

THE HON' BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Appeal no.893 of 2011

JUDGMENT

(per Hon'ble Sri Justice M. Seetharama Murti)

In this appeal under Section 374(2) CrPC, the appellant/accused impugned the judgment dated 28.06.2011 of the learned III Additional Sessions Judge, Warangal, in S.C.No.106 of 2009. By the said judgment, the learned Additional Sessions Judge while finding the accused not guilty of the offence punishable under Section 498-A IPC, however, found the accused guilty of the offence punishable under Section 302 IPC and convicted him under Section 235(2) of CrPC and sentenced him to undergo rigorous imprisonment for life and pay a fine of Rs.500/- and undergo simple imprisonment for fifteen (15) days in default thereof. The period of imprisonment already undergone, that is, from 29.10.2008 to 02.07.2009 and from 03.12.2010 and till the date of the impugned judgment, was directed to be set off under Section 428 CrPC.

2. We have heard the submissions of *Sri B. Parameswara Rao*, learned counsel, on legal aid, appearing for the accused, and of the learned Public Prosecutor appearing for the respondent/ State. We have perused the material on record. It is stated that the accused was enlarged on bail during the pendency of this appeal. However, due to failure of the counsel to communicate the date of hearing to the accused, he was not present before this Court on the date of hearing, 03.02.2018.

3. The charges framed against the accused by the learned III Additional Sessions Judge, read verbatim as follows:

'Charge No.1: That you on 24.10.2008 at about 5:00 p.m., at Christian Colony, Warangal, being the husband of Yaka Laxmi, subjected such woman to cruelty namely abused in filthy language and also suspecting her fidelity,

had a quarrel with Yaka Laxmi and poured kerosene on her body and lit fire, and that you thereby committed an offence punishable under Section 498-A of the Indian Penal Code and within my cognizance.

Charge No.2: That you on the above said date, time and place mentioned supra, committed murder intentionally (or knowingly) causing the death of Yaka Laxmi, and thereby committed an offence punishable under Section 302 of the Indian Penal Code and within my cognizance.

The accused denied the said charges and claimed to be tried.

4. At trial, the prosecution examined PWs 1 to 15 and exhibited P1 to P17 and marked MOs 1 & 2. No evidence was adduced on the side of the defence.

5. The case of the prosecution and gist of the evidence, which was adduced to bring home the guilt of the accused, which need a detailed examination, are as follows:

Yaka Laxmi, the deceased, who is the daughter of S Yellaiah-PW1, is the wife of lytha Sarangapani, the accused. Their marriage was performed about eight years prior to 15.03.2011, the date of the testimony of PW1. The deceased and the accused, who were of 30 and 35 years of age respectively as on, 24.10.2008, the date of the incident of murder, used to reside in H.No.11-4-215, Christian colony. The accused used to work as a coolie. They were not blessed with children. Suramma, the mother of the accused, was residing separately from the accused; and, her house is located at a distance of 2 kilometres from the house of the accused. The accused used to abuse the deceased. The deceased earlier informed PW1 that the accused abused her saying that she was having a paramour. The accused used to consume liquor and quarrel with the deceased alleging that she has not given birth to children and that she was having a paramour and that she is having extra marital relations. On that day, that is, 24.10.2008, when the deceased questioned the accused as to why he came to the house in a drunken state, he abused her and set her afire by pouring kerosene. On 24.10.2008, on a requisition-exhibit P15 received at 07:00 PM., from PC 2111 of police outpost of MGM hospital, PW14,

the then Special Judicial Magistrate of First Class, P & E cases, Warangal, proceeded to the said hospital and reached the hospital at about 07:15 PM., and recorded the dying declaration of the deceased-exhibit P16. On 25.10.2008, PW12, the then Assistant Sub-Inspector of Police, Mills Colony Police Station, having received information proceeded to MGM hospital and recorded the statement of the deceased and obtained her right thumb impression on the said statement after reading over the contents of the same to her and on her admitting the contents of the same and returned to the police station and registered the case in Crime No.253 of 2008 under Sections 498-A and 307 IPC on the basis of the said statement and issued exhibit P12-FIR and forwarded a copy of the same to the Court concerned and took up investigation. Her said statement is enclosed to exhibit P12-FIR. PW12 along with a photographer-PW7 proceeded to the scene of offence and secured the presence of mediators, M. Yakub-LW9, and P. Arun Kumar-PW5 and inspected the scene of offence and seized burnt pieces of saree-MO1 and one 5 litres plastic can containing kerosene-MO2 under the cover of crime details form-exhibit P3 and prepared exhibit P13-the sketch of scene of offence and then he visited MGM hospital and recorded the statement-exhibit P11 of the deceased, and examined PWs1 & 2, PW6-the paternal uncle of the accused, PW7-the photographer who has taken photographs of the scene of offence, PW3-paternal uncle of the accused, PW4-a neighbour of the accused and the deceased and recorded their statements. He later examined PW10-the photographer who has taken the photographs under exhibit P8 of the deceased, on 29.10.2008, at MGM hospital and recorded his statement. On 27.10.2008, the deceased died of burn injuries. Two days prior to the death of the deceased, the mother of the accused informed PW1 about the deceased suffering burn injuries and shifting of the deceased in an ambulance to a hospital. On 24.10.2008, the mother of the accused also informed, over telephone, S.Mogili, the brother of the deceased, about the receiving of burn

injuries by the deceased at about 04:30 PM and shifting of the deceased to MGM hospital. Immediately, PW1, along with PW2, rushed to the MGM hospital, Warangal; and, on enquiries made by them with the deceased about the matter, she informed them that –‘the accused came to the house on that day in a drunken state and abused her saying that she was having a paramour and that thereafter, the accused went inside and got the kerosene tin and poured kerosene on her and lit fire with a matchstick and that she raised cries and that neighbours came, on hearing her cries, and shifted her to MGM hospital in 108 ambulance and that the accused was responsible for the incident.’ On 27.10.2008, at 05:00 PM., PW15, the then Sub-Inspector of Mills Colony Police Station, who received death intimation of the deceased from MGM hospital, altered the Section of law from 307 IPC to 302 of IPC vide alteration memo exhibit P7 = P17. On handing over of the case diary file, the then inspector of police-PW9, PW9 verified the investigation done by his subordinates and found it on proper lines. He had got taken photographs (exhibit P8) of the dead body of the deceased through PW10 and secured the presence of mediators, viz., G. Lakshmi-LW12 and PW11-Ambi Pochalu, and held inquest over the dead body of the deceased in the presence of the said mediators and others and prepared exhibit P9-inquest panchanama, whereunder the inquest panchas opined that the deceased died due to burn injuries. He then forwarded the dead body for post mortem examination. On the requisition of police, on 28.10.2008, PW13, Dr.Md.Ismail, conducted autopsy on the dead body of the deceased between 11:30 AM to 12:30 PM and issued exhibit P14-PM report opining that there are ante mortem burns on the head & face, chest (front & back), abdomen (back & front), left & right upper limbs, thigh (front), thigh (left), pubic region, and that the total percentage of burns is 64%and that skin peeled off; hyperaemia is present at the edges of the burns and that superficial and deep burns (mixed) are present and that the age of the burns is about 4 days prior to the death. PW9 arrested the accused at his house, on 29.10.2008 at 09:00 A.M, and

obtained orders of judicial remand having produced him before the learned Magistrate concerned and later laid the charge sheet after receipt of relevant documents and completion of investigation.

6. Learned counsel for the accused contended as follows: - 'The prosecution failed to prove the motive of the accused. The learned Additional Sessions Judge failed to consider that the version in the statement given by the deceased to PW12, the then Assistant Sub-Inspector of Police, who registered the crime and the version given to the learned Magistrate in the dying declaration, exhibit P16, are different from one another and that, therefore, the two versions in the two dying declarations, that is, the one in the statement of the deceased enclosed to exhibit P12-FIR and the other in her dying declaration-exhibit P16 recorded by the learned Magistrate being at variance, the said two dying declarations are unreliable. The learned Additional Sessions Judge ought to have noted the said aspect and ought to have discarded the same. He ought to have held that the accused is entitled to a reasonable benefit of doubt and ought to have extended a reasonable benefit of doubt to the accused and ought to have acquitted him. As per settled law, unless the dying declaration is reliable, it cannot form the sole basis for conviction. In the case on hand, there is no material to corroborate the two versions of the deceased in the two declarations, viz., the one given to the police officer and the other to the learned Magistrate. The learned Additional Sessions Judge ought to have seen that when the versions in the two dying declarations are inconsistent, the same are unreliable. Further, on the statement said to have been recorded on 25.10.2008 by PW9, which is enclosed to exhibit P12-FIR, the said police officer has taken the right thumb impression of the deceased, whereas, on exhibit P16-dying declaration, which was recorded by the learned Magistrate on 24.10.2008 at 07:15 PM., the learned Magistrate has taken the right toe impression. The said learned Magistrate, who was examined as PW14, deposed that as the fingers of the deceased were burnt, he obtained her toe

impression. For the above reason as well, the dying declarations are unreliable and cannot form the basis for the conviction of the accused. Hence, the appeal may be allowed and the impugned judgment be set aside and the accused may be acquitted of the alleged charge under Section 302 IPC.'

7. Per contra, learned Public Prosecutor while supporting the judgment of the learned Additional Sessions Judge contended as follows: - 'There is no variance in the two versions of the deceased, that is, the version in the statement given to the police officer and the version in the declaration recorded by the learned Magistrate. The deceased consistently stated in both the declarations that there were disputes between her and her husband, the accused, and that the accused used to come home in a drunken state and have disputes with her and that on that night also they had a dispute and that he poured kerosene on her and set her afire and that the neighbours called for an ambulance and shifted her in the ambulance to the hospital. Therefore, there is consistency as regards motive and also the cause of death. Hence, the dying declarations do not suffer from any infirmity. Therefore, there is no necessity to look for corroboration. A conviction was rightly recorded on the dying declarations more particularly on the basis of the one that was given to the learned Magistrate at the earliest point of time. Hence, the finding of conviction recorded by the trial Court calls for no interference. Further, both PWs1 & 2, who are the father and brother of the deceased, testified that on receiving information about the incident from the mother of the accused, they both rushed to the hospital and that on their enquiries the deceased stated to them that the accused came to the house on that day in a drunken state and abused her saying that she was having a paramour and that thereafter, the accused went inside and got the kerosene tin and poured kerosene on her and lit fire with a matchstick and that thereafter she raised cries and that neighbours came, on hearing her cries, and shifted her to MGM hospital in 108 ambulance and that the accused was responsible for the incident. The said

evidence of two material witnesses affords sufficient corroboration for the versions in the dying declarations. Hence, the conviction of the accused is sustainable in any view of the matter.'

8. In the light of the above contentions, it is necessary to advert to the law relating to appreciation of evidence in the form of more than one dying declaration, which is well settled. Even in a case where there are two declarations with varying versions and one of them is only acceptable and reliable; the Court may, while rejecting the other which is unreliable, base a conviction on the one which is reliable. [See: Raju Devade v. State of Maharashtra (AIR 2016 SC 3209)]. In the decision in Amol Singh v. State of Madhya Pradesh [(2008) 5 SCC 468], the Supreme Court held that it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case and that if a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration and that the statement should be consistent throughout. The Supreme Court further held as follows: - 'If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinizing the contents of various dying declaration, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.' Hence, on the mere ground that there are multiple declarations, the declaration, which is reliable, shall not be discarded.

9. It is no doubt true that there are two dying declarations apart from the statement of the deceased under Section 161 CrPC under exhibit P11, which also acquired the status of a declaration on the death of the deceased in the

hospital while receiving treatment for the burn injuries. Exhibit P11 statement portrays a version that is exactly akin to the version in the statement recorded by the police officer, which was enclosed to the FIR-exhibit P12. Therefore, exhibit P11 and the statement of the deceased enclosed to exhibit P12-FIR contain exactly the same versions is not in controversy. Nonetheless, the contention is that the versions therein are at variance with the version in exhibit P16-dying declaration recorded by PW14. In view of the said contention, it is necessary to carefully examine, in juxtaposition, the contents of the statement enclosed to exhibit P12-FIR, which bears the right thumb impression of the deceased, and the contents of exhibit P16-dying declaration recorded by PW14, the learned Magistrate. In the statement enclosed to FIR, the deceased was said to have stated as follows: - 'Yesterday, that is, on 24.10.2008 evening, at about 05:00 PM her husband consumed liquor and came home and abused her and that when she questioned him, as to why he has come home in a drunken state, he picked up the kerosene tin available in the house and sprinkled the kerosene on her and set her on fire with a matchstick and that when she raised cries neighbours came and called for an ambulance and shifted her on an ambulance to MGM hospital.' Whereas in exhibit P16-dying declaration recorded by the learned Magistrate, she stated that on that night she had a dispute with her husband and that on the evening of that day they went to the hospital of Dr. Narasimha Reddy on the issue of lack of children and that on receiving the report, the Doctor stated that the accused is impotent and that for that reason the accused had a dispute with the deceased and that thereafter he poured kerosene on her and set her afire and that at that time there was nobody else in the house and that later the villagers called for an ambulance and shifted her to the hospital and that her husband used to come home in a drunken state and have disputes with her. It is to be noted that exhibit P16 declaration is the first declaration and it was recorded by the Special Judicial Magistrate of First Class. In the said declaration, she referred

to the visit to the hospital of Dr.Narasimha Reddy and the opinion of the Doctor that the accused is impotent. Hence, it is sought to be contended that as per the said statement the opinion of the Doctor that the accused is impotent is the reason for the dispute and for the burning incident, but, such version is conspicuously absent in the statement made to the police officer. However, in the declaration given to the learned Magistrate, she also stated that her husband used to come home in a drunken state and have disputes with her. Though, in the statement given to the police officer, she did not state about the visit to the hospital and the opinion of the Doctor, she, however, stated that her husband came home in a drunken state and that when she questioned him he stated that she is having a paramour and that she is got used to him and abused her and then set her afire after sprinkling kerosene on her and that on that she raised cries and then the neighbours came and put off the fire and called for an ambulance and shifted her to MGM hospital. When the contents of the two declarations referred to supra are thus examined in juxtaposition, it is evident that they reflect that the deceased used to come home in a drunken state and have disputes with the deceased and that on the night of the incident also there was a quarrel between the deceased and the accused and that the accused sprinkled kerosene on her and set her afire and that the neighbours came and called for an ambulance and shifted her to the hospital. Hence, on the principal and material aspect of the matter and the cause of death, there is no variance; and, on the other hand, there is ample consistency. Hence, the contention of the accused that the two versions are at variance deserves no countenance.

10. Now turning to the evidence on record, it is to be noted that PW1 deposed that after the incident, his daughter told him at the hospital that the accused abused her on that night by saying that she was having a paramour and that earlier also the accused used to abuse his daughter. It is in evidence of PW2 that the accused used to consume liquor and quarrel with the deceased

alleging that she has not given birth to children and that having come to know of the incident from the mother of the accused she rushed to the hospital along with his father, PW1, and that on their enquiries the deceased revealed that on that day the accused came home in a drunken condition and abused her in filthy language stating that she was having a paramour and poured kerosene on her and lit her with a matchstick. Further, PW1 also testified that immediately after coming to know of the incident he and his son rushed to the hospital and that on their enquiries the deceased stated to them that the accused abused her saying that she was having a paramour and that thereafter the accused went inside the house and got the kerosene tin and poured kerosene on her and lit her with a matchstick and that thereafter the neighbours came and shifted her to MGM hospital in 108 ambulance and that she informed him that her husband was responsible for the incident. They both denied the suggestions given to them in their respective cross examinations and maintained their stands. Thus, the testimonies of PWs1 & 2 lend sufficient corroboration to the consistent versions in the two declarations. No-doubt, the evidence on record depicts that the statement of the deceased given to the police officer bears her right hand thumb impression, whereas the dying declaration, exhibit P16, recorded by the learned Magistrate bears her toe impression and that the learned Magistrate clarified in his cross examination that since her fingers were burnt he obtained her toe impression. In the considered view of this Court, this aspect of the matter will not militate the veracity of either of the two statements for the reason that there was no cross examination of PW12, the police officer, on this aspect and no information was elicited from him to discredit the statement recorded by him, on the mere ground that he had obtained the right hand thumb impression on the said statement of the deceased which was recorded by him, on 25.10.1998 at about 10:00 AM. A plain perusal of the thumb impression on the said statement shows that it is an unclear impression and that even the ridges are also not visible. Further, the

learned Judicial Magistrate who recorded the statement, on 24.10.2008 at 07:20 PM., gave the reason for obtaining the toe impression of the deceased on the declaration. All the above facets of the matter apart, there is no quarrel in the instant case with regard to mental condition and fitness of the deceased to give the declaration to the Magistrate and also with regard to the procedure that was followed by the learned Magistrate in recording the declaration. The defence could not point out that the declaration recorded by Magistrate suffers from any infirmities. The evidence of the Doctor-PW8 shows that the dying declaration, exhibit P16, was recorded by the learned Magistrate in his presence and that at that time the deceased was conscious, coherent and sound enough to give the statement and that he made exhibits P5 & P6 endorsements before and after recording the dying declaration as to the consciousness, coherence and soundness of the deceased to give the statement. Further, the evidence of PW13, the Doctor, and the post mortem report-exhibit P14 given by him disclose that the cause of death is 'burn injuries'. Having thus carefully examined the dying declarations and the evidence brought on record, we are of the view that the declarations in the case on hand do not suffer from any infirmities and that there are no circumstances casting a serious doubt on the said declarations and that they can be safely relied upon to base a conviction.

11. In summation, we hold that that the dying declarations are not at variance and that there are no material inconsistencies in the declarations and that the same do not suffer from any factual or legal infirmities and that the same are reliable and are sufficient to base a conviction more particularly in the light of the testimonies of PWs1 & 2, which lend sufficient corroboration, and also the facts and surrounding circumstances of the case.

12. The further contention that the dying declaration (exhibit P16) was recorded by the learned Magistrate even before the crime has been registered

also does not deserve any countenance in view of the fact that the dying declaration recorded even before the registration of the crime can be accepted if it is otherwise reliable in view of the decision in *State of Punjab v. Amarjit Singh* [1988 (Supp) SCC 704] wherein the Supreme Court, having noticed that a police officer recorded a dying declaration even before issuance of FIR and the commencement of investigation, held that in such a case where the police officer records a dying declaration, he does so, not in the capacity of an investigating officer and such a dying declaration can be accepted if otherwise it is reliable; and also in view of the settled legal position that recording of information report by the police is not a condition precedent to the setting in motion of a criminal investigation. (See: *Apren Joseph alias Current Kunjukunju and others v. The State of Kerala* [1973(3) SCC 114].

13. Having thus considered all the contentions of the accused, we are of the considered view that none of the contentions advanced are sufficient to put out of place the well established case of the prosecution. To sum up in one sentence, there is a ring of truth in the evidence brought on record to bring home the guilt of the accused.

14. Having regard to the reasons aforesaid, we are satisfied that the evidence brought on record is enough to safely hold that the prosecution sufficiently and beyond reasonable doubt brought home the guilt of the accused for the offence punishable under Section 302 IPC with which he is charged and that there are no grounds calling for interference with the well considered judgment of the Court of Session.

15. In the result, the Criminal Appeal is dismissed confirming the conviction and the sentence imposed upon him in S.C.No.106 of 2009 on the file of the Court of the learned III Additional Sessions Judge, Warangal. Since the accused is enlarged on bail, the learned I Additional Judicial Magistrate of First Class, Warangal, shall take steps in accordance with the procedure established by law

for securing the presence of the accused and committing him to the prison for serving the remaining portion of the sentence that was imposed upon him by the judgment impugned.

JUSTICE SANJAY KUMAR

JUSTICE M. SEETHARAMA MURTI

16.02.2018
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