

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N.BALAYOGI

CRIMINAL APPEAL No.108 of 2012

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

Assailing the conviction and sentence in Sessions Case No. 270 of 2008 on the file of the VI Additional District and Sessions Judge, (FTC), Nizamabad at Kamareddy, the present appeal is filed. Originally, A1 to A7 were tried on three charges. The first charge was against A1 to A6 for an offence punishable under Section 302 IPC. The second charge was against A7 for the offences punishable under Section 302 read with Section 109 IPC, while the third charge was against A7 for the offence punishable under Section 498-A IPC. By its judgment dated 05.08.2011, the learned Sessions Judge, while acquitting A7 of all the charges, convicted A1 to A6 and sentenced them to undergo imprisonment for life for the offence punishable under Section 302 and to pay fine of Rs.1,000/- each, in default to undergo simple imprisonment for three months.

2. The gravamen of the charge against the accused is that on 29.11.2006, at about 7 p.m., A1 to A6 entered into the house of the deceased with a plastic tin containing kerosene and match box,

poured kerosene on the deceased and set her on fire, as a result of which, she died, while taking treatment in the hospital.

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

PW1 is a resident of Tandure village. PW2 is the Village Servant of Sathelly village. PWs 3 and 4 are the parents of the deceased. PW5 is an elder of the village. PW6 is the junior maternal aunt of the deceased, while PWs 7, 8, 10 and 11 were examined to speak about the circumstances connecting the accused with the crime. PWs 1 and 2 are said to have shifted the deceased/ injured from her house to the Government Hospital, Yellareddy. They are the persons who spoke to the deceased/ injured immediately after the incident.

4. In substance, the averments in the charge sheet show that the deceased objected A7, who is her husband, for having illicit intimacy with A3. Accused Nos.1, 2, 4 and 6 are close relatives of A3. It is the case of the prosecution that on the instigation of A7, all the accused decided to do away with the life of the deceased, who is the wife of A7. Accordingly, on 29.11.2006, A1 to A6 entered the house of the deceased, poured kerosene and set her on fire. Subsequently, she was shifted to Government Hospital, Yellareddy. On 29.11.2006, PW18, on receiving telephonic information from Government Hospital, Yellareddy, stating that a woman with burn injuries was brought to the hospital, gave a requisition to the Mandal Revenue Officer to record the dying

declaration of the deceased. On the same day, at about 9.45 p.m., PW14-Mandal Revenue Officer, Yellareddy received a requisition from the Assistant Sub Inspector of Yellareddy Police Station for recording the dying declaration of the deceased. Accordingly, he proceeded to the hospital and recorded the statement of the injured/ deceased, which is placed on record as Ex.P17. PW18 also proceeded to the hospital and recorded the statement of the injured/ deceased, basing on which, case in Cr.No. 168 of 2006 was registered under Section 307 read with Section 34 IPC. Ex.P21 is the original F.I.R. At about 11.30 p.m., a requisition was also sent to PW16- the III Additional Junior Magistrate of First Class, Kakinada for recording the dying declaration of the injured/ deceased. Accordingly, he proceeded to the hospital, and on being satisfied with regard to the mental condition of the injured, recorded her statement. The said statement is placed on record as Ex.P20. At about 2.20 a.m., on 30.11.2006, PW18 received intimation about the death of the injured/ deceased. Accordingly, he altered the section of law from 307 IPC read with 34 IPC to Section 302 read with 34 IPC. Ex.P22 is the altered F.I.R.

5. PW19-the Inspector of Police took up further investigation on receipt of the altered F.I.R; proceeded to the Government Hospital, Yellareddy; examined PWs 1 to 6 and conducted inquest over the dead body of the deceased in the presence of PW12 and LW15. Ex.P23 is the inquest report. He also prepared a panchanama of the scene of offence in the presence of PW12 and

seized an empty kerosene white plastic tin, which is marked as M.O.1 and also cloth pieces, which are marked as M.O.2. Ex.P24 is the scene of offence panchanama and Ex.P25 is the rough sketch of the scene of offence. After completing the inquest, he sent the dead body for post mortem examination.

6. PW15-the Government Civil Surgeon, Banswada conducted autopsy over the dead body and issued Ex.P18-the post mortem report. According to him, the cause of death was due to hypovolumnic shock and burns shock due to dermo epidermal mixed burns.

7. After completing the investigation, a charge sheet came to be filed, which was taken on file as PRC No.1 of 2007 on the file of Judicial Magistrate of First Class at Yellareddy. After complying with the requirements of Section 207 of Cr.P.C., the case was committed to the Court of Sessions and the same came to be numbered as S.C.No. 270 of 2008 on the file of Court of the VI Additional District and Sessions Judge (FTC), Nizamabad at Kamareddy. Basing on the material on record, charges for the offences punishable under Sections 302, 109 and 498-A read with 34 of IPC were framed, read over and explained to the accused, to which they denied and claimed to be tried.

8. To substantiate their case, the prosecution examined PWs.1 to 19 and got marked Exs.P1 to P25 and M.Os.1 to 3. PWs 1 to 13 did not support the prosecution case and were treated hostile by the prosecution. After the closure of evidence, the accused were

examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them in the evidence of the prosecution witnesses, to which they denied. No oral or documentary evidence was adduced on behalf of the accused in support of their defence.

9. Basing on the evidence on record, the trial Court, while acquitting A7-the husband of the deceased, convicted A1 to A6 for the offence punishable under Sections 302 IPC and sentenced them to suffer imprisonment for life. Challenging the same, the present appeal came to be filed.

10. The learned counsel for the appellants mainly submits that there is absolutely no legal evidence to connect the accused with the crime.

11. On the other hand, the Public Prosecutor would contend that the two dying declarations made by the deceased, clinchingly establish the involvement of the accused in the commission of the offence, and that the conviction of the trial court requires no interference.

12. The point for consideration is: whether the accused are responsible for the acts alleged against them.

13. A perusal of the record would show that the case rests on the two dying declarations given by the deceased. Ex.P17 is the first dying declaration recorded by the Mandal Revenue Officer. To a question as to who brought her to the hospital, the deceased

replied that the Village Servant brought her to the hospital by means of an auto at 9 p.m. on 29.11.2006. When asked as to how she sustained injuries, she stated that A1 to A6 burnt her. She further stated that all of them poured kerosene over her and set her on fire. To a question as to where the incident happened, she stated that it happened in front of her house. She further admits that at the time of the incident, she was alone in the house. When asked as to why the accused burnt her, she stated that the accused do not want her to live with her husband, and that Bestha Padma (A3) and Bestha Kalavva (A6) had illicit relationship with her husband. When asked as to whether there was any problem earlier also, she stated that couple of days and couple of nights back also, they beat her. This dying declaration was certified by the doctor, stating that the injured/ deceased was in conscious state at the time of recording the dying declaration. The Mandal Revenue Officer also took the thumb impression of the right leg of the injured/ deceased at the bottom of the dying declaration.

14. The second dying declaration was recorded by the Magistrate, who was examined as PW16. In the said dying declaration, to a question as to how she sustained burn injuries, the injured/ deceased stated that a quarrel took place at the time of filling water at the tap, and as such, all the accused who belong to her caste, came to her house at 7 p.m., and poured kerosene while she was sweeping the house. She further stated that her husband is not involved in this case, and that he went for fishing to Armour village on Monday and came on 29.11.2006. It is her

version that the A1 to A6 poured kerosene and set fire to her saree, keeping in view the dispute that took place at the water tap. Though the dying declaration is said to have been certified by the doctor, saying that it was recorded in his presence, the endorsement made does not indicate that the injured/ deceased was in fit state of mind at the time of recording the dying declaration.

15. From the above two dying declarations, which are now made the basis to convict the accused, it is clear that both of them run contrary to each other. Though the names of the accused persons are common in both the dying declarations, the circumstances under which the incident took place, are totally different, more particularly, the statement of the deceased which excludes her husband as an accused, though the case of the prosecution was that the incident in question took place at the instance of her husband alone. A reading of the above two dying declarations would show that in the first dying declaration recorded by the Mandal Revenue Officer, the deceased stated that her husband was having illicit intimacy with A3 and A6, and with a view to eliminate her, all of them conspired and killed her. This was given a go-by in the second dying declaration recorded by the Magistrate, wherein the deceased, while giving a clean chit to her husband with regard to his involvement in the crime, gave a totally different version, stating that because of a quarrel near the water tap on that day morning, all the accused came to her house and killed her by setting her on fire. In the absence of any other legal evidence with

regard to the manner in which the incident took place, and since the version in the two dying declarations are totally inconsistent with each other, we feel that it may not be safe to rely on any of the two dying declarations and convict the accused, merely because the names of the accused are common in both the dying declarations. Since the version spelt out by the deceased in the two dying declarations throws any amount of doubt with regard to the manner in which the incident in question took place, we feel that it is not safe to rely on the two dying declarations to convict the accused.

16. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/ accused No.1 to 6 in the judgment dated 05.08.2011, in Sessions Case No.270 of 2008, on the file of the VI Additional District and Sessions Judge (FTC), Nizamabad at Kamareddy for the offence punishable under Section 302 I.P.C. is set aside and they are acquitted for the said offence. Consequently, the appellants/ accused No.1 to 6 shall be set at liberty forthwith, if not required in any other case. Miscellaneous applications pending, if any, stand closed.

JUSTICE C.PRAVEEN KUMAR

JUSTICE N.BALAYOGI

02.04.2018
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