

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE MS. JUSTICE J. UMADEVI

CRIMINAL APPEAL No.58 OF 2014

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

1) The sole accused in Sessions Case No.61 of 2011 on the file of the VI Additional District and Sessions Judge, Markapur, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing death of his wife "Mothadi Subba Lakshamma" (hereinafter referred to as "the deceased") on 24.09.2010, by pouring kerosene and setting her on fire. Vide judgment, dated 12.12.2012, the learned Sessions Judge, convicted the accused under Section 302 IPC and sentenced him to suffer "imprisonment for life" and to pay fine of Rs.2000/- in default to suffer simple imprisonment for a period of six months.

2) The case of the prosecution in brief is as under:

i) Accused is the husband of the deceased. PWs.1 and 2 are parents while PWs.3 and 4 are daughters of the deceased. PWs.5 to 10 are relatives of the accused and deceased. The marriage between the accused and the deceased took place about 14 years prior to the date of incident. Out of wedlock

they were blessed with three female children. The accused used to harass the deceased mentally and physically suspecting her fidelity. A panchayat was also held wherein the elders admonished the accused, but there was no change in the attitude of the accused. On 24.09.2010 at about 9.30 p.m., while the deceased was in the house, the accused poured kerosene and set her on fire. Due to flames the deceased raised hue and cry. On hearing the cries, the neighbours rushed to the house of the deceased and shifted the deceased to Government Hospital, Giddalur, where PW.20 treated the injured and sent hospital intimation to PW.19-the Station House Officer, Giddalur, who inturn rushed to the hospital and recorded the statement of the deceased. Basing on the said statement, PW.19 registered a case in Crime No.138 of 2010 for the offence punishable under Section 307 IPC and issued the first information report, which is placed on record as Ex.P29. Thereafter, PW.19 visited the scene of offence, conducted the scene of offence panchanama and also prepared a rough sketch of the scene in the presence of PW.16 and another, Ex.P16 is the scene observation report. During the course of panchanama, PW.19 seized Mos.1 to 3 and 5 to 7 and also recorded the statements of PWs.1 to 10 and others.

ii) On 25.09.2010 at about 2.55 hours PW.11-the Tahsildar, Giddalur, visited R.R.Nursing Home and recorded the statement of the deceased.

iii) On 08.10.2010 PW.23-the IV Additional Junior Civil Judge, Guntur, received a requisition from the Government General Hospital, Guntur, to record the dying declaration of one Subba Laxmamma. Ex.P33 is the requisition. On receipt of the said requisition, PW.23 proceeded to Government General Hospital, Guntur, put some preliminary questions to the deceased to test her mental condition and after satisfying himself with regard to the mental condition of the injured and after taking the endorsement of the duty doctor, recorded the statement of the deceased, wherein she stated that her husband poured kerosene and set her on fire. After recording the statement, the same was read over and explained, wherein she admitted the same to be true and correct and affixed her left thumb impression. Ex.P34 is the dying declaration of the deceased.

iv) On 26.09.2010 PW22-the Sub-Inspector of Police, Giddalur, took up further investigation, arrested the accused and produced him before the Court. On 01.11.2010, PW.1-father of the deceased presented a report informing the death of the deceased. On receipt of the said report, PW.22 altered the section of law from 307 IPC to 302 IPC. Ex.P.31 is the

alteration memo. PW.22 handed over the C.D. file to PW.21- the Inspector of Police, for further investigation. On receipt of the altered F.I.R., PW.22 visited the scene of offence, conducted inquest over the dead body of the deceased in the presence of PWs.13, 14 and 16. Ex.P30 is the inquest report. During the course of inquest proceedings, he examined PWs.1, 2, 5 and 6 and recorded their statements. Thereafter, he sent the dead body to Government Hospital, Giddalur, for postmortem examination. Later he handed over the C.D. file to his successor Sk.Maqbul.

v) PW.20-the Civil Assistant Surgeon, Community Health Centre, Giddalur, conducted autopsy over the dead body of the deceased and issued Ex.P26 the postmortem certificate. According to doctor, the cause of death was “due to septicemia as a result of infected severe second degree burns”.

vi) After collecting all the necessary documents, one Sk.Maqbul, the Inspector of Police, filed a charge sheet before the Court of Additional Judicial First Class Magistrate, Giddalur, which was taken on file as P.R.C.No.6 of 2011. After complying with Section 207 Cr.P.C., the learned Magistrate committed the case to Sessions Division under Section 209 of Cr.P.C., which came to be numbered as S.C.No.61 of 2011.

3) Basing on the material on record, a charge for an offence punishable under Section 302 IPC was framed, read over and explained to the accused, to which he denied and claimed to be tried.

4) To substantiate their case, the prosecution examined PWs.1 to 23 and got marked Exs.P1 to P34 and MOs.1 to 7. 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 his behalf, in support of his defence.

5) Relying upon the dying declarations made by the deceased, the learned Sessions Judge 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 statements made by the deceased are an outcome of tutoring and that she was not in normal sense at the time of making the statements. She further submits that the deceased died due to septicemia as she left the hospital against the medical advice and died about 1 ½ month after the incident.

7) On the other hand, the learned Additional Public Prosecutor opposed the same contending that the dying declarations of the deceased are sufficient to base a conviction.

8) The point that arises for consideration is whether the accused is responsible for the death of the deceased, and if so, whether he is liable to be convicted under Section 302 IPC.

9) As seen from the record, all the material witnesses including the parents of the deceased, who were examined as PWs.1 and 2, did not support the case of prosecution and they were treated hostile by the prosecution. The only other material available on record is the dying declarations made by the deceased before the PW.17-the Tahsildar, Giddalur, PW.19-the A.S.I. of Police, Giddalur and PW.23-the Magistrate.

10) It is no doubt true that all the three statements of the deceased are consistent with each other, wherein it is stated that the accused poured kerosene and set her on fire. This incident of setting the fire of the deceased even as per the three dying declarations, which remain un-disputed, took place on 24.09.2010 at about 9.30 p.m. The evidence of PW.18, who was working as consulting physician in the hospital of Dr.Ranga Reddy, Giddalur, shows that on the next

day at about 10.00 a.m., the deceased was brought by her relatives with burn injuries and admitted her in Ranga Reddy Nursing Home. He is said to have treated her as in-patient. According to him, the deceased sustained 75 to 80% of burns which according to him are grievous in nature and might have sustained about 12 to 20 hours prior to his examination. After taking treatment in the said hospital for ten days, and against their advice she was taken home by her relatives. According to him, after her admission in the hospital, the Tahsildar, Giddalur, came and recorded the statement of the deceased on 25.09.2010 and also by the A.S.I. of Police on the same day. PW.18 is said to have certified with regard to mental condition of the deceased in two dying declarations which are marked as Ex.P18 and 22.

11) The evidence of PW.19-the A.S.I. of Police, would show that basing on the statement recorded by him, which is marked as Ex.P22 he registered a case in Crime No.138 of 2010 for the offence punishable under Section 307 IPC against the accused. PW.20 is the Civil Assistant Surgeon, Community Health Centre, Giddalur. After the death of the deceased on 01.11.2010, he said to have conducted post mortem examination on 01.11.2010 at 1.45 p.m. and got issued Ex.P26 the post mortem certificate. In his evidence in chief, he deposed that about 1 ½ month prior to the post mortem, the

deceased was admitted in the said hospital with burns and she was treated by him for one day and thereafter she absconded from the hospital without permission, hence he could not continue the treatment. He further deposed that on her admission in the hospital she was examined and found the victim with 70 to 80% of burns and to that effect a certificate was given, which is placed on record as Ex.P27. The certificate shows that he first saw the deceased on 24.09.2010.

12) From the evidence of these two witnesses, who were examined to speak with regard to treatment and post mortem done, would show that on 24.09.2010 the deceased took treatment in Government Hospital for a day with PW.20 and thereafter the deceased was taken to a private nursing home in Giddalur, where PW.18 treated her for ten days. There is no material on record to show as to the nature of treatment taken by the deceased after the said period of 10 days, which i.e., after 5th or 6th October, 2010. However, the evidence of PW.23 the Junior Civil Judge, would show that he recorded the dying declaration of the deceased in Government Hospital, Guntur on 08.10.2010. From this, it would establish that from Giddalur the deceased was shifted to Government Hospital, Guntur. As things stand, she was there in Government Hospital, Guntur on 08.10.2010 and there is no evidence on

record to show that as to what happened to her after 08.10.2010. No evidence has been adduced by either of the party as to whether she was admitted in any other hospital or whether she continued with treatment in the Government Hospital, Guntur after 08.10.2010. It is to be noted that the death of the deceased took place at her house and after her death she was shifted to Government Hospital, Giddalur for post mortem examination, which means she was not there in Government Hospital, Guntur, as on the date of death of the deceased. If the death has occurred in Government Hospital, Guntur, the post mortem examination would have been done there, which has not happened. Therefore, as on the date of death she was in her house and while she was at her house, died. There is no evidence on record to show as to how long and since when, she was in the house. There is also no evidence to show the nature of treatment taken while she was in the house. The parents also did not disclose in their evidence as to what happened to the victim during the said period. The inquest report gives some indication to show that since a week prior to the death she was in the house. But neither the inquest panch nor any other witnesses speak to that effect. In the absence of any evidence being adduced with regard to nature of treatment taken after 08.10.2010; the circumstances in which she was living and also what

happened to her, the argument of the learned counsel for the appellant that the death could have been due to some other circumstances cannot be ruled out. Further PW.20 the doctor, who conducted post mortem examination, states that foul smell and pus discharge was present over the body, which implies that she must have been totally ignored and kept separately without giving any attention to her in the house. Having regard to the above, though the dying declaration establish that the accused poured kerosene and set her on fire, but since she died nearly 1 ½ month after the incident and there is no material on record to show as to where she was after 08.10.2010 and also the nature of treatment given, in our view the accused cannot be convicted under Section 302 IPC.

13) In *Ganga Dass v. State of Haryana*¹, the accused gave iron pipe single blow on the head of the deceased and the deceased died eighteen days after the occurrence due to septicemia and other complications, the conviction of the appellant under Section 302 IPC was altered by the Apex Court to Section 304 Part II IPC. The Apex Court observed as under:

“We find considerable force in this submission. As stated above the occurrence took place on 18.11.1988 and the deceased died 18 days later on 05.12.1988 due to septicemia and other

¹ (1994) SCC (Cr.) 592

complications. The doctor found only one injury on the head and that was due to single blow inflicted with an iron pipe not with any sharp edged weapon. Having regard to the circumstances of the case, it is difficult to hold that the appellant intended to cause death nor it can be said that he intended to cause that particular injury. In any event the medical evidence shows that the injured deceased was operated but unfortunately some complications set in and ultimately he died because of cardiac failure, etc. Under these circumstances, we *set aside* the conviction of the appellant under Section 302 IPC and the sentence of imprisonment for life awarded thereunder. Instead we convict him under Section 304 Part II IPC and sentenced him to undergo six years RI. The sentence of fine of Rs.2000/- along with default clause is confirmed. Accordingly the appeal is partly allowed.”

14) In *Sanjay v. State of Uttar Pradesh*² the Apex Court was dealing with a case where the death occurred 62 days after occurrence and proximate cause of death was septicemia due to injuries caused in the incident. Having regard to fact that the deceased survived for 62 days and that he was died because of septicemia, the Apex Court altered the conviction from Section 302 to Section 304 Part-I IPC.

15) Even in the instant case, incident in question is said to have taken place on 24.09.2010 and nearly 1 ½ month

² (2016) 3 SCC 62

thereafter, the deceased died due to septicemia. PW.20 the doctor, who conducted post mortem examination, categorically stated that the death was due to septicemia as a result of infected severe second degree burns. In the absence of any evidence as to where the deceased was after 08.10.2010 and the nature of treatment taken, it appears that the act of the accused was not the direct cause of death. Lack of treatment might have developed infection, leading to her death.

16) Hence, in view of the judgments of the Apex Court referred to above and the findings arrived at, we feel that it is a fit case where the conviction of the accused under Section 302 IPC can be scaled down to one under Section 304 Part I IPC. At this stage, learned counsel for the appellant submits that the accused is in jail since for the last six years.

17) In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant – accused in S.C.No.61 of 2011 on the file of the VI Additional District and Sessions Judge (Fast Track Court), Markapur, for an offence punishable under Section 302 IPC is altered to one under Section 304-I IPC. For the altered conviction, the appellant is sentenced to suffer rigorous 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 imprisonment, if not required in connection with any other case.

18) Consequently, miscellaneous petitions, if any, pending shall stand closed.

C. PRAVEEN KUMAR, J

28.12.2018
gkv



J. UMA DEVI, J