appellant may not have had the intention of causing the death of the deceased, he would have had at least the knowledge of causing the bodily injuries which are likely to cause her death. In these facts and circumstances of the case, we are of the opinion that this is a fit case where the appellant is liable to be convicted for the offence punishable under Section 304 Part I IPC.”

¹ (2016) 10 SCJ Online (AP) 218

21) As stated above, even in the instant case, the accused used to beat the deceased while he was in a drunken condition. Having regard to the judgment of this Court in Mohamed Jahangir we feel that it is a case where the accused may not be having any motive to cause the death of the deceased. Therefore, we feel that it is a fit case where the nature of offence can be scaled down from 302 IPC to 304 Part-I IPC.

22) Accordingly, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/ accused in S.C.No.343 of 2011 on the file of the Principal Sessions Judge, Guntur, for an offence punishable under Section 302 IPC is altered to one under Section 304 Part-I IPC. For the altered conviction, the appellant is sentenced to imprisonment for a period of seven years. The period of remand underwent by him during investigation, trial and after conviction shall be given set off, under Section 428 Cr.P.C. Consequently, the appellant/ accused shall be set at liberty forthwith on completion of seven years rigorous imprisonment, if not required in connection with any other case.

23) As a sequel to it, miscellaneous petitions, if any, pending shall stand closed.

C.PRAVEEN KUMAR, J

J. UMADEVI, J

13.04.2018
gkv

