

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL No.1285 of 2012

JUDGMENT : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

The present appeal is preferred against the judgment dated 7th September 2012, passed in Sessions Case No.771 of 2010 by the V-Additional District and Sessions Judge, Guntur, whereby, the appellant was found guilty for the offence under Section 302 of IPC and has been sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall suffer simple imprisonment for one month. The appellant was, however, acquitted of the charge under Section 201 of IPC.

2. The case of the prosecution, in brief, is that the appellant is a native of Prathur village of Tadepalli Mandal. The deceased was native of Ganginenipalem village of G.Konduru Mandal of Krishna District. About 11 years back, the first wife of the appellant by name Dhanalakshmi committed suicide due to some unknown reasons. Later, he married with the deceased. During the conjugal life, they were blessed with two sons aged about 9 and 6 years. After some time, the appellant got addicted to bad vices like consuming liquor. Having relinquished all his coolie works, he completely depended upon the earnings of his wife i.e. the deceased. He used to pick up quarrels with the deceased whenever he needed

money for consuming liquor. He also used to cause physical torture against the deceased whenever she refused to give money for his bad vices.

3. Further case of the prosecution is that about 15 days prior to the incident, the deceased had taken loan of Rs.10,000/- from Micro Finance Company in order to purchase a she-buffalo for their livelihood. On seeing the same, LW-7/Merimma requested her to give an amount of Rs.500/- as hand loan as she wanted to attend a function of their relations at Revendrapadu village. The deceased told her that she required sufficient money to purchase a she-buffalo and assured her that she would give the amount on the next day of Christmas festival i.e. on 26.12.2009 and asked LW-7 to come to her house to take the amount. When the deceased was making enquiries about the she-buffalo, the appellant started mental agony demanding to give him Rs.2,000/- for his expenses. Due to the unbearable torture, the deceased gave him Rs.2,000/- with a condition not to ask her money in future. But, in continuation of his bad vices, the appellant spent away the entire amount and re-started his cruel acts against the deceased for want of money.

4. While so, just a day before the occurrence, the mother of the appellant had been to her mother's village and on the morning of 26.12.2009, the sons of the deceased drove away their cattle into the

fields for grazing. On the afternoon of 26.12.2009 when the deceased was alone in the home, the appellant picked up a quarrel with her and demanded her to give him cash of Rs.100/-. In order to avoid the mental agony, the deceased gave him the amount. On the same day at about 3 p.m., the appellant returned home in a drunken state and once again picked up quarrel for want of further sum of Rs.100/-. In this connection, a struggle took place between them and the appellant assaulted the deceased indiscriminately. At the same time, LW-7 went to the house of the deceased to ask hand loan of Rs.500/- which was already requested by her and witnessed the appellant assaulting the deceased. On seeing her arrival, the appellant closed the kitchen doors and bolted from inside. Thinking that it was a routine dispute between the appellant and deceased, LW-7 left the place and went to her home. Thereafter, the appellant caught hold of the neck of the deceased, beat her indiscriminately, snatched Rs.100/- from her "*Pavita Chengu*" and throttled her to death. In order to screen the evidence of murder, the appellant poured kerosene over her body, set fire with a match stick and escaped from the house through the Western exit. LW-2/Dokuparthi Seemonu, who observed smoke coming out from the kitchen window of the house of appellant, came out from his house and raised alarm. Responding to the said alarm, PW-2 and LW-4/Guduru Janardhana Rao rushed to the spot. They tried to open the

doors of the kitchen, but in vain. PW-2 secured a crow-bar and broke opened the doors of the kitchen. They entered into the room and found the deceased lying dead in the bed room-cum-kitchen and her body was completely charred. Within few minutes, the appellant also rushed to the spot and acted like an innocent.

5. On receipt of telephonic message about the incident, LWs.1, 5 and 6 came to Prathuru village on the same day night and enquired regarding the death of the deceased. Having suspected the complicity of appellant, LW-1 went to the Police Station on 27.12.2009 at 4 p.m. and presented a report to that effect. LW-15 registered the same as a case in Crime No.378 of 2009 under Section 174 Cr.P.C., as suspicious death. He submitted the original FIR together with the report of LW-1 to the Tahsildar and Executive Magistrate, Tadepalli and submitted the copies of FIR to all officers concerned.

6. Thereafter, LW-16/Inspector of Police visited the scene of offence on the same day at 5 p.m., prepared rough sketch, seized the material objects under the cover of observation report and shifted the dead body to GGH, Guntur. On 28.12.2009, PW-8 held inquest over the corpse in the presence of LWs.9 to 11, examined them and recorded their detailed statements under Section 161 Cr.P.C. PW-6/Dr.G.B.Raja Kumar conducted autopsy over the dead body

and issued postmortem certificate opining that the deceased died due to asphyxia as a result of throttling. Basing upon the medical opinion, on 04.01.2010, LW-15/S.I. of Police altered the Section of law from Section 174 Cr.P.C. to Sections 302 and 201 of IPC and submitted the copies of FIR to all concerned.

7. On 11th January 2010 at 8.30 a.m., the appellant surrendered before PW-4 and admitted the offence committed by him. PW-4 recorded the extra-judicial confession of the appellant and produced him before LW-15/S.I. of Police at 10.30 a.m. LW-16/Inspector of Police went to Tadepalli P.S., interrogated the appellant in the presence of LWs.12 and 13, recorded the confession of appellant and arrested him.

8. On completion of investigation, LW-16/Inspector of Police laid charge sheet before the Special Judicial First Class Magistrate for Prohibition and Excise, Guntur and the same was numbered as P.R.C.No.37 of 2010.

9. Accordingly, the learned Magistrate, as per Section 207 Cr.P.C., committed P.R.C.No.37 of 2010 to the Court of Sessions, Guntur Division since the offences are exclusively triable by the Court of Sessions. Later, it was numbered as Sessions Case No.771 of 2010 and was made over to the Court of V-Additional District

and Sessions Judge (FTC), Guntur, for disposal in accordance with law.

10. The appellant was charged for the offences under Sections 302 and 201 of IPC, for which, he pleaded not guilty and claimed to be tried.

11. To prove its case, the Prosecution examined PWs.1 to 8, got marked Exs.P-1 to P-13 and M.Os.1 to 6. On closure of prosecution evidence, the appellant was examined under Section 313 Cr.P.C. He denied the incriminating material appearing against him. He got examined DW-1 on his behalf, but no documents were marked.

12. Considering the oral and documentary evidence on record and perusing the statement of the appellant recorded under Section 313 Cr.P.C., the learned trial Court has convicted and sentenced the appellant as mentioned above. Hence, the present appeal.

13. Learned counsel appearing on behalf of appellant submits that the incident had taken place on 26.12.2009 at 15.00 hours, but intimation to the Police Station concerned, which is 4 km away from the place of offence, was given on 27.12.2009 at 14.00 hours. Thus, there was delay of one day in lodging report to the Police, which was not explained by the Prosecution. It is further argued that the appellant was present for all two days with the Police, but the Police did not arrest him. It shows that the appellant has not committed

any offence, but the deceased herself poured kerosene lit herself on fire due to some other reason. Therefore, the appellant is not responsible for the death of the deceased. Learned counsel for appellant further argued that PW-4/VRO, who has recorded the alleged extra-judicial confession of the appellant, is none other than the henchman of Police. He acted as mediator in many other reports at the Police Station. Therefore, the evidence of PW-4 was wrongly relied upon by the trial Court.

14. It is further argued by the learned counsel for appellant that there is no eyewitness to the incident. Merely basing on the circumstantial evidence, a false case was foisted against the appellant. LW-7/Merimma is the main material witness, who witnessed the altercation between the appellant and deceased, but she was given up by the Prosecution for the reasons best known to them. In fact, on 26.09.2012, nobody was present at the house of the appellant, except his son. As per the directions of the deceased, the son of the appellant was curing the newly constructed walls with water in the opposite house of the appellant and he was examined as DW-1. The son of the appellant, in his evidence as DW-1, stated that the appellant went to coolie work on that day and deceased alone was present at home. Therefore, it is argued that the prosecution has foisted a false case against the appellant and that the entire Police investigation was table-made one. The prosecution

also failed to establish that the appellant was a habitual drunkard. The appellant was with clean record and no criminal case was registered against him.

15. The learned counsel for appellant further argued that the incident had taken place in the kitchen, which was bolted from inside, as evident from the deposition of PW-2, who stated that he broke-opened the doors of the kitchen with the help of a crow-bar and by that time, the deceased was in flames. Learned counsel submitted that if the kitchen was locked from inside, then there was no occasion for the appellant to pour kerosene and put fire on the body of the deceased. But, the aforesaid circumstances have been ignored by the trial Court. Accordingly, the present appeal deserves to be allowed.

16. On the other hand, learned Public Prosecutor appearing on behalf of State argued that the learned trial Court, after considering the evidence on record, has rightly convicted the appellant. He submitted that on receiving information about the incident, PW-1 went to the place of occurrence. Thereafter, the villagers insisted him to settle the matter. But, on the very next day, he reported the matter to the Police. Thus, there is no delay in getting the FIR registered in the present case. Moreover, as per Ex.P-12/rough sketch, there are three doors in the house of the appellant. The

appellant first killed the deceased, thereafter poured kerosene oil and lit fire just to show that the deceased has committed suicide and thereafter left the house from the other door. Since smoke was coming from the kitchen portion side and there is admittedly door in the kitchen which was bolted from inside, it was opened forcibly with a crow-bar by PW-2. Thus, there is no merit in the present appeal and the same is liable to be dismissed.

17. PW-1/Mother of the deceased gave complaint Ex.P-1 on 27.12.2009 at Tadepalli Police Station. She deposed that the deceased/Rani was her 3rd daughter. She was given to the appellant in marriage as his 2nd wife. The appellant's 1st wife by name Dhanalakshmi committed suicide due to some unknown reasons. The appellant narrated that his 1st wife committed suicide due to stomachache. Believing his version, she gave deceased to the appellant in 2nd marriage. The appellant and deceased lived happily for about 10 years and were blessed with two children. After some time, the appellant addicted to bad vices like consuming liquor and relinquished all his coolie works. He was fully dependant on the earnings of deceased and used to pick up quarrels with her whenever he needed money. On 26.12.2009, she received phone call from the village of the appellant at about 8 p.m. Upon that, herself, PW-3 and others rushed to the said village by 10.30 p.m. By that time, the deceased died and was kept on the ground.

18. Ex.P-1/report reveals that the elders on appellant side advised PW-1 to settle the land and house property in the name of the children of deceased and asked them not to lodge Police report. But, said proposal was not accepted and she gave complaint on 27.12.2009.

19. Though PW-2, who is the neighbour of the deceased, turned hostile, his evidence cannot be brushed aside as a whole. He deposed that he knows the deceased and used to call her as sister as she is his neighbour. On 26.12.2009 at about 3 p.m., there was a smoke coming from the house of the deceased. Immediately, he rushed to her house and broke-opened the door with the help of a crow-bar. By that time, the deceased died due to flames. Then, he immediately called LW-2/Seemonu, LW-4/Janardhan Rao, LW-7/Merimma and some others. This portion of the evidence of this witness corroborates the deposition of PW-1. He also deposed that when they came to the spot, flames were coming and with the help of a crow-bar, the door of the kitchen was broken.

20. The confession statement of appellant/Ex.P-6 recorded by PW-4/VRO discloses that the appellant was completely depending upon the earnings of the deceased. He was addicted to alcohol and used to harass the deceased for money. About 15 days prior to the incident, the deceased availed Rs.10,000/- loan from the Micro

Finance Company for the purpose of purchasing a she-buffalo. The appellant harassed the deceased asking an amount of Rs.2,000/-. The deceased gave Rs.2,000/- and the remaining Rs.8,000/- was kept with her for the purpose of purchasing the she-buffalo. On the date of incident at about 12 Noon, the mother of appellant went to her patents' house and the appellant sent his children to the fields for grazing the cattle. He demanded Rs.100/- from his wife and she gave him. He again came back at about 3 p.m. and demanded another Rs.100/-, but she refused. Then, he assaulted her indiscriminately. At that time, LW-7/Merimma came and went away seeing their dispute. The appellant snatched Rs.100/- from the deceased's "*Pavita Chengu*" and thereafter throttled her to death. In order to screen the evidence of murder, he himself poured kerosene over her body, set fire with a match stick and escaped from the house through the Western exit. Thereafter, within few minutes, when neighbours gathered, he came to the spot and acted as an innocent, but he actually killed the deceased.

21. Thus, Ex.P-6 clearly discloses that the appellant made extra-judicial confession before PW-4, who recorded such statement, and thereafter, the appellant was produced before PWs.7 and 8 at Tadepalli Police Station along with cover note as in Ex.P-7. Accordingly, the evidence of PW-4 corroborates with the evidence

of PWs.7 and 8, which is further supported by Exs.P-6 and P-7 that the appellant killed the deceased, but acted as an innocent.

22. In addition to above, the evidence of PW-2, who is neighbour to the scene of offence, clearly established that on observing that smoke was coming from the house of the deceased, he rushed to the house and observed that smoke was coming out from the kitchen window. Accordingly, he raised alarm, upon which, neighbours rushed to the spot and they tried to open the doors. However, the kitchen door was bolted from inside. Then PW-2 secured crow-bar and broke opened the doors of the kitchen, entered into the room and found that the deceased was lying in bed-cum-kitchen room and her body was completely charred. Within few minutes, the appellant also came to the spot and acted as an innocent.

23. It is pertinent to mention here that if the deceased poured kerosene on herself and set fire, then certainly she would raise cries loudly. But, she did not raise her voice. DW-1, who is the son of the 1st wife of the appellant, deposed in support of the appellant that deceased alone was present in the house, as at that time, the appellant went to coolie work. But, if really the appellant went to coolie work, it is not known as to how he came to the house within few minutes after the incident. It shows that the appellant killed the deceased by throttling, thereafter poured kerosene and set fire.

Then, he closed the kitchen door from inside and went through the Western exit.

24. In addition to above, DW-1, in his cross-examination, admitted that the appellant was at home till 2.30 p.m. The incident, as noticed by PWs.1, 2 and neighbours, took place at 3 p.m. Thus, the appellant was very much present at home at the time of incident. Thus, it is clear that none else but the appellant alone committed the murder of his wife by throttling her. Thereafter, he poured kerosene and set fire, giving an impression that she herself committed suicide.

25. PW-6/the Doctor who conducted postmortem examination on the dead body, deposed that 75% dermo epidermal postmortem burns were present all over the body, except on back of chest and abdomen, 8% postmortem deep burns were present over the outer aspect of left side of chest and abdomen and 7% postmortem deep burns were present over outer aspect of right side of chest and abdomen with peeling-off skin here and there all over the body. He also found external injuries. Except injury No.1, all other injuries were ante-mortem in nature. The cause of death was due to Asphyxia as a result of throttling. Accordingly, he issued Ex.P-9/ Postmortem report. PW-6 has clearly deposed that it is not possible to bear this much of burn injuries without screaming. Thus, the evidence of PW-6 is corroborated with the circumstantial evidence

that the appellant killed the deceased by throttling and he himself poured kerosene and set fire with a match stick, closed all the doors of the house and went out through the Western exit.

26. From the above discussion, it is established that the appellant was at home at 2.30 p.m. on 26.12.2009 and the incident was noticed by PWs.1 and 2 and neighbours at 3 p.m. This fact has been corroborated by the deposition of DW-1, as he deposed that the appellant was at home upto 2.30 p.m. As per the postmortem report as discussed above, the death was due to Asphyxia due to throttling and other injuries were postmortem in nature. Therefore, the learned trial Court has given benefit of doubt to the appellant and acquitted him from the charge under Section 201 of IPC.

27. Considering the entire evidence and the material on record, we are of the considered opinion that the learned trial Court has rightly convicted the appellant for the offence under Section 302 of IPC.

28. Finding no merit in the present appeal, the same is accordingly dismissed.

29. Since the appellant is on bail pursuant to order dated 12th March 2018, he is directed to surrender before the V Additional District and Sessions Judge (Fast Track Court), Guntur within one week from the date of receipt of a copy of this judgment for

undergoing the remaining period of sentence, failing which, the trial Court shall take steps against the appellant as per law.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

T.AMARNATH GOUD, J

18th September, 2018

ajr

