

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SMT.JUSTICE KONGARA VIJAYA LAKSHMI**

CRIMINAL APPEAL No.1083 of 2011

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

The sole accused in S.C.No.340 of 2010, on the file of the II Additional Sessions Judge, East Godavari District, Amalapuram, is the appellant. He was tried for an offence punishable under Section 302 IPC, for causing the death of his sister-in-law Oleti Manga on 23.01.2010 at about 06.00 p.m. at Pallipalem village. Vide judgment dated 04.02.2011, the learned Sessions Judge convicted the accused for an offence punishable under Section 302 IPC and sentenced him to suffer imprisonment for life and to pay fine of Rs.1,000/- in default to undergo rigorous imprisonment for six months.

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

(i) The accused is the brother-in-law of the deceased (D1). PW1 is the brother of the deceased (D1). PW2 is the daughter of the deceased (D1). PW3 is the husband of the deceased D1, while PWs.4 and 5 are the neighbours of the deceased.

(ii) No charge is framed for the death of the mother-in-law of the deceased D1 by name Oleti Bhulakshmi, who is the second deceased (D2) in the said case.

(iii) PW3 married the first deceased about 10 years prior to the date of incident. After marriage, both of them resided at S.Pallipalem for two years. Thereafter, they shifted their residence to Hyderabad and resided there for about 7 or 8 years. PW3, having embraced Christianity, started preaching in S.Pallipalem. The deceased (D1) and her husband raised mangalore tiled house for running the church near S.Pallipalem bus stop. Beside the church, PW3 raised a thatched hut for the purpose of cooking. The place where the said church and thatched house were raised, belongs to the second deceased, who is the mother of PW3. It is said that the accused used to drink and abuse PW3 and D1 in filthy language number of times for erecting church in the site belonging to D2. About a week prior to the incident, the accused came home in a drunken state, quarreled with the deceased, abused her in filthy language and threw utensils from the kitchen. The accused quarreled with the deceased at that time, when PW3 was not present in the house. Even after the incident, all of them continued to stay together in the thatched house. The evidence on record would show that on the date of incident, at about 06.00 p.m., there was an altercation between the accused and D1. At that time, the mother of the accused intervened and admonished the accused for his behavior towards his sister-in-law i.e., D1 for which the accused is said to have slapped his mother and then went out. Later he came home in a drunken condition. He asked the daughter of the deceased to bring a glass to consume liquor.

The deceased interfered and admonished the accused for asking her daughter to bring a glass for consuming liquor, due to which the accused grew wild and slapped on the cheek of the deceased. Immediately, the mother of the accused interfered and questioned the accused for his attitude towards his sister-in-law and then the accused abused the deceased and left the house. Subsequently, the deceased started cooking food. It is stated that when she was blowing fire near the stove, the accused came from behind and poured kerosene on her. The kerosene poured on the body of D1 split and fell on the earthen furnace in which flames were raising due to cooking of food. The flames raised from the furnace, engulfed the deceased and started running out of the house. Immediately after the deceased caught fire, her mother-in-law intervened and tried to put off the flames. In that process, she – D2 also sustained burn injuries. The evidence of PW2 would show that the accused also made every effort to put off the flames on D1 and D2. After narrating the incident to the family members, the deceased fell down on the ground. Immediately, PW.1 and others shifted both the injured to Government Area Hospital, Amalapuram. On 24.01.2010 at about 01.30 a.m., PW11 the Head Constable in Amalapuram Town Police Station, proceeded to the Area Hospital on receipt of intimation from the hospital and recorded the statement of Oleti Manga in Area hospital, Amalapuram. Ex.P12 is the said intimation. Ex.P13 is the statement of the injured. On the same day, at about 10.00 a.m., PW12 the Inspector of Police

registered a case in Crime No.12 of 2010 for the offences punishable under Sections 307 and 323 IPC and submitted the FIR to the Magistrate, Amalapuram. Ex.P14 is the FIR. Thereafter, PW12 proceeded to Amalapuram Area hospital, secured the presence of D1 and D2 and recorded their statements and also examined PW2 and recorded her statement. He then proceeded to the scene of offence situated at S.Pallipalem and got the scene of offence photographed through PW6, under the cover of Ex.P3. He also prepared a rough sketch of the scene of offence which is marked as Ex.P15. He also recorded the statements of PWs.1, 4, 5 and others. At the scene of offence he seized MO.1 Kerosene tin and MOs. 2 to 7. On 25.01.2010 at about 07.15 p.m., PW8 Addl.Judicial Magistrate of First Class, Amalapuram, received hospital intimation for recording the dying declaration of D1. Ex.P7 is the hospital intimation. Immediately, PW8 proceeded to the hospital and recorded the statement of the first deceased which is placed on record as Ex.P8. On 28.01.2010, PW12 again proceeded to S.Pallipalem, secured the presence of LW5 and PW3 and recorded their statements. On receiving information about the presence of the accused, PW12 proceeded towards S.Pallipalem on 08.02.2010, arrested the accused and recorded his confessional statement. His evidence is to the effect that on 11.02.2010 at about 01.00 a.m., he received the death intimation of D1. Basing on the said intimation, he altered the Section of law from Sections 307, 323 to 302 IPC and submitted

the altered FIR, which is placed on record as Ex.P16. Further investigation was taken by PW13, the CI of Police. After receiving the altered FIR, PW13 proceeded to KIMS Hospital, Amalapuram and in the presence of PWs.6 and 7 held inquest over the body of the first deceased in the presence of her blood relatives. Ex.P6 is the inquest report. After inquest, the body was sent for post mortem examination. PW9, the Civil Assistant Surgeon, Area hospital, Amalapuram, conducted autopsy over the body of D1 and issued Ex.P9 the post mortem certificate. According to the doctor, the cause of death was due to septicemia due to severe burns. On transfer of the case from PW13, PW14 continued with the investigation. After completing investigation, he filed charge sheet, which was taken on file as PRC No.6 of 2010, on the file of Judicial Magistrate of First Class, Amalapuram. On committal to the Court of the II Additional Sessions Judge, East Godavari District, Amalapuram, the same came to be numbered as S.C.No.340 of 2010.

(iii) On appearance, charge under Section 302 IPC was framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

(v) In support of its case, the prosecution examined PWs.1 to 14 and got marked Exs.P-1 to P-17 and M.Os.1 to 7. Out of 14 witnesses examined by the prosecution, PWs.3, 4 and 5 did not support the prosecution case and were treated hostile. On

behalf of the accused, DWs.1 and 2 were examined and got marked Exs.D1 to D3 for defence.

(vi) After 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.

(vii) Basing on the two dying declarations recorded and having regard to the evidence given by PW1, the trial Court convicted the accused for an offence punishable under Section 302 IPC. Challenging the same, the present appeal came to be filed.

3. The argument of the learned counsel for the appellant is that even if the evidence of PW2, PW1 and the two dying declarations are taken into consideration, the offence may not fall under Section 302 IPC. Her case is that since the death was due to septicemia and that too in a private hospital where death occurred after twenty days of the incident and in the absence of any material to show the nature of treatment given, the accused cannot be convicted for an offence punishable under Section 302 IPC. Apart from that, she would contend that insofar as the death of Oleti Bhulakshmi is concerned the accused has nothing to do since she sustained injuries when she tried to rescue Oleti Manga. Insofar as the death of Oleti Manga – D1 is concerned, learned counsel for the petitioner would contend that the accused never threw any flame or lit a match stick and threw it

on the deceased. On the other hand, the kerosene poured on the body of the deceased spilled on the earthen furnace, resulting in raising the flames which engulfed the body of the deceased. Hence, it is urged that it cannot be said that the accused came in an inebriated condition with an intention to cause death.

4. Learned Additional public prosecutor opposed the same contending that in view of the two dying declarations and the evidence of PW2, the trial Court was right in convicting the accused for an offence punishable under Section 302 IPC.

5. Now, the point that arises for consideration is whether the accused is responsible for the death of the first deceased?

6. In order to appreciate the rival circumstances, it is to be noted that PW1 who is the brother of the deceased deposed as under:

According to him, on the date of incident, at about 06.00 p.m., while PW1 returned home after fishing, the younger daughter of the deceased PW2 came to his house and informed him about the altercation that took place between the accused and D1. Then himself and the father of the first deceased proceeded to the house of the deceased, by which time, the deceased came out of the house with flames on her body. PW 1 and her relatives tried to put off the flames on the body of the first deceased. When enquired, the first deceased informed

them that the accused came to house with a brandy bottle just prior to the incident and asked her daughter to bring a glass for drinking liquor. When the deceased objected for the same, an altercation took place between the accused and the first deceased and then the accused slapped her on the cheek. She further reported that while she was cooking food, the accused came from behind and poured kerosene on her body, which spilled and fell on the earthen furnace, in which flames were raised for cooking the food. The flames raised from the furnace engulfed her and she started running out of her house. It is further stated that when the first deceased caught fire, the second deceased came to her rescue and in that process, she also sustained burn injuries on her body. Though PW1 was cross examined at length, we feel that nothing useful came to be elicited. To a suggestion that both the deceased gave their statements as if they sustained burn injuries accidentally while they were cooking, was denied. To a suggestion that when the deceased was in flames, the accused tried to save them was also denied. However, PW1 admits that on the date of incident the first deceased was wearing a silk saree and by the time of incident the first deceased was blowing into furnace to ignite flames. To a suggestion that false case was foisted against the accused was denied.

7. PW2 who is the daughter of the deceased was present in the house on the date of the incident. After putting some preliminary questions, the Court was satisfied with regard to her

mental condition and as such proceeded to record her evidence. It may not be relevant to refer to the entire evidence of PW2, except few answers which she gave to the questions, which are as under:

2Q. Were you were present at the time of incident?

A. At the time of incident, I sat on the doorsill of the church.

My mother was cooking food in the kitchen shed at a distance of 7 feet from the place where I sat.

4Q. From where the accused brought kerosene and what was the container?

A. The accused picked up a plastic tin containing kerosene from our kitchen shed itself.

5Q. What did the accused do with the kerosene tin?

A. The accused poured kerosene on my mother from her back side while she was cooking food by sitting in front of the earthen furnace.

6Q. How did your mother caught fire on her body?

A. When the accused poured kerosene on the body of my mother, the kerosene spilt into the furnace and caught flames to my mother.

8Q. What did your mother do after catching flames?

A. My mother immediately got up from the furnace and ran towards the cement road which is leading to the house of PW1 and LW4.

11Q. What was happened just prior to this occurrence between your mother and accused?

A. Just prior to this occurrence the accused came to house with brandi bottle and asked me bring a glass to consume brandi,

on hearing that my mother warned the accused how you are asking the small kid to bring a glass for consuming liquor on that the accused grew wild for which he slapped on the cheek of my mother. Then my mother sent my younger sister to the house of PW1 and LW4 to bring them to our house in this connection.

Further in the cross examination of PW2 the following answers were given to few questions, which reads as under:

Q. Whether your father, accused, D1 and LW3 were used to live together amicably and they used to earn together and construct a house at Hyderabad or not?

A. Yes. LW3, accused and D1 used to live together in Hyderabad and earn together for construction of house at Hyderabad.

Q. Whether the accused came to S.Pallipalem on the occasion of Sankranti festival or not?

A. The accused came to S.Pallipalem from Hyderabad before Sankranti festival.

Q. Whether the accused was attending any work at S.Pallipalem after returning from Hyderabad or not?

A. The accused used to attend whatever work available in our village.

Q. Whether the accused went to any coolie work on the date of incident or not?

A. Yes he attended coolie work and returned to home on the date of incident.

Q. Whether the accused came to the rescue of D2 or not?

A. Yes it is true the accused try to put off the flames on the body of D2.

The following are the questions put to PW2 by the Court:

Q. When the flames raised on the body of your mother, who were already present in the scene of offence?

A. Myself, D2, accused and D1 were present in the scene.

Q. Whether the accused did an attempt to put off the flames on the body of D1 and D2 or not?

A. It is true the accused try to put off the flames on the body of D1 and D2.

Q. Why the accused try to put off the flames on the body of D1 and D2?

A. The accused try to put off the flames on the body of D1 and D2 to avoid the apprehension in the mind of LW4.

From the evidence of this witness, it is clear that on the date of incident, the accused asked the daughter of the first deceased to bring a glass for consuming liquor and the same was rejected by the first deceased, which led to a quarrel. Thereafter the accused is said to have pour kerosene which was in the plastic container, while the deceased was cooking food. The kerosene fell on the earthen furnace, where the food was cooked and the deceased caught with fire. Her evidence also clearly establishes that the accused tried to put off the flames on both the deceased. The said version of PW2 finds place even in the statement recorded by PW11 and also in the dying declaration recorded by the Magistrate, which are placed on record as Ex.P16 and P8 respectively. Therefore, the manner in which the incident in question took place cannot be doubted. However, it is to be noted that immediately after the incident, both the deceased were taken to a Government hospital, wherein they claimed to have been treated. The evidence of DW1, who is working at Government Area hospital, Amalapuram would show

that the deceased who sustained 70% to 80% burn injuries informed that she sustained burn injuries while cooking food.

8. Having regard to the nature of injuries sustained, both the deceased were discharged on 25.01.2010 on medical advice. Similar is the evidence of DW2, who is consultant surgeon in Konark Hospital, Hyderabad. According to him, the first deceased was admitted in the KIMS hospital, Amalapuram, on 25.01.2010 at about 05.30 p.m. The evidence of these two witnesses, who treated the deceased cannot be doubted. The first deceased was discharged from the Government hospital on 25.01.2010 and later she took treatment in a private hospital till her death. The cause of death of the deceased was due to Septicemia. No evidence is placed on record to show the nature of treatment given in the said hospital. Learned counsel for the appellant mainly submitted that in a case where the death was due to Septicemia and in the absence of any material to show the nature of treatment given the accused cannot be convicted under Section 302 IPC. It is also to be noted that the accused was not directly responsible for the death of the deceased. There was a quarrel between the accused and the deceased, pursuant to which he went out, consumed alcohol, came back and then poured kerosene. But he never made any effort to set fire the deceased.

At this stage, it would be useful to refer to the contents of the dying declaration which are as under:

“The patient is conscious, coherent and in a fit state of mind to give statement.

Sd/-

Casual Medical Officer, KIMS Hospital, Amalapuram.

To know the mental condition of the injured I put the following questions.

1. What is your name?
A. Oleti Manga.
2. How old are you?
A. 25 years.
3. Are you married?
A. Married.
4. Where are you now?
A. Hospital.
5. Do you know who am I?
A. Do not know.
6. I am a Magistrate and came to record your statement.

From the above answers, I am satisfied that the patient is conscious, coherent and in a fit state of mind to give statement.

7. How this incident occurred, who are responsible for it, their details, why it was happened and where it was happened and at what time it was happened?

A. My youngest brother-in-law poured kerosene on me the name of my youngest brother-in-law is Oleti Srinu, S/o.Sattiraju, Age 20 years, R/o.Samantakurru. Prior to incident the disputes went on but for the present occurrence/dispute my youngest brother-in-law alone is responsible. My husband is no way concerned with. In the morning of Saturday my youngest brother-in-law consuming alcohol and asked my eldest daughter to pour alcohol into glass for which is admonished him, Saturday at 04.00 p.m., in the evening when I returned to my home from my mother's house my youngest brother-in-law scuffled with me from 4 to 5 p.m. and scolded me, I asked him why he is scolding me then he said 'EMTI EKKUVA MAATLAADUTUNNAVU' then my mother-in-law said that 'TAPPURAA VADINANI AA VIDHAMUGAA MAATLAADARAADU' then he slapped on her cheek and also beat me later he said 'EEROJU NEEVAINA UNDALI

NENAINA UNDALI' and went outside and drunk alcohol. I am cooking food at hearth then my youngest brother-in-law poured kerosene on me as I was at hearth, flames came in contact with my saree I went on to the road then the neighbours gathered and controlled the flames, my youngest brother-in-law is responsible for this entire incident. That's it."

Therefore, from the evidence of PWs.1 and 2 and the dying declaration it would indicate that the kerosene fell on the vessel which was used for cooking and as a result of which flames engulfed the deceased. The evidence on record shows that after the incident, the accused made every effort to save the lives of both the injured. Learned counsel for the appellant relied upon the Judgment of the Bombay High Court in ***Sham Madhavrao Rupvate Vs. State of Maharashtra***, in support of her plea stating that the conviction can be altered in a case where the death was not due to burns but due to septicemia.

9. The Apex Court in ***Kaluram Vs. State of Rajasthan***¹ dealt with a situation where the accused poured kerosene on the deceased, set her on fire and later made efforts to extinguish the flames. The Court observed as under:

"The conduct cannot be seen divorced from the totality of the circumstances. Very probable he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. All that the accused thought of was to inflict burns to her and to frighten her but unfortunately the

¹ (2000) 10 SCC 324

situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore the offence has to be brought down from first degree murder to culpable homicide not amount to murder. Therefore, conviction is altered from Section 302 IPC to Section 304 Part II IPC”.

10. The situation on hand is much better than the judgment referred to above. As stated earlier, in the instant case, the accused never made any effort nor he set fire the deceased. He poured kerosene on the deceased which fell on the earthen vessel leading to deceased catching fire. Further, from the facts referred above, it can be said that the accused never intended to cause the death of the deceased. If really his intention was to cause death, he would not have made efforts to put off the flames.

11. Having regard to the above and the judgment of the Apex Court in ***Kaluram Vs. State of Rajasthan***, conviction shall be altered from Section 302 IPC to 304-II IPC.

12. In the result, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/accused in the judgment dated 04.02.2011 in S.C.No.340 of 2010 on the file of the II Additional Sessions Judge, East Godavari District, Amalapuram, for an offence punishable under Section 302 IPC are altered to one under Section 304-II IPC. For the altered conviction, the petitioner is sentenced to undergo 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, if not required in connection with any other case.

C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

11.06.2018

vhb

