

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

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.A.No.853 of 2011

Date: 06.06.2018

Between:

Gaggera Yadaiah S/o.Bajari,
Aged 21 years, Occ: Collie,
R/o.Lemamidi Village of
Keshampet mandal,
Mahaboobnagar District

...

Appellant

And

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

...

Respondent



Counsel for the Appellant : Mr.V.Ramesh Reddy

Counsel for the Respondent: Public Prosecutor (TS)

The Court made the following:

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

The sole accused in Sessions Case No.310 of 2008 on the file of the I Additional Sessions Judge, Mahabubnagar, filed this appeal against his conviction for the offence under Section 302 IPC and sentencing for imprisonment for life and also to pay a fine of Rs.500/- and in default to suffer imprisonment for one month. The appellant was however acquitted of the charge under Section 498-A of I.P.C.

2. The case of the prosecution in brief, is as follows:

The accused who is the husband of the deceased, is a resident of Lemamidi village. The deceased was given in marriage to the accused about two years ago and her parents presented Rs.40,000/- and 3 tolas of gold towards dowry. The accused looked after the deceased for a short period only and thereafter, started harassing her mentally and physically. On 08.05.2008 at 2230 hours, PW-16 received intimation from Osmania General hospital, Hyderabad, regarding admission of the deceased in burns ward and he deputed PW-15 to record her statement and accordingly, on 09.05.2008 at 0500 hours, PW-15 visited the hospital, examined the deceased and recorded her statement, wherein she stated that she is the eldest daughter of her parents and that she was given in marriage to the accused about two years ago; that he was looking after her well for some time, but later got addicted to bad habits like consuming liquor and was harassing her mentally and physically by suspecting her

fidelity and as he was not looking after her welfare, she was taking money from her parents for her family necessities. That, on 07.05.2008, after the deceased went to coolie work and came back in the evening, the accused questioned her as to where she has gone till late hours and suspecting her fidelity, he poured kerosene on her body and set her on fire at about 2000 hours and immediately, she was taken to Government hospital, Kalwakurthy in an ambulance and later she was referred to Osmania General Hospital, Hyderabad. Basing on the above statement, PW-15 registered a case in Crime No.41 of 2008 u/s. 498-A, 307 IPC and submitted the C.D. file to PW-16 for further investigation. That, during the course of investigation, PW-16 visited Osmania General Hospital and recorded the statement of the deceased and later visited the scene of offence and conducted scene of crime panchanama in the presence of mediators - PWs.7 and 8 and recovered an empty kerosene container, a match box and burnt clothes i.e. saree, blouse of the victim and a blanket. That, on 10.05.2008 at 0800 hours, PW-16 received intimation from Afzalgunj Police Station through telephone that the victim succumbed to burn injuries on 10.05.2008 at about 0600 hours and as such, PW-16 altered the section of law from 307 to 302 IPC and submitted express alteration memos. to all the concerned and gave a requisition to the Tahsildar, Keshampet, to visit Osmania General Hospital, for conducting inquest over the deceased, as her death occurred within 7 years of her marriage. Subsequently, PW-16

visited Osmania General Hospital, Hyderabad, examined and recorded the statements of PWs.1 and 3. PW-13, Tahsildar, Keshampet, also visited Osmania General hospital, held inquest over the dead body of the deceased in the presence of mediators PWs. 9 and 10 and subjected the dead body for post mortem examination and later, PW-16 examined PWs.3 to 6 and recorded their statements. That, PW-17 has taken up further investigation and verified the investigation done by PWs.15 and 16 and found to be on proper lines. That, PW-12 rendered first aid to the deceased at Government Civil Hospital, Kalwakurthy and referred her to Osmania General Hospital, Hyderabad and PW.11 recorded the dying declaration of the deceased, while she was undergoing treatment at Osmania General Hospital and PW-14 held post mortem over the deceased and furnished post mortem examination report, stating that the cause of the death of the deceased was due to burns. That, while efforts were made for want of accused, on 12.05.2008, on receipt of credible information, PW.16 proceeded to Lemamidi village and apprehended the accused at 1500 hours, brought him to C.I. Office, Shadnagar and produced before PW.17 at 1600 hours and on interrogation by PW.17, the accused admitted his guilt and as such, PW.17 effected the arrest of the accused and produced him before the court for judicial custody.

That, from the evidence collected during the course of investigation, it is clearly established that on 07.05.2008, the accused started beating the deceased and at about 2000 hours, set her on fire by pouring kerosene over her body, even as the neighbours PWs.3, 4 and 6, gathered and witnessed the incident and that the deceased sustained severe burns and raised screams. PW-3 covered a blanket on her and put out the flames and PW-5 called an ambulance and shifted her to Government hospital, Kalwakurthy, where PW.12 rendered first aid and referred her to Osmania General hospital, Hyderabad and while undergoing treatment at Osmania General hospital, she gave dying declaration before the Metropolitan Magistrate, Nampally, Hyderabad and succumbed to burns on 10.05.2008 at about 0600 hours and thus, the accused has committed an offence punishable under Section 498-A and 302 I.P.C.

3. Having regard to the charge sheet and the evidence collected during the investigation, the court below has framed the following charges:

“Firstly: That on 07.05.2008 at 2000, at house at Lemamidi village, you did commit murder by intentionally or knowingly causing the death of your wife Smt.Neelamma by pouring kerosene over her body and setting ablaze and that she succumbed to the burns on 10.05.2008 at 0600 hours at OG Hospital, Hyd., and you thereby committed the offence punishable U/s. 302 r/w.34 IPC and within my cognizance.

Secondly: That prior to 07.05.2008, you being the husband of the deceased Neelamma, harassed her physically and mentally demanding her to bring additional dowry from

her parents and thus you committed the offence U/s. 498-A of IPC and within my cognizance.”

4. As the plea of the appellant was one of denial, he was subjected to trial, wherein prosecution has examined 17 witnesses, got marked exhibits P1 to P17 and produced MOs 1 to 5. On appreciation of oral and documentary evidence, the court below has disposed of the case in the manner as noted herein before.

5. At the hearing, Mr.V.Ramesh Reddy, learned counsel for the appellant, while fairly conceding that in view of the two statements of the deceased marked as Ex.P9 and Ex.P14 respectively, he is unable to press the appeal to the extent of the finding of the lower court that the appellant has caused the death of the deceased. He however submitted that even as per Ex.P9, dying declaration recorded by PW-11, the IX Additional Chief Metropolitan Magistrate, the appellant has poured kerosene and lit matchstick on being scolded by the deceased. That the appellant had no premeditated intention of killing the deceased, is evident from the further statement of the deceased that the appellant has put out the flames and also shifted her to the hospital for treatment. He has accordingly submitted that the act committed by the appellant amounts to culpable homicide not amounting to murder.

6. As could be seen from Ex.P9, the deceased stated before PW-11 that on being questioned about her reaching home late in night, the latter has abused the appellant and thereupon, the appellant has

poured kerosene and lit fire. The sequences narrated by the deceased, thus make it clear that the appellant got provoked by the abuses made by the deceased. But however, his act of pouring kerosene and lighting fire on the body of the deceased, shows his intention to kill her, which evidently developed in view of the grave and sudden provocation given to him by the deceased. The further act of the appellant putting out the fire and taking the deceased to the hospital, would fortify our view that the appellant has developed intention to kill the deceased on the spur of the moment, without there being any premeditation. Hence, in our opinion, this case falls under exception 4 to Section 300 I.P.C. r/w. Section 304 Part-I I.P.C.

7. Accordingly, the judgment of the I Additional Sessions Judge, Mahaboobnagar dated 31.12.2010 in Sessions Case No.310 of 2008 is modified, by altering the conviction into one under Section 304 Part-I I.P.C. and substituting the sentence to rigorous imprisonment for 10 years, while sustaining the sentence of fine. It is needles to observe that the appellant is entitled to all the permissible remissions.

8. The appeal is, accordingly, partly allowed to the extent indicated above.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 06th June, 2018

msb

