

The Hon'ble Sri Justice C.V.Nagarjuna Reddy
and
The Hon'ble Sri Justice Gudiseva Shyam Prasad
Crl.A.No.643 of 2011

Date: 27.02.2018

Between:

Kommerla Anjaneyulu

...

Appellant

And

The State of Andhra Pradesh
Rep. by its P.P.,
High Court of A.P.,
Hyderabad

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Respondent

Counsel for the Appellant : Sri.D.Kodanda Rami Reddy

Counsel for the Respondent: Public Prosecutor (AP)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice Gudiseva Shyam Prasad)

Accused No.1 in Sessions Case No.119 of 2007 on the file of the learned I Additional Sessions Judge, Kadapa, filed this Appeal against Judgment, dated 18.05.2011, convicting him for the offence punishable under Section 302 I.P.C. and sentencing him to undergo Rigorous Imprisonment for life and also to pay a fine of Rs.5,000/-, and in default, to undergo Simple Imprisonment for a period of three months.

The brief facts of the case of the Prosecution are that, appellant/accused No.1 was the husband of the deceased Smt.Kommer Padmavathi, having married her 13 years prior to the date of the incident. They have two daughters and one son. Right from the date of their marriage, the appellant used to harass the deceased mentally and physically demanding money from her parents and accused No.2, who is the mother of the appellant, used to instigate him in that regard. On 11.06.2005, the deceased along with her parents approached the Police at Thondur Police Station. On 12-06-2005, LW.19- Head constable, Thondur Police Station, called the appellant and his parents and counselled them in the

presence of their village elders (LW.9- Thugutla Ramachandra Reddy, PW.10- Devireddi Vijayabhaskara Reddy, PW.11- Mekala Chandramouleeswara Reddy, and PW.4). During the said counselling, the appellant admitted his cruelty and harassment towards the deceased and agreed to stop consuming alcohol and behave properly with the deceased. Thereafter, for a period of two months, the appellant looked after the deceased properly and the parents of the deceased helped the appellant to purchase a tractor. Later, the appellant again started consuming alcohol and harassing the deceased demanding money from her parents. About three months prior to the date of the incident, as the deceased was suffering from severe gynec disorder, she went to her parents' house. Her parents admitted her in Sona Mona Hospital, Pulivendula, where she has undergone surgery. After surgery, the deceased went to her parents' house for taking rest. On 26-08-2006, on the appellant making a phone call to the deceased to come to Pulivendula, the deceased along with the children came to Pulivendula and joined him. On 27-08-2016 at about 5.15 p.m., the appellant found the deceased alone in the house. He abused her and asked her to die herself or otherwise he would kill

her. By saying so, he poured kerosene on her body, bolted the door from inside, set fire to her and went out of the house. On hearing her cries, the neighbours- LW.5- Smt.Gogula Ramasubbamma and others rushed and put off the fire by covering beds on her person. Initially, she was taken to a private nursing home belonging to LW.13- Dr.S.Pulla Reddy, but, after the arrival of her parents and other relatives, she was shifted to the Government Area Hospital, Pulivendula, for better treatment. The deceased made her dying declaration both to the Medical Officer and the Sub-Inspector of Police, Pulivendula, and succumbed to the burn injuries on 28.08.2006 at 4.40 a.m. As the Judicial First Class Magistrate, Pulivendula, and the Mandal Executive Magistrate, Pulivendula, were out of the Headquarters, no separate dying declaration was recorded.

Based on the statement of the deceased, PW.7- Sub-Inspector of Police, Pulivendula Police Station, initially registered a case in Crime No.120 of 2006 under Sections 498-A and 307 IPC and proceeded with the investigation. After receipt of the death intimation, the Section of Law was altered to Sections 302 and 498-A IPC.

During the course of investigation, on 02-09-2006, the appellant and his mother were arrested and sent for remand. While the appellant/accused No.1 was lodged in the Central Prison, Kadapa, accused No.2 was released on bail.

PW.5- Civil Assistant Surgeon, who conducted autopsy over the deadbody of the deceased, opined that the deceased would appear to have died of burns shock.

As the plea of the appellant and accused No.2 was one of denial, they were made to stand the trial. In support of its case, the Prosecution examined P.Ws.1 to 9 and got marked Exs.P-1 to P-15, apart from marking MOs.1 to 3. On behalf of the defence, EXs.D.1 and D.2 were marked.

Based on the oral and documentary evidence, the Court below has convicted the appellant and sentenced him in the manner as noted hereinbefore.

The point for consideration in this case is,

“Whether the Prosecution proved the guilt of the accused beyond reasonable doubt for the offence punishable under Section 302 IPC ?”

Heard the learned Counsel for the appellant and the learned Public Prosecutor.

The learned Counsel for the appellant submitted that Ex.P.4- Dying Declaration was not recorded either by the Judicial First Class Magistrate or the Executive Magistrate; that the same was recorded by PW.7- Sub-Inspector of Police; that Ex.P.4 does not contain the endorsement of the Medical Officer concerned to the effect that the deceased was conscious at the time of recording the statement; and that PW.5- Civil Assistant Surgeon, who has treated the deceased, has deposed in his cross-examination that he was not present throughout the recording of the statement.

While pleading for acquittal of the appellant on the above grounds, the learned Counsel has taken an alternative plea that the appellant was in an inebriated condition at the time of the alleged incident and that the said fact has been spoken by the deceased herself in Ex.P.4- Dying Declaration recorded by PW.7- Sub-Inspector of Police and also by PW.1 in his evidence. Therefore, the learned Counsel has requested to take a lenient view and convert the conviction of the appellant from the one under Section 302 IPC to that under Section 304 Part II IPC.

The learned Public Prosecutor submitted that this case is based on circumstantial evidence; that the Prosecution has proved the guilt of the appellant beyond reasonable doubt; that the trial Court has rightly convicted the appellant for the offence under Section 302 IPC; and that therefore, the Judgment under Appeal does not require any interference.

It is clear from the evidence on record that as the Magistrate and the Executive Magistrate were not available, PW.7- Sub-Inspector of Police has recorded the dying declaration of the deceased. The same can be relied upon if it does not suffer from any infirmities such as tutoring or exaggerations.

PW.5- Civil Assistant Surgeon, who has examined the deceased on 27.08.2006 at 5.15 p.m., stated that when the deceased was admitted in the Hospital with burn injuries, he was informed that she received burn injuries in homicidal act by her husband at 5.30 p.m., near the house.

No doubt, the learned Counsel for the appellant has placed reliance on the cross-examination of PW.5 wherein he has admitted that he was not present during the recording of

Ex.P.4 by PW.7. A perusal of Ex.P.4 would reveal that there is an endorsement made by PW.5 on Page 2 of the statement that the patient was conscious while recording the statement. PW.5, during his cross-examination, has denied the suggestion that the patient was unconscious at the time of her admission and till her death. This statement would clearly show that the patient was conscious throughout till her death.

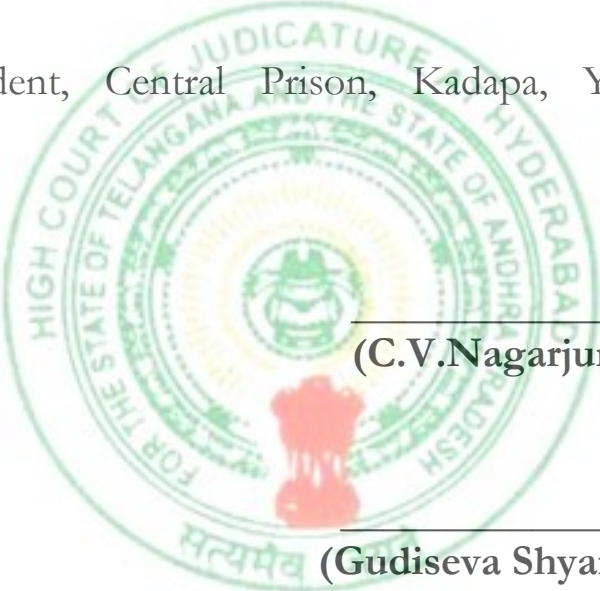
Ex.P.4- Dying Declaration coupled with the surrounding circumstances would clinchingly prove the case of the Prosecution. The testimony of other witnesses and the conduct of the appellant would clearly prove that he was not innocent and that he was involved in the commission of offence. It is not the case of the defence that the appellant was not present. The evidence on record would clearly show that the appellant was present in the house when the occurrence has taken place and in fact, he also received certain injuries, which he failed to explain. The accused failed to put out the flames and rescue the deceased by taking her to hospital. There is no material on record to show that he tried to save her from the incident. There is no

explanation coming from him as to how she received the injuries. Though he was present at the time of the incident, he is not coming with any reason as to how she caught fire. On the other hand, Ex.P.4- dying declaration clearly reveals that the appellant poured kerosene and set fire to her. MO.1- green colour plastic kerosene can and MO.2- match box were recovered from the scene which, however, support the case of the Prosecution. The appellant has also not accompanied the deceased to the hospital and tried to save the life of the deceased and he has not lodged any complaint at all. Moreover, after the incident he absconded. This conduct of the appellant would clearly reveal that he has committed the offence.

As regards the submission of the learned Counsel for the appellant, PW.1 spoke about the accused being in inebriated condition. In our opinion, that by itself would not constitute an extenuating or mitigating circumstance to set aside the conviction of the appellant.

Having regard to the facts and circumstances of the case, there are no valid grounds to interfere with the judgment of the trial Court in convicting the appellant.

In the result, the Appeal is dismissed. The conviction and sentence recorded against the appellant/accused No.1 for the offence punishable under Section 302 IPC in Judgment, dated 18-05-2011, in Sessions Case No.119 of 2007 on the file of the learned I Additional Sessions Judge, Kadapa, are hereby confirmed. The bail bonds of the appellant/accused No.1 shall stand cancelled and the appellant/accused No.1 shall forthwith surrender before the Superintendent, Central Prison, Kadapa, YSR Kadapa District.



(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Date: 27th February, 2018
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