

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SMT. JUSTICE T.RAJANI

Crl.A.No.552 of 2012

Date: 01.10.2018

Between:

Manjali Sambaiah (A-1),
S/o.Late Yellappa, aged 34 years,
R/o.Kesava Nagar, Gowlidoddi,
Raidurgam,
Chandangar, R.R. district.

...

Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court of A.P., Hyderabad

...

Respondent

Counsel for the Appellant : Mr. D.Purnachandra Reddy

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Accused No.1 in Sessions Case No.309 of 2008 on the file of IV Additional Sessions Judge, Ranga Reddy, filed this appeal, assailing his conviction for the offence punishable under Section 302 I.P.C. and sentencing him to undergo imprisonment for life and to pay a fine of Rs.1000/- and in default of such payment, to suffer simple imprisonment for three months.

2. The case of the prosecution having already been referred in detail by the court below, it is unnecessary to repeat the same once again. Based on the charge sheet filed and the material gathered during the investigation by the police, the lower court has framed the following charges:

“Charge (i): At about 4 year back you married Kurumamma as your first wife had no children. You and your first wife Kashamma harassed deceased Kurumamma physically and mentally and also harassed to leave from their house. Thereby you had committed an offence punishable u/Sec. 498-A IPC within my cognizance.

Charge (ii): On 6-3-2008 at about 6.30 p.m. both of you closed the doors from inside and poured kerosene on Kurumamma and set fire to her due to which she sustained burns and came out of the house by raising cries. Thereafter, she was shifted to Gandhi Hospital On 8.3.2008 at about 2.15 p.m. while undergoing treatment she died and thereby you had committed an offence punishable u/Sec. 302 IPC within my cognizance”.

3. As the plea of the accused was one of denial, they were subjected to trial, during which, the prosecution examined PWs.1 to 10 and got Ex.P1 to P13 marked. On behalf of the defence, no evidence was let in.

4. On consideration of the oral and documentary evidence, the trial court has disposed of the case by acquitting accused No.2 and convicting and sentencing A-2 (appellant) in the manner as noted herein before.

5. At the hearing, Mr.D.Purnachandra Reddy, learned counsel for the appellant, submitted that the prosecution having failed to drive home charge No.2 and that the court below has wrongly held the said charge as partly proved, by finding the appellant guilty of murder. He has further submitted that all the material witnesses, namely, PWs. 1 to 4 and 6 having turned hostile, the lower court committed a serious error in relying upon the only piece of evidence, namely, Ex.P5-dying declaration. The learned counsel further submitted that from the evidence of PWs.1 to 3, it is clear that the deceased died by committing suicide and that, therefore, the appellant is entitled to acquittal.

6. Opposing the above submissions, the learned Public Prosecutor for the State of Telangana, supported the judgment of the lower court.

7. We have heard the learned counsel for both the parties and perused the material available on record.

8. PW-1 is the first informant based on whose report, the police have registered Ex.P11 - F.I.R. She has stated in Ex.P11 that four

years prior to the occurrence, the deceased who is her sister, was given in marriage to the appellant, as he did not have children through his first wife – accused No.2. That, six months prior to the occurrence, both the deceased and A-2 were quarrelling frequently and both the accused were harassing the deceased mentally and physically, with an intention to send her out of their house. That, every day, the appellant used to come to the house in drunken state and harass the deceased. That on 06.03.2008, at about 6.30 p.m., both the accused have poured kerosene on the deceased and lit fire, with an intention to kill her, when she was in a room of their house, by locking the door from inside. That, being unable to bear the burns, the deceased came out crying and PW-1 and her brother-in-law, extinguished the fire and shifted the victim to Gandhi Hospital for treatment. That, by the time the report was filed, the injured was given treatment in the hospital.

9. PWs.1 and 3, the sisters of the deceased and PW-2 husband of PW-1, did not support the case of the prosecution. Therefore, their evidence will not help the prosecution to prove the guilt of the accused. The only piece of evidence available, based on which the court below convicted the appellant, is Ex.P5 – dying declaration. The law is well settled that even in the absence of any corroborative evidence, conviction can be based on dying declaration, provided, it is free from tutoring and the victim was conscious and in a fit

condition to give statement. We have therefore, to consider whether Ex.P5 conforms to the above requirements.

10. On the requisition being given by the police, PW-5, the jurisdictional Magistrate, recorded Ex.P5. A perusal of this document shows that PW.5 has put certain preliminary questions such as the name of the patient, her marital status, whether she was literate, her occupation, etc. On being satisfied that the patient was conscious and in a fit state of mind to give statement, PW-5 has asked the patient to give her statement. The following is the true english translation of the statement of the victim given in telugu:

“on the evening of yesterday at 5 p.m., my husband poured kerosene on me and lit fire. He has lit fire on me in my house. At that time, myself and my husband were alone in the house”.

Immediately below the statement, the impression of right leg big toe of the deceased was taken by PW-5. Immediately below the toe impression, PW-5 has stated that recording of dying declaration was completed at 4.20 p.m.; that the statement was read over to the deponent who admitted the same as correct; that no police or attendants were present at the time of recording of dying declaration and that as the fingers of both the hands were burnt, right leg big toe impression of the deceased was taken. Below the said statement and signature of PW-5, the duty doctor has endorsed as under:

“Pt is conscious, coherent throughout recording the statement”.

In her evidence, PW-5 has stated that she has verified the condition of the patient throughout and the doctor endorsed that the patient was conscious, coherent and cooperative to give statement; that she had put preliminary questions to know whether she was in a fit condition and that she was satisfied with the answers given by her and that the patient was in a fit condition to give her declaration. She has also referred to the contents of the declaration made by the patient. The witness also referred to the declaration given by the duty doctor, endorsing to the effect that the patient was conscious and coherent throughout the recording of the statement. She further deposed that before obtaining her impression, she has read over the contents of her statement to the deceased and she admitted the contents as true. In her cross-examination, defence has not put to PW-5, that either the deceased was not conscious or not in a fit condition to give statement or that the declaration was a result of tutoring. The only relevant question that was put to PW-5 was that, the duty doctor has not specifically endorsed that the patient was in a fit condition to give statement, which was admitted by the witness.

11. As regards the fit condition of the patient, PW-5 was satisfied through the answers given by the patient to the preliminary questions. Apart from the same, the duty doctor has specifically

endorsed that the patient is conscious and coherent throughout the recording of the statement. Though the doctor has not used the words 'fit condition', the fact that he has certified the patient as being conscious and coherent, would show that she was in a fit condition to make the declaration. As noted above, PW-5 has specifically endorsed before recording the declaration that the declarant is conscious and is in a fit state of mind to give declaration. Thus, if we consider the endorsements of PW-5 as well as of the doctor together, we are left with no doubt that the deceased was in a fit condition to give her statement.

12. Though the learned counsel for the appellant has submitted with strong conviction that the dying declaration was a result of tutoring, such a stand is not reflected in the cross-examination of PW-5, doctor or PW-10, the investigation officer. Even in his Section 313 Cr.P.C. statement, the appellant who gave mono syllable answers, did not come out with any specific stand. On a careful consideration of the contents of Ex.P5 – dying declaration, we are of the opinion that the same not only sounds very natural, but is also free from exaggerations or embellishments. The statement of the deceased was brief, precise and to the point. Had there been any tutoring, as argued by the learned counsel for the appellant, we would have found many other details, such as the harassment of the deceased by the accused,

etc. We have, therefore, no reason to disbelieve Ex.P5 – dying declaration.

13. As regards the submission of the learned counsel for the appellant that the prosecution failed to prove charge No.2 in toto, from the contents of Ex.P5, it is clear that the deceased has not made any whisper about the role played by A-2, the first wife of the appellant. On the contrary, she has categorically stated that at the time of the incident, herself and the appellant alone were in the house. Thus, the dying declaration ruled out the presence and participation of A-2. In the absence of any evidence, the court below has rightly acquitted A-2. However, acquittal of A-2 would not enure to the benefit of the appellant, as his culpability was proved beyond reasonable doubt through Ex.P5.

14. As for the submission of the learned counsel for the appellant that PWs. 1 and 3 who were no other than the sisters of the deceased and PW-2, the brother-in-law of the deceased, have themselves stated in the evidence that the deceased has committed suicide, their Section 161 Cr.P.C. statements made before the police, were marked as Ex.P1 to P3. Though they have denied having given such statements, it is quite obvious that for the reasons best known to them, they have taken a u-turn and did not support the case of the prosecution. While the prosecution cannot rely upon the testimony of the hostile witnesses, except to the extent of any incriminating aspects being

elicited in the cross-examination, the defence cannot take advantage of their evidence too. Therefore, the testimony of these witnesses on the nature of the death, has no probative value. As discussed herein before, we have absolutely no reason to disbelieve the contents of Ex.P5, which would constitute the basis for sustaining the conviction of the appellant.

15. For the aforementioned reasons, we do not find any merit in this appeal and the same is, accordingly, dismissed.



(C.V.Nagarjuna Reddy, J)

(T.Rajani, J)

Date: 1st October, 2018

msb

