

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CRL.A.NO. 85 of 2013

JUDGMENT: (Per Hon'ble Mr. Justice C. Praveen Kumar)

1. Assailing the judgment dated 12.5.2010 passed by the Additional Metropolitan Sessions Judge, Cyberabad in S.C.No. 32 of 2007 wherein the accused was convicted of the offence punishable under Section 302 IPC and sentenced to undergo life and pay a fine of Rs.500/- in default to suffer simple imprisonment for three months, the present appeal came to be filed through legal aid.

2. The substance of the charge against the accused is that on 26.8.2006 at about 8.00 P.M. at Sheriguda village the accused intentionally caused the death of K. Mariamma by sprinkling kerosene on her body and lit fire to her with a matchstick.

3. The brief facts of the case are as under,

The accused is the husband of the deceased. P.W.5 is the father of the deceased. PWs 1 and 12 are their sons. P.W.2 is the brother of P.W.5. PWs 3 and 4 are residents of Sheriguda village. The marriage of the accused with the deceased took place about 12 years prior to the date of incident at Dayyala Ravur in Ongole district. The accused who was working as a mason at Ibrahimpatnam suspected the fidelity of his wife and started harassing her. The same was informed to P.W.2 and others by the deceased. On coming to know about the same, P.W.5 brought his daughter (deceased) to his house and while she was

staying with him, the accused came and took the deceased along with him promising to look after her well, but there was no change in the his attitude and he continued to harass his wife, suspecting her character.

4. On the date of incident, while P.W.1, P.W.12 and the deceased were present in their house, the accused came home in a drunken condition, poured kerosene over the deceased and set her on fire with a match stick. When the deceased tried to approach P.W.1, he is said to have ran away. On hearing the cries of the deceased, the neighbours came and took the deceased to the hospital. On 26.8.2006 at 10.00 P.M. P.W.11-Head Constable, Ibrahimpatnam received information about the admission of the injured in the hospital. Immediately he proceeded to the Government Hospital, Ibrahimpatnam, identified the injured and then recorded her statement. Ex.P10 is the statement of the deceased. He obtained her right leg toe impression on the statement as her both hands were found burnt. As per the evidence of P.W.11, the deceased is said to have stated that her husband Samson questioned her as to why she came late in the night, alleging that she had illicit intimacy with others, he beat her, poured kerosene and set fire to her. On the very same day at 11.00 P.M. P.W.11 produced the statement of the injured before P.W.14, the then Sub-Inspector of Police, Ibrahimpatnam, basing on which a case in Cr.No. 205 of 2006 came to be registered under Section 307 IPC. Ex.P13 is the original FIR. P.W.14 took up investigation, examined PWs 1, 4 and 12 and

recorded their statements. He visited the scene of offence and in the presence of P.Ws. 7 and 9, conducted panchanama of scene of offence and prepared a rough sketch which are marked as Exs.P14 and 15 respectively. He also seized M.O.1-kerosene tin, M.O.2-mug, M.O.3-match box and M.O.4-burnt pieces of cloth from the scene of offence. On 27.8.2006, he received death intimation of the deceased from Osmania General Hospital, Hyderabad. Pursuant to that, he filed a memo altering the section of law from 307 IPC to 302 IPC. Ex.P16 is the said alteration memo. T. Bapuji Rao, Sub-Inspector of Police (who is no more) proceeded to the hospital and conducted inquest over the dead body of the deceased. During the inquest proceedings, he examined P.Ws 2, 3, 5 and 6 and others and recorded their statements. Ex.P3 is the inquest report. On 30.8.2006 P.W.15, the then Circle Inspector of Police, Ibrahimpatnam arrested the accused and recorded his confessional statement in the presence of PWs 8 and 10. After obtaining all the necessary documents and on completion of investigation, he filed the charge sheet.

5. The case was taken on file as PRC No. 32 of 2006 on the file of the IV-Metropolitan Magistrate, Cyberabad at Ibrahimpatnam. On appearance of the accused, copies of documents as required under Section 207 Cr.P.C. were furnished to the accused. Thereafter the matter was committed to the Court of Sessions for trial. Basing on the material available on record, a charge under Section 302 IPC came to be framed, read over and explained to the accused, to which he denied

and pleaded not guilty. In support of its case, the prosecution examined 15 witnesses and got marked Ex.P1 to P17. Out of 15 witnesses examined by the prosecution, PWs 3, 4, 7, 8, 9, 10 and 12 did not support the prosecution and were declared as hostile. After concluding the evidence of prosecution, the incriminating material appearing against the accused was put to him during examination under Section 313 Cr.P.C. to which he denied. After considering the oral evidence of P.W.1, coupled with the dying declaration recorded by P.W.11, the Head Constable, the trial Court found the accused guilty of the offence under Section 302 IPC. Aggrieved by the said conviction and sentence, the present appeal came to be filed through legal aid.

6. Learned counsel for the accused/appellant would submit that there is any amount of doubt as to whether the deceased has really made the statement before the Head Constable, which was treated as her dying declaration. According to him, when both the hands of the deceased were completely burnt, the question of putting her toe impression would not arise. Apart from that, he submits that no reasons, whatsoever are forthcoming from the prosecution, as to why they failed to get the dying declaration of the deceased recorded by a Magistrate, though there is a court at Ibrahimpatnma. In view of this, he submits that a doubt arises as to the genuinity of the statement recorded by P.W.11.

7. On the other hand, learned Public Prosecutor would contend that there is no rule to say that the dying declaration recorded by Head Constable cannot be accepted, if the same inspires the confidence in the mind of the Court. In the absence of any motive to implicate in the case, he pleads that the same can be accepted to base a conviction.

8. The point for consideration is,

Whether the accused is responsible for the murder of the deceased?

9. As seen from the record, the prosecution pressed into service the evidence of P.Ws. 1 and 5 and the dying declaration recorded by P.W.11, the Head Constable to connect the accused with the commission of offence. It is to be noted here that the incident in question took place on 26.8.2006 at about 8.00 P.M. at Sheriguda village. Immediately thereafter she was taken to the hospital and was alive till next day morning. Strangely no steps were taken by the police to get her dying declaration recorded through Magistrate. As stated earlier, P.W.11, after receipt of intimation, proceeded to the hospital and recorded the statement of the injured. Though the said statement was recorded in the hospital, no endorsement of the doctor was obtained on the said statement. Things would have been different, had the endorsement of the doctor been obtained with regard to the mental fitness of the deceased on the said statement. Apart from that, it is also to be noted that the evidence of P.W.11 discloses that after recording the statement of the deceased, he took the toe impression of

the deceased at the bottom of the dying declaration. P.W.13, the post-mortem doctor in his evidence deposed as under,

“The body of the deceased Mariyamma was burnt in its entirety. As she suffered 100% burns, there is no possibility to obtain either thumb impressions or foot impressions.”

10. From the admission made by the post-mortem doctor, it is clear that when the entire body of the deceased was burnt including her thumb and foot, the possibility of taking her foot impression on the dying declaration throw some suspicion on the said statement. Since the endorsement of the doctor who treated the injured was not obtained and there is any amount of doubt, in taking the toe impression of the deceased when the whole body was burnt, we feel that the dying declaration of the deceased cannot be made the basis to convict the accused, as the same appears to be doubtful.

11. One other circumstance on which the prosecution tried to rely upon is the evidence of PWs 1 and 12 who were examined as eye-witnesses to the incident. P.W.12 was declared as hostile. In his evidence he states that his mother asked him and P.W.1 to go and bring a match box from shop and by the time they returned home with a match box, she doused herself with kerosene and set fire to herself. At the time of the incident, his father was sleeping outside. Since the witness resiled from his earlier statement, the prosecution declared him as hostile.

12. Coming to the evidence of P.W.1, he is a child witness, aged about 9 years at the time of his giving evidence. His evidence is as follows,

“My name is Vijay. The deceased Mariyamma was my mother. Anil (List witness No.2) is my elder brother. The accused standing in the box is my father. At the time of occurrence, we stayed at Hyderabad. My father used to work as a mason. At the time of incident, myself, my elder brother Anil, my mother Mariyamma and my father were present. The offence took place in the evening. My father having come home drunk poured kerosene on my mother and set fire to her with a match stick. Then, my mother tried to approach me. Then, I ran away. The neighbours came into the house and took my mother to the hospital. My brother Anil was also present at the time of incident. My mother died on the next day. Later, we did not stay at Hyderabad. We are now staying with Anjaiah, who is my maternal grandfather. B. Rama Rao is also my grandfather. My brother Anil is presently staying with my aunt.”

13. However, in the cross-examination he states that at that time, all of them including his parents lived there happily and that his father used to look after them well. On the date of incident, his father came drunk, poured kerosene on his mother and set her on fire. He further states that he does not know what happened on that day and that they were asked by his father to bring eatables and chocolates and by the time they returned, they found his mother in flames. He clearly states that at the time of incident his father sent him out to bring eatables and

chocolates and by the time they returned, his mother was found in flames. A close perusal of his evidence shows that he was referring to himself and P.W.12 being sent out to get eatables and chocolates and both of them found their mother in flames by the time they returned back. From the evidence of this witness, it does not establish by doubt that he had actually seen the incident. His evidence further discloses that the entire family was living very happily at the time of incident.

14. The evidence of P.W.2 may not be of any help to the prosecution as admittedly he has not seen the incident. His source of information regarding the incident, is the telephonic information passed on to him by the sister and brother-in-law of the accused who again are not the eye-witnesses to the incident.

15. In view of the findings given above viz., that there is any amount of doubt with regard to the deceased giving her statement to P.W.11 and that the evidence of PWs 1 and 12 who on their own showing were away from the house at the time of incident, we feel that the evidence adduced by the prosecution is not sufficient to base a conviction.

16. Accordingly the appeal is allowed setting aside the conviction and sentence passed by the Addl. Metropolitan Sessions Judge, Cyberabad, NTR Nagar, Hyderabad against the accused/appellant in Sessions Case No. 32 of 2007. The accused is acquitted of the offence under Section 302 IPC and he shall be released forthwith from custody, if not required in any other case. The fine amount of Rs.500/-

, if paid, shall be refunded to him. The material objects are ordered to be destroyed as per the direction of the trial Court.

Dt. 23.1.2018
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C.PRAVEEN KUMAR, J

J. UMA DEVI, J

