

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

CRIMINAL APPEAL No.39 of 2013

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

1) Accused Nos.1 and 2 in Sessions Case No.399 of 2010 on the file of the I Additional Sessions Judge, Kurnool, are the appellants herein. They were tried for the offences punishable under Sections 498-A and 302 read with 34 IPC for harassing one Shaik Rahena (hereinafter referred to as "the deceased") and thereafter killed her on 28.06.2010 at Mittakandala village by setting her on fire. Vide judgment dated 21.12.2012, the learned Additional Sessions Judge, Kurnool, convicted both the accused under Section 498-A IPC and sentenced them to suffer rigorous imprisonment for three years each and to pay fine of Rs.2,000/- each, in default, to suffer simple imprisonment for a period of six months each. Accused No.1 was further found guilty for the offence punishable under Section 302 IPC and was sentenced to under "imprisonment for life" and to pay a fine of Rs.3,000/-, in default to suffer simple imprisonment for one year. The sentences of accused No.1 were directed to run concurrently.

2) The facts as disclosed in the evidence of the prosecution witnesses are as under:

i) Accused No.1 is the mother-in-law of the deceased while accused No.2 is the husband of the deceased. PWs.1 and 8 are

sisters of the deceased while PW.2 is the brother of the deceased. The marriage between accused No.2 and deceased took place about four years prior to the date of incident. Out of wedlock they blessed with a son and daughter. Both of them lived happily for a period of one year at Kurnool. Later disputes arose when the deceased came to know about accused No.1 having illicit intimacy with a person. The same was also informed to accused No.2, but nothing happened, on the other hand, it is said that the accused tried to cut the throat of the deceased. As accused No.1 was contemplating to perform the marriage of accused No.2 again, mediation took place, in which PW.9 and one Rajasekhar Reddy were acted as elders. During mediation the accused promised to look after the deceased well and due to floods in Kurnool during that time, the accused and deceased returned to Mittakandala village. It is said that even in Mittakandala village, there was no change in the attitude of the accused towards the deceased. At the said place the accused were running a hotel. It is said that accused No.2 used to ask his wife to work in the hotel, to which the deceased was not accepting on the ground that it is a small village and people in drunken condition would be visiting the said hotel. As the accused was beating the deceased, PW.8 took the deceased back to Velgode village. At Velgode the deceased gave birth to a female child. Though they informed about the birth of the child, none of the accused visited Velgode to see the new born baby. Mediation took place again in the presence of Rajasekhar Reddy and others. Pursuant to which the deceased was taken back

to Mittakandala village. Three days thereafter, the villagers of Mittakandala village, informed PW.8 that Rehana (deceased) sustained burn injuries and she was taken to Government Hospital, Atmakur. Immediately, PWs.1, 2, 8 and others proceeded to Government Hospital, Atmakur and saw the injured with burn injuries. This incident is said to have happened on 28.06.2010. On the same day at about 2.15 p.m. while PW.17-the Sub-Inspector of Police, was in the police station, he received a phone call from Government Hospital, Atmakur, stating that a lady was admitted in the hospital with burn injuries. Simultaneously information about the admission of the injured in the hospital was also sent to PW.18-the Judicial Magistrate of First Class, Sathupally. Ex.P18 is the requisition. On receipt of the said intimation, PW.18 immediately proceeded to the hospital, identified the declarant, put some questions to declarant and on being satisfied with the mental condition of the injured, recorded the statement of the deceased. Ex.P19 is the dying declaration. Ex.P20 is the endorsement made by the doctor on Ex.P19. PW.17-the Sub-Inspector of Police also visited the hospital, noticed the Magistrate recording the dying declaration. After completing the proceedings of the Magistrate, PW.17 also recorded the statement of the injured in the presence of the duty doctor. As the entire body was burnt, he took the left toe impression of the deceased on the said statement. Ex.P12 is the statement of Rehana recorded by PW.17 in the presence of Dr.Govindarajulu (PW.20). Thereafter, the injured was referred to Government General Hospital, Kurnool, for better treatment.

Basing on Ex.P12, PW.17 registered a case in Crime No.31 of 2010 for the offences punishable under Sections 498-A and 307 read with 34 IPC. Ex.P14 is the first information report. Thereafter, he proceeded to Government General Hospital, Kurnool and recorded the statement of the injured under Section 161 Cr.P.C. and also recorded the statements of PWs.1 and 2 and then proceeded to the scene of offence which is situated in Mittakandala village, which consists of two rooms, one room is filled with food grains and in other room he noticed a plastic can emanating smell of kerosene and also burnt pieces of cloth. In the presence of PWs.10 and 11, he seized plastic can (M.O.1) and also recorded the statements of PWs.3 to 6. On 29.07.2010 at about 2.00 p.m., he received the death intimation of the injured from Government General Hospital, Kurnool. Ex.P15 is the death intimation. On receipt of Ex.P15, he altered the section of law to one under Sections 498-A and 302 read with 34 IPC. Ex.P.16 is the altered first information report.

ii) The Inspector, who succeeded PW.17, sent a requisition to the Mandal Executive Magistrate, to conduct inquest over the dead body of the deceased, as the deceased died within seven years of the marriage. PW.16-the Mandal Executive Magistrate conducted inquest over the dead body of the deceased in the presence of PWs.12 and 13. Ex.P9 is the inquest report. During inquest, investigating agency recorded the statements of the family members and neighbours of the deceased. Thereafter, the body was sent for postmortem examination.

iii) PW.19-the Assistant Professor, Department of Forensic Medicine, Government Medical College, Kurnool, conducted autopsy over the dead body of the deceased and issued Ex.P21-the postmortem certificate. According to him, the cause of death was due to shock resulting from burns. On 30.06.2010, both the accused were arrested. After collecting all the material, a charge sheet came to be filed before the Judicial Magistrate of First Class, Atmakur, who inturn committed the case to the Sessions Division under Section 209 of Cr.P.C., wherein it came to be numbered as S.C.No.399 of 2010.

3) On appearance, charges under Sections 498-A and 302 read with 34 IPC came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) To substantiate its case, the prosecution examined PWs.1 to 20 and got marked Exs.P1 to P21 and MOs.1 and 2. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. Neither oral nor documentary evidence was adduced on behalf of the accused.

5) Out of 20 witnesses, PWs.3 to 7 and 10 to 15 did not support the case of the prosecution and they were treated hostile by the prosecution. Believing the dying declarations of the deceased, the Sessions Judge convicted the accused for the

offences in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) Learned counsel for the appellants would contend that the evidence on record clearly indicates that the dying declaration is an outcome of tutoring. According to her, when the oral evidence established that accused No.2 was not present in the house at the time of the incident, it is strange as to how the deceased stated that accused No.1 poured kerosene and set her on fire at the instance of accused No.2. In other words, the question of accused No.2 instigating accused No.1 to commit the offence would not arise when he was not present in the house at the time of the alleged incident. She would further contend that there is any amount of doubt as to who recorded the statement of the deceased at the earliest point of time. In view of the discrepancy in the evidence as to whether it was the police or magistrate, who recorded the statement first, she would contend that no credence can be given to the said dying declarations. It is further stated that the intimation about the admission which is placed on record as Ex.P15 clearly show that one Muneeruddin brought the deceased to the hospital and his version as to how the deceased sustained injuries totally falsifies the case of the prosecution. According to her, no effort was made by the prosecution as to who is the said Muneeruddin. Though in Ex.P15, it is stated that Muneeruddin is the father of the deceased, but no investigation is conducted to show that the said information furnished is false. It is said that PW.9 in her evidence states that the deceased has no parents, but

the same is not supported by the evidence of other witnesses. It is further pleaded that if really the accused were assailants, nothing prevented the police to arrest accused No.1, who was present in the hospital and who brought the injured to the hospital. Having regard to the above, she would contend that the accused are entitled for benefit of doubt.

7) On the other hand, the learned Public Prosecutor would contend that the fact as to whether it was Magistrate or the police who recorded the dying declaration first will not make any difference and the Court has to see only whether the said dying declarations are reliable and can be acted upon. According to him, the declaration made on Ex.P15, Muneeruddin is the father of the deceased and he admitted the deceased in the hospital, appears to be incorrect since the evidence of PW.8 shows that the deceased had no parents. According to him, accused No.1, who brought the deceased, have stated the name of the father of the deceased at the time of admission, which was carried out even in Ex.P15. In order to protect herself, she must have disclosed it was the case of accidental burns which came to be recorded. Having regard to the above, it is urged that the declaration on Ex.P15 cannot be given much importance. Insofar as the conduct of the police not arresting the accused immediately, he submits that immediately after registering the crime, the police proceeded to the Government Hospital, Atmakur, recorded the statement of the injured, from there they went to Government Hospital, Kurnool

and such delay of one or two days in arresting the accused was not falsifying the entire case.

8) Now, the point that arises for consideration is whether accused No.1 is responsible for the death of the deceased.

9) As seen from the record, out of 20 witnesses examined by the prosecution, PWs.3 to 7 and 10 to 15 did not support the prosecution case and they were treated hostile by the prosecution. In fact, the prosecution examined PWs.3 to 6 to prove about the oral dying declarations said to have been made by the deceased with regard to manner in which she sustained burn injuries, but none of them supported their earlier version and all of them were declared hostile. If the said evidence of PWs.3 to 6 goes, what remains on record is the evidence of PWs.1,2, 8 and 9 coupled with the dying declarations recorded by the police and Magistrate.

10) Coming to the oral evidence, PW.1 is the sister of the deceased. According to her, the marriage between accused No.2 and deceased took place about four years prior to the incident and out of wedlock they were blessed with a male and female child. There were some disputes between the accused and deceased, pursuant to which the accused also attempted to cut the throat of the deceased. However, PW.1 admits that no report about the said incident was given to the police. In view of the alleged harassment, a mediation was conducted, pursuant to which the accused promised to look after the deceased well. After mediations, the accused shifted their residence to Mittakandala

village, where the accused have set up a hotel. The dispute between the deceased and the accused was due to accused No.1 having an affair with another person. However, the same went in vain though it was brought to the notice of accused No.2. PW.1 was not an eye witness to the incident and she came to know about the incident through the villagers of Mittakandala village, who telephoned and informed her about the deceased sustaining burn injuries. PW.1 in her evidence categorically states that on coming to know about the incident, she went to Atmakur hospital, where the Magistrate and the police were present. According to her, the injured stated before the police and Magistrate that by sending away the children and accused No.2, accused No.1 set her on fire by pouring kerosene, in spite of the injured shouting that she had children. The deceased also stated to Shaik Khasim Bee (PW.8) to look after her children well. Though PW.1 was cross-examined at length, nothing useful was elicited to discredit her testimony. In fact, it was suggested that the deceased sustained burn injuries accidentally while preparing food but the same was denied. From the evidence of PW.1, it is clear that on receiving the intimation about the incident, he proceeded to Atmakur Hospital, where the deceased is said to have stated before the Police and the Magistrate that after sending the children and accused No.2, accused No.1 set fire to her by pouring kerosene.

11) PW.2 is the brother of the deceased. He also deposed about the previous disputes and also shifting of the accused and deceased to Mittakandala village. He also deposed that on

receiving information about the admission of the injured in the hospital, they proceeded to Government Hospital, Atmakur, and found the injured in the hospital with serious burn injuries. After the statement of the injured recorded by the police and Magistrate, they shifted the injured to Government General Hospital, Kurnool. PW.2 was cross-examined at length, but nothing useful was elicited. In fact in the cross-examination, he admits that he is not an eye witness to the incident and he was at Velgode at the time of the incident.

12) Coming to the evidence of PW.8, she happens to be the sister of PWs.1 and 2 and the deceased. In her evidence in chief she reiterates about the disputes between the accused and deceased and also about accused No.2 beating the deceased. She also speaks about the accused attempted to cut the throat of the deceased with blade, but she admits that no report was given to about the said incident to the police. Coming to the incident proper, she states as under:

*“The Magistrate also came to Government Hospital and the Magistrate recorded the statement of Rahena. We came to know that during the absence of accused No.2, A1 poured kerosene and set fire to Rahena. We were also informed that Rahena requested A1 not to do anything to her. From Government Hospital, Atmakur, my sister Rahena was shifted to Government General Hospital, Kurnool and she died on 28.06.2010 at night. A1 was having a view to perform second marriage to A2. Because of all these reasons, my sister was harassed.”*

13) PW.8 was also cross-examined at length. It was suggested to her that accused No.1 was not in the house at the time of the incident, but the same was denied. However, she admits that she did not inform the police that they took the deceased to their house on the ground that the accused beat her when she was having pregnancy of six month. It was further elicited that after their arrival at Atmakur, the Magistrate recorded the statement of the deceased and they were also present at that time. It would be useful to extract the words spoken to by the witness, which is as under:

*“On the date of incident, police examined me at Government Hospital, Atmakur. The distance between Velgone and Atmakur is about 20 kms. We might have reached Government Hospital, Atmakur, around 1.30 p.m. on that day. By the time we went to the Government Hospital, the Magistrate was in the hospital. After our arrival at Atmakur, Magistrate recorded the statement of my sister and we were also present at that time.”*

14) From the evidence of PW.8, it is clear that even before the Magistrate and police arrived at the hospital, PWs.1 and 8 reached the hospital and only after they meeting the injured the Magistrate and police recorded the dying declarations of the deceased. It is also to be noticed here that in the chief examination itself, PW.8 categorically stated that the incident in question took place during the absence of accused No.2. It is not the case of PW.8 that accused No.2 asked accused No.1 to pour kerosene and then left the house. Apart from all these facts, it is

also to be noted here that the version of PW.8 runs contra to the evidence of PW.1 with regard to the deceased requesting PW.8 to look after her children well. As observed earlier, PW.1 in her evidence deposed that the deceased requested PW.8 to look after her children which is lacking in the evidence of PW.8. A reading of the evidence of these two witnesses would categorically say that the two dying declaration which will be discussed later came to be recorded after PWs.1 and 8 meeting the deceased and talk with her.

15) Coming to the evidence of PW.9, he is resident of Velgode. He appears to be the person, who acted as an elder in the mediation held in view of the disputes between the accused and deceased. In his evidence, he states that though the deceased was unwilling to join the accused, on their advice she joined them. He only refers to PW.8 receiving a phone call from the villagers of Mittakandala village about the deceased sustaining burn injuries and also her admission in the Government Hospital, Atmakur. In the cross-examination he admits that Rahena (injured) might have informed the matter in the hospital to about 30 to 40 persons. He further admits that he did not tell the police at the hospital that he talk with the deceased and she gave details. It would be useful to extract the admissions made by PW.9, a mediator, which are as under:

*“ Apart from myself and Budda Rajasekhar Reddy, other elders also participated. I cannot give the names of the other elders. Rahena might have informed the*

*matter at the hospital to about 30 to 40 persons. I did not tell the police that at the hospital, I talked to Rahena and Rahena gave some details. I did not tell police that Rahena informed me about the illicit relationship of A.1 with others.”*

16) The evidence of PW.9 amply supports the defence of the accused with regard to deceased being tutored before giving the statement to the police and the magistrate. As seen from the cross-examination of PW.9, the deceased appears to have been informed about the incident to about 30 to 40 persons in the hospital. Even assuming for the sake of argument that the said version is an exaggeration, but the fact remains that the deceased informed about the incident to some people. It is also to be noticed here that immediately after recording the statement of the injured at Government Hospital, Atmakur, the deceased was shifted to Government General Hospital, Kurnool. So, the question of deceased informing the relatives and neighbours about the incident at Kurnool as urged by the learned Public Prosecutor to show that the disclosure was after the dying declarations, cannot be accepted.

17) From the above discussion, one fact which emerges is that even before the dying declarations were recorded, PWs. 1, 2, 8 and 9 and others met the deceased and thereafter only the statements came to be recorded. Therefore, the arguments of the learned counsel for the appellants that the said statements are an outcome of tutoring cannot be brushed aside.

18) Coming to the dying declarations made before the police and the Magistrate, there is some discrepancy as to who recorded the statement first. PW.20-the doctor, who endorsed on the two dying declarations, in his evidence states that the police have recorded the statement of the injured first, but the evidence of other witnesses indicate that it was the Magistrate, who recorded the dying declaration prior to the statement recorded by the police. However, in our view the same should not make much difference and will not go to the root of the matter on that score, thereby making the entire case false. In the dying declaration recorded by the Magistrate, the deceased stated as under:

*“While I was cutting onions in my house, my mother-in-law came and poured oil on me. My husband instigated my mother-in-law to pour oil on me and went away. My husband and my mother-in-law used to harass me daily. My husband used to harass me daily by coming in a drunken state. They were harassing me since the date of my marriage. I begot two children, one daughter and one son. This was happened.”*

19) If the dying declaration recorded by the Magistrate is tested with the oral evidence of PWs.1, 2 and 8, it show that the deceased stated before the Magistrate that her husband instigated her mother-in-law (accused No.1), to pour kerosene and left the house. Thereafter, Accused No.1 poured oil on her. The same is lacking in the version given by PWs.1,2 and 8. On the other hand, the oral evidence on record show that accused No.2 was not present in the house at all at the time of incident and the version

of the deceased before them, does not anywhere show the complicity of accused No.2 in the commission of offence. It is true that accused No.2 was not convicted for a capital offence, but reference to the fact of instigation by accused No.2 assumes lot of importance to test the genuinity of the version of the deceased. At this stage, it would also be relevant to refer to the second dying declaration recorded by the police. In the said statement, which was recorded at 3.30 p.m., the deceased stated as under:

*“Today ie. 28.06.2010 at about 12.00 noon my husband after discussing with my mother-in-law something secretly, went to Atmakur to bring chicken. After half an hour, my mother-in-law poured kerosene on me at that time I was cutting onions, I requested my mother-in-law not to kill me as I was having children, in the meanwhile, my mother-in-law lit match stick and set me to fire. Due to flames, I came out of the house by making hue and cry.”*

20) If the above statement, which was recorded at 03.30 p.m., is tested with Ex.P19 and the oral dying declarations, the same appears to be a complete improvement from what she has stated earlier. In Ex.P12, which was recorded by the police, the deceased stated that at about 12.00 noon her husband (accused No.2) after discussing with accused No.1 and then left the house to bring chicken. Half an hour later the incident in question is said to have happened. According to her, she pleaded with her mother-in-law not to pour kerosene as she was having children, but her mother-in-law poured kerosene and set her on fire. The version of the deceased that she pleaded her mother-in-law not to

kill her as she was having children, does not find place in her statement recorded by the Magistrate. Apart from that the statement made before the Magistrate does not refer to accused No.1 lighting the match stick and setting her on fire.

21) At this stage, one other circumstance which requires to be noted is Ex.P15, the intimation received from Government General Hospital, Kurnool. The said intimation is dated 28.06.2010. In column NO.3 of the said statement, it was mentioned that the deceased was brought by one Muneeruddin (father). It was also stated in the said intimation that "the burns were due to fall of kerosene by herself at 10.00 a.m. on 28.06.2010". PW.17-the investigating officer in this case admits in his cross-examination that he did not examine Muneeruddin. He further admits that the intimation contains the endorsement that the burns were due to fall of kerosene by herself and she was admitted in the hospital by one Muneeruddin. In view of the said endorsement made in Ex.P15, a doubt arises as to whether really it is the case of suicide or a case of homicidal, more so, when the prosecution failed to find out as to who the said Muneeruddin was.

22) Learned Public Prosecutor would submit that if the M.L.C. is looked into one can find out the earliest version with regard to cause of death, but PW.20 in his cross-examination though admits that in MLC intimation they record the reasons relating to the injuries received by the patient but no steps were taken to produce the same before the Court.

23) Further, from the oral evidence coupled with the version in the dying declarations, it is also clear that the evidence of the witnesses is silent as to the manner and purpose for which the deceased was subjected to harassment. Mere usage of word harassment may not be sufficient to bring home the case within the fold of section 498-A IPC. Though the prosecution tried to elicit that on earlier occasion the accused tried to cut the throat of the deceased with blade, but the same is lacking in Ex.P12-the statement of the deceased. Therefore, the allegations of harassment, in our view, appear to be vague. Hence, the conviction and sentence imposed by the trial Court for the offence under Section 498-A IPC cannot be sustained.

24) Having regard to the versions given by the deceased; and the contents of Ex.P15, a doubt arises as to whether really it was accused No.1, who set her on fire. Hence, we intend to extend the benefit of doubt by acquitting accused No.1 for the offence punishable under Section 302 IPC as well.

25) In the result the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/ accused Nos.1 and 2 for the offence punishable under Section 498-A IPC and also the conviction and sentence recorded against the accused No.1 for an offence punishable under Section 302 IPC in S.C.No.399 of 2010 on the file of the I Additional Sessions Judge, Kurnool, are set aside. Consequently, the appellants/ accused Nos.1 and 2 shall

be set at liberty forthwith, if they are not required in any other case or crime.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE N. BALAYOGI

25.01.2018  
gkv

