

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE UMA DEVI

CRIMINAL APPEAL No.1207 of 2012

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

The sole accused in Sessions Case No. 70 of 2012 on the file of the Additional Sessions Judge, Hindupur, is the appellant herein. He was tried on two charges. The first charge was under Section 452 IPC and the second one under Section 302 IPC, for causing the death of Narasamma, who is the younger sister of the wife of the accused. By its judgment dated 08.10.2012, the learned Sessions Judge, while acquitting the accused under Section 452 IPC, convicted him under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for a period of six months.

2. The gravamen of the charge against the accused is that on 22.10.2011, at about 8.30 p.m., while the deceased was taking meals in the house along with her children, the accused trespassed into the house and demanded for food, and when she refused, the accused is said to have beat her with a stick on the head, and thereafter, poured kerosene and set her on fire.

3. The facts, as culled out from the evidence of the prosecution witnesses are as under:

PW1 is the husband of the deceased, and the accused is his cousin (deceased sister's husband). PW2 is the son of PW1 and deceased, and PW6 is the brother of PW1. The house of PW1 was situated in Indiramma Colony in the village. His marriage with the deceased was performed about 15 years prior to her death, and out of wedlock, they are blessed with two daughters and two sons. PW2 was studying VI class at the time of the incident. It is said that the accused was harassing the deceased by demanding her to fulfill his sexual desire since 1 ½ years prior to the death of the deceased. The same was informed by the deceased to PW1 on two occasions, but, however, no report was given to the police. The matter was reported to the elders, but the accused did not heed to their advice. On the date of incident, i.e., on a Saturday, at about 9 p.m., while PW1 was in his house, the accused came there in a drunken condition and asked the deceased to serve food. PW1, after advising his wife(deceased) to arrange food to the accused, left to Anjaneya Swami temple for seeing Chakka Bhajana programme. He was there at the programme for about half an hour, and thereafter, went towards a pan shop to purchase pan. At that time, the villagers came to him and informed that the accused poured kerosene and set her on fire. Immediately thereafter, he ran towards the house and noticed the door being bolted from outside. He, along with others who gathered there, broke open the door, entered the house and found the deceased in

flames. When questioned as to what happened, the deceased is said to have informed that when she refused to provide food to the accused, he beat her with a stick on the head, causing bleeding injury, poured kerosene, set her on fire, and ran away, bolting the door from outside. After putting off the flames, PW1, along with PW3 and PW6 shifted the injured/ deceased in an ambulance to Government Hospital, Hindupur.

4. PW4-the Civil Assistant Surgeon, Government Hospital, Hindupur admitted the injured in the hospital and sent an intimation to the Junior First Class Magistrate, Hindupur to record her dying declaration. Ex.P2 is the said intimation. On receipt of the said intimation from the hospital, PW9-the Junior Civil Judge, Hindupur proceeded to the hospital, identified the injured/ deceased and after being satisfied that she was conscious and coherent, recorded her statement, which is placed on record as Ex.P10. According to PW9, at the time of recording of the statement, PW4-the duty doctor and a male nurse were present. He is said to have commenced the recording of the dying declaration at 2.20 a.m., and concluded the same at 2.45 a.m. Ex.P2 to Ex.P5 are the endorsements of the duty doctor on the said declaration.

5. On 23.10.2011, at about 7.45 a.m., the injured/ deceased died in the hospital. Immediately thereafter, PW1 proceeded to the police station and lodged a report with PW10-the Sub Inspector of Police, Madakasira Police Station. Exhibit P1 is the report.

Basing on the said report, a case in Crime No. 88 of 2011 came to be registered under Sections 448, 509, 324 and 302 IPC. Exhibit P11 is the FIR. Further investigation is said to have been taken up by PW11-the Circle Inspector of Police. After receipt of F.I.R., PW11 proceeded to the Government Hospital, Hindpur, identified the body of the deceased in the mortuary and conducted inquest over the dead body in the presence of PW7. During inquest, he examined PWs 1 to 3. Ex.P2 is the inquest report. Thereafter, he sent the dead body for postmortem examination.

6. PW5-the Civil Assistant Surgeon, Government Hospital, Hindupur conducted autopsy over the body of the deceased on 23.10.2011 at 3 p.m. According to him, except burn injuries, no other injuries were found on the body of the deceased. She opined that the cause of death was due to hypovolumic shock due to extensive burns, and the approximate time of death was 18 to 20 hours prior to autopsy. Ex.P6 is the Post Mortem Report.

7. PW11 continued with the investigation and proceeded to the scene of offence, which is the house of the deceased. In the presence of PW7 and PW8, he examined the scene of offence and seized half burnt cloth pieces, half burnt hair of the deceased, partly burnt Anjaneya Swami photo, partly burnt calendar and kerosene tin, which are placed on record as M.Os 1 to 5. Ex.P13 is the seizure mahazor. He also got prepared the rough sketch of the scene of offence, which is placed on record as Ex.P14. According to PW11, on 20.11.2011, on credible information, he arrested the

accused at Kadagalapalli bus stop and remanded him into judicial custody.

8. Further investigation in this case was taken up by B.Venugopal, the successor of PW11, who, after completing the investigation filed a charge sheet, which was taken on file as PRC No.25 of 2011 on the file of Judicial Magistrate of First Class, Dharmavaram. After complying with the requirements of Section 207 of Cr.P.C., the matter was committed to the Court of Sessions and the same came to be numbered as S.C.No.70 of 2012 on the file of Court of the Additional Sessions Judge, Hindupur. Basing on the material available on record, a charge for the offences punishable under Sections 453 and 302 IPC came to be framed, read over and explained to the accused, to which he denied and claimed to be tried. Out of the eleven witnesses examined by the prosecution, PWs 7 and 8 did not support the prosecution case and were treated hostile by the prosecution.

9. To substantiate their case, the prosecution examined PWs.1 to 11 and got marked Exs.P1 to P14 and M.O.1 to 6. After the closure of 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 in support of his defence.

10. Basing on the dying declaration of the deceased, coupled with the evidence of PWs 1, 3 and 6, the trial Court, while

acquitting the accused under Section 452 IPC, convicted him for the offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life. Challenging the same, the present appeal came to be filed through legal aid.

11. The learned counsel for the appellant, Sri V.V.Paghavan mainly contends that there are number of circumstances to indicate that the incident in question did not happen in the manner suggested by the prosecution. According to him, the oral dying declaration alleged to have been made by the deceased, cannot be accepted, for the reason that though, in the oral dying declaration, the deceased informed PWs 1, 3 and 6 that the accused beat her on the head with a stick, causing bleeding injury, the same is not found in the post mortem report. Coming to the version of PWs 1 and 2, he would contend that the trial court erred in believing the evidence of PW2 to the extent of PW1 being present in the house when the accused entered the house, while disbelieving the evidence of PW2 with regard to witnessing the incident, though, in court, he tried to project himself as an eye witness to the incident. It is urged that when PW1 claims to be present in the house at the time when the accused entered the house, there was no reason for PW2 to go and call PW1 about the visit of the accused to the house. He would further contend that the fact that PW1 was present in the house at the time of arrival of the accused is doubtful, as the same does not find place in the First Information Report and also in the earlier statement of PW1.

12. Coming to the incident proper, the learned counsel for the appellant would contend that there is any amount of doubt as to whether it is a suicide or homicide. According to him, when the dying declaration is to the effect that after committing the offence, the accused left the house by bolting the door from outside, there is no reason for the neighbours to break open the door for entering the house, as it was a house with a single door and they could have easily removed the latch from outside and entered the house. It is not the case of the prosecution that the accused has locked the door from outside and left the house. According to him, this circumstance of breaking open the door itself indicates that the door was locked from inside and the deceased has committed suicide. He would further contend that as per the averments in the dying declaration, the incident in question is said to have happened while the deceased and her children were taking food; but, however, the scene of offence panchanama and the evidence of the investigating officer would show that there were no utensils at the scene of offence, which, falsifies the version set out in the dying declaration.

13. Having regard to the above, the learned counsel for the appellant would contend that the dying declaration recorded by the Magistrate is a tutored one, which is evident from the evidence of the duty doctor, who categorically admitted in the cross-examination that the relatives of the deceased were there in the hospital at the time of admission and they were talking with the deceased till the arrival of the Magistrate. Having regard to the

above and in view of the enmity between the accused and PW6, he submits that the dying declaration recorded by the Magistrate is a tutored one and is the outcome of tutoring by the family members and PW6.

14. On the other hand, the Public Prosecutor would contend that the evidence of PW2, coupled with the dying declaration recorded by the Magistrate would clearly establish that it was the accused alone who caused the death of the deceased. According to him, the door of the house was broke open, since the same was jammed due to heat, and as such, the said circumstance cannot by itself indicate that the door was locked from inside. He would further contend that though the evidence of PW2 was disbelieved with respect to witnessing the incident, the fact that he has seen the accused in the house leads to an irresistible conclusion that it was the accused alone who is responsible for the death of deceased.

15. The point for consideration is: whether the accused is responsible for the death of the deceased.

16. As seen from the record, PW1 is the husband of the deceased. He was not an eye witness to the incident, but, in his evidence, he deposed that the accused used to harass the deceased by demanding her to fulfill his sexual desire, which, according to him, was happening since one and a half years prior to the death of the deceased. He further deposed that on the date of incident, while he was in his house, the accused came there in a drunken condition and asked the deceased to provide food. PW1

seems to have left the house to Anjaneya Swami temple, asking his wife to provide food to the accused. Thereafter, while he was at the pan shop, received information about the incident and then came to the house. While he was there, the villagers also came there, and all of them broke open the door of his house. When he questioned the deceased, she seems to have stated that the accused beat her with a stick on the head, causing bleeding injury, poured kerosene on her, set her on fire, and left the house by bolting the door from outside. However, in the cross-examination, he admits that he did not inform the police about the harassment of the accused towards the deceased. Though PW1 stated in his evidence that on the date of incident, at about 9 p.m., the accused came in a drunken condition and asked his wife to provide food, and that he went to Chakka Bhajana, asking his wife to arrange food for the accused, the evidence of the investigating officer shows that PW1 failed to mention the said fact in his earlier statement. He further admits that there was no enmity with the accused. The suggestion that the deceased herself committed suicide because of her husband suspecting her fidelity, was denied. The suggestion that the deceased was tutored to give the statement before the Magistrate in the manner spelt out by the prosecution, was also denied.

17. PW2 is the son of PW1 and deceased. He was studying VI class at the time of the incident. In his evidence, he deposed that on the date of incident, at about 8 and 9 p.m., while himself and his mother were taking food in the house, the accused came to

their house in a drunken condition and asked to arrange food for him. His mother told the accused that there was no food. Then, the accused beat the deceased with a stick, pursuant to which she received bleeding injury and fell down. Then the accused is said to have poured kerosene and set her on fire. According to him, the accused is said to have bolted the door from outside and ran away and then, the neighbours came there, broke open the door, and put off the flames.

18. From the version of PW2, it appears as if he was present in the house, not only at the time when the accused entered the house, but also at the time when the accused beat the deceased and set her on fire. The said version of PW2 with regard to witnessing the incident of accused beating the deceased, was disbelieved by the learned Sessions Judge, since the same runs contrary to the version of the deceased in her dying declaration, which, we will refer to later.

19. Coming to the evidence of PW3, who is a neighbour, he deposed that on the date of the incident, at about 8 p.m., he heard cries from the house of the deceased and immediately he rushed to the said house. The neighbours also came there and all of them put off the flames on the body of the deceased. When they enquired the deceased, she told them that the accused asked her to serve food and when she stated that there was no food, the accused beat her on the head with a stick, fell her down, poured kerosene and set her on fire. Later, PW1 came to the house.

However, in the cross-examination, PW3 stated that the deceased informed that when she refused to satisfy the accused, he poured kerosene on her. He further admits that by the time he went to the house of the deceased, her flames were already put off and she was brought out.

20. PW6 is the brother of PW1 and PW3. In his evidence, he deposed on the same lines as that of PW3. However, in the cross-examination, it has been elicited that the accused and PW6 were not on talking terms. The suggestion that he tutored the deceased while she was in hospital, was denied. He also denied the suggestion that the accused was harassing the deceased by asking her to fulfill his desire.

21. From the oral evidence of the witnesses, which has been referred to above, it appears that the accused was harassing the deceased since 1 ½ years, demanding her to fulfill his sexual desire. On the date of incident, at about 9 p.m., while PW1 and PW2 were there in the house, the accused entered the house and demanded food. PW1, who knows about the harassment of the accused towards the deceased, is said to have left the house, asking the deceased to provide food to the accused. When the deceased informed that there was no food, the accused is said to have beat her with a stick on the head, causing bleeding injury and thereafter, poured kerosene and set her on fire.

22. Coming to the oral dying declarations made before PWs 1, 3 and 6, it is to be seen that the accused initially is said to have beat

the deceased on the head with a stick, causing bleeding injury and thereafter, poured kerosene on her and set her on fire. But, if the said oral dying declarations are tested with the post mortem certificate, except burn injuries, the doctor did not find any external injuries on the body of the deceased. Therefore, a doubt arises as to whether really the deceased has given the oral dying declaration, and whether these witnesses are speaking the truth with regard to the information furnished by the deceased.

23. Coming to the evidence of PW2, as stated earlier, his evidence was disbelieved by the trial court with regard to witnessing the incident, since the same runs contrary to the dying declaration recorded by the Magistrate. However, the trial court believed his evidence to the extent of accused entering the house of the deceased and PW2 leaving the house to inform his father about the arrival of the accused. When the version of PW1 is that he was present in the house when the accused arrived, there was no reason for PW2 to go and inform PW1 about the visit of the accused to the house. This circumstance throws any amount of doubt about PW1 being present in the house at the time of incident. It is to be seen from the above that when the accused was harassing the deceased by demanding her to fulfill his sexual desire, in normal course, PW1 would not have left the house leaving the accused with the deceased; more so, when he knows the demands made by the accused.

24. Coming to the dying declaration recorded by PW9-the Junior Civil Judge, Hindupur, it is his version that on the date of incident, i.e., on the intervening night of 22nd and 23rd October, 2011, at about 1.50 a.m., he received intimation, pursuant to which, he proceeded to the hospital and recorded the statement of the deceased, which is placed on record as Ex.P10. The learned counsel for the appellant mainly contends that this statement of the deceased is not only inconsistent with the oral dying declaration, but is also an outcome of tutoring by the family members and PW6. The said argument cannot be brushed aside.

25. The evidence of PW4-the doctor who initially admitted the deceased in the hospital and sent intimation to the Magistrate for recording the dying declaration, reads as under:

“My self admitted the patient in hospital. I cannot say the time of admission unless I see admission register. Her relatives were there in the hospital at the time of admission. Except during the recording of D.D., her relatives were with present. It is true that the relatives were talking with her till the arrival of Magistrate.”

From the answers given by PW4, it is clear that the relatives of the deceased were present in the hospital at the time of admission and all of them were talking to the deceased till the arrival of the Magistrate.

26. At this stage, it would be useful to refer to the contents of the dying declaration, wherein the deceased is said to have stated

as to how she sustained injuries. According to her, while she was in the house, the accused came home in a drunken state and asked her to provide food. When she stated that there was no food, he beat her with a stick. Thereafter, he poured kerosene on her and set her on fire. She further stated that at that time, herself and her children were eating food. While they were eating, the accused came and asked for food and when she refused to give food, he beat her with a stick on the head, poured kerosene on her and set her on fire. She further stated that soon after the accused arrived, her son went to bring her husband from Chakka Bhajana. Subsequently, her husband and PW6 came to the house, put off the fire and admitted her into hospital.

27. From the dying declaration, it is clear that the deceased did not state as to whether she received bleeding injuries. Apart from that, it is her version that the incident in question took place when she was eating food with her children. It is also stated by her that her son left on the arrival of the accused to inform PW1 about the arrival of the accused. If the contents of the dying declaration are tested with the evidence of the investigating officer, it is clear that when he visited the house, i.e., the scene of offence, he did not notice the stick and the vessels. If really the incident occurred at the time when the deceased was taking food, definitely, there would have been some vessels at the scene of offence. It is not his case that PWs 1 and 2 had set things right in the house before the arrival of the police.

28. It would be useful to extract the evidence of PW11, which is as under:

“It is true that it was mentioned in Ex.P13 that the door of the said house was forcibly got opened and as such the bolt was broken. I did not observe any blood stains at the scene. I did not also observe a stick there, and also the vessels.”

29. From the above circumstances, viz., the version of PW2 being inconsistent with the contents of the dying declaration with regard to the witnessing the incident, the family members talking with the deceased before recording of the statement of the deceased by the Magistrate and the absence of utensils and vessels at the scene of offence when the police visited the scene of the incident, there arises any amount of doubt with regard to the version in the dying declaration.

30. Having regard to the above circumstances, the argument of the learned counsel for the appellant that the deceased has committed suicide by bolting the door of the house from inside cannot be brushed aside and a doubt arises as to the cause of death of the deceased.

31. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 08.10.2012, in Sessions Case No.70 of 2012, on the file of the Additional Sessions Judge, Hindupur for the offence

punishable under Section 302 I.P.C. is set aside and he is acquitted for the said offence. Consequently, the appellant/ accused shall be set at liberty forthwith, if not required in any other case.

JUSTICE C.PRAVEEN KUMAR

JUSTICE J UMA DEVI

18.01.2018
DMG

