

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Appeal No. 891 of 2012

JUDGMENT:

The sole accused in Sessions Case No.359 of 2001 on the file of the III Additional District & Sessions Judge, (Fast Track Court) at Medak, is the appellant herein. He was tried for offences punishable u/sec 498A and 302 IPC. By its judgment dated 02.07.2012, the learned Sessions Judge while acquitting the accused for the offence punishable under Section 498-A I.P.C., convicted the accused under Section 302 IPC and sentenced him to imprisonment for life and also payment of fine of Rs.500/- in default, to undergo simple imprisonment for two months for the offence punishable u/s.302 IPC.

2. The facts as can be culled out are as under:

PW-1 is the owner of the house, where the accused and the deceased were staying. PW-2 is the father of the deceased, PW-3 is the neighbour of the deceased, PW-4 is the brother of the deceased and PW-5 is the daughter of the accused and the deceased. After marriage of the accused with the deceased, both of them were staying at Sriramnagar, Narsapur, Medak district. The accused was not doing any work and there used to be a quarrel with the deceased every day on this issue. He was counseled by PW2, their neighbour, but there was no change in his attitude. On 06.10.2011, which was the day of Dasara, he picked up a quarrel with the deceased for not preparing a tasty chicken curry. Pursuant to the said quarrel, he poured kerosene and set the deceased on fire. The deceased is said to have come out of the house in flames. Seeing the same, the neighbours extinguished the flames. Thereafter, the neighbours shifted the injured to the hospital. On the intervening night of 6th and 7th October, 2011 at about 2 a.m., PW-8, A.S.I. of Police, Narsapur, who was at the police station,

received information from Gandhi Hospital about the admission of the injured in the said hospital. Accordingly on 07.10.2011, on the instructions of the S.I. of Police, PW8 proceeded to government hospital and identified the injured through her parents, who were present at that time and recorded the statement of the injured, which is placed on record as Ex.P-4. It is to be noticed here that on the very same day, i.e. on 07.10.2011 at about 1.35 a.m., the III Additional Chief Metropolitan Magistrate, Nampally, while she was in the hospital with regard to recording of a dying declaration, received intimation about the said incident and after identifying the injured and on being satisfied with regard to the condition of the injured, recorded her statement, which is placed on record as Ex.P-5.

3. Basing on the statement recorded by PW-8, the S.I. of Police, R.C. Puram (PW8), registered case in Crime No.146 of 2011 under Sections 498-A and 307 I.P.C. and issued F.I.R., which is marked as Ex.P-7. On the next day, he proceeded to the hospital and recorded the statement of the injured, wherein she stated that on the date of incident, the accused came in a drunken condition, quarreled with her on the ground that chicken curry was not prepared in a tasty manner, beat her, poured kerosene and set her on fire. The said statement is placed on record as Ex-P.8. Thereafter, he visited the scene of offence, recorded the statements of PW-1 and PW-3 and also conducted panchnama of the scene, in the presence of PW-6, which is marked as Ex-P.2. On 19.10.2011, i.e. nearly 12 days after the incident, PW-12 received intimation about the death of the injured/deceased from Gandhi Hospital, Secunderabad. Basing on the said intimation, he altered the Section of law from 498-A, 307 IPC to 498-A and 302 IPC and, subsequently, handed over the C.D. file to PW-10 for further investigation. After receipt of copy of altered FIR, PW-10 visited the mortuary at Gandhi hospital and conducted inquest over the dead-body in the presence of PW-7 and marked it as Ex-P.3 in the inquest report. During inquest, he examined PW-5 and others. Thereafter, he sent the body for postmortem. PW-11, the Assistant Professor in Gandhi Medical College, conducted autopsy over

the body and issued postmortem examination report, which is marked as Ex-P.6. According to him, the reason for the death was due to burns. PW-10 got arrested the accused on 06.11.2011 and after completing the investigation, filed a charge sheet in the Court of Judicial First Class Magistrate, Narsapur, which was taken on file as Cr.No.146 of 2011. Thereafter, the case was committed to the Court of Sessions at Sangareddy, under Section 209 Cr.P.C. On appearance and basing on the material available on record, charges under Section 498-A and 302 IPC came to be framed, read over and explained to the accused in telugu, to which he denied and claimed to be tried. In support of its case, the prosecution examined PWs 1 to 2 and got marked exhibits P1 to P9. After completing the prosecution evidence, the incriminating evidence appearing against the accused was confronted to the accused u/s. 313 Cr.P.C., to which he denied. However, no oral or documentary evidence was adduced by the accused. Basing on the dying declaration and the oral evidence, the learned Sessions Judge convicted the accused. Challenging the same, the present appeal came to be filed.

4. The learned counsel for the accused would submit that the two dying declarations, which are made the basis to convict the accused, cannot be relied upon, in view of the inconsistency in the said dying declarations. He would further submit that no prudence can be given to the evidence of PW-5, who is a child witness, as her version appears to be a tutored one. In any event, he would submit that the version given by the deceased in the dying declaration recorded by the Magistrate, shows that the accused had no intention to kill.

5. On the other hand, the learned P.P. submits that the circumstances, which led to the commission of the offence, are sufficient to connect the accused with the crime. As the two dying declarations are inconsistent, the same corroborate the oral evidence of PW-5, which is sufficient to show the culpability of the accused in commission of the offence.

6. As seen from the record, there are three statements recorded from the deceased. The 1st statement was recorded by the Magistrate, which is placed on record as Ex-P.5. The 2nd statement was recorded at 9 a.m. by ASI, which was marked as Ex-P.4 and the 3rd statement recorded by SI during the course of investigation, which is marked as Ex-P.8. It is to be seen that the statement marked as Ex-P.8., which was recorded under Section 161 Cr.P.C., cannot be treated as substantial piece of evidence as it does not contain the signature of the declarant. The said statement can, at the most be used to contradict the maker, which cannot be done in the instant case. A similar issue came up for consideration before the Apex Court in RAUF & OTHERS VS. STATE OF U.P.,¹ wherein the Court held as under:

"18. We also wish to add that as on date, there is no statutory prescription as to in what manner or the procedure to be followed for recording a dying declaration to fall within the four corners of [Section 32\(1\)](#) of the Evidence Act. The presence of Magistrate; certification of the doctor as to the mental or the physical status of the person making the declaration, were all developed by judicial pronouncements. As has been repeatedly stated in various decisions, it will have to be found out whether in the facts and circumstances of any case the reliance placed upon by the prosecution on a statement alleged to have been made by the deceased prior to his death can be accepted as a dying declaration, will depend upon the facts and circumstances that existed at the time of making the statement. In that case it would mainly depend upon the date and time vis-à-vis the occurrence when the statement was alleged to have been made, the place at which it was made, the person to whom the said statement was made, the sequence of events, which led the person concerned to make the statement, the physical and mental condition of the person who made the statement, the cogency with which any such statement was made, the attending circumstances, whether throw any suspicion as to the factum of the statement said to have been made or any other factor existing in order to contradict the statement said to have been made as claimed by the prosecution, the nexus of the person who made the statement to the alleged crime and the parties involved in the crime, the circumstance which made the person to come forward with the statement and last but not the least, whether the said statement fully support the case of the prosecution."

7. The first statement of the deceased was recorded by the Magistrate, who was examined as PW-9. The said statement was recorded on 07.10.2011 at 1.35 a.m. After being satisfied with regard to the mental fitness of the deceased, she recorded the statement of the deceased, wherein she said that on that day, the

¹ AIR 2013 SC 2272

accused quarreled with her, poured kerosene and set her on fire and, thereafter, took a bucket of water and poured the same on the deceased. As per the dying declaration, the husband of the deceased was not doing any work. From the above, it is clear that the accused quarreled with the deceased for not preparing the curry properly and, thereafter, poured kerosene and set her on fire. Realizing the act done by him, immediately he poured a bucket of water on the deceased, so as to extinguish the flames.

8. Coming to the dying declaration recorded by the A.S.I., which was on 07.10.2011, the deceased stated that about 8 p.m., the accused started quarrelling with her regarding vegetables and cooking and, thereafter, he poured kerosene and set her on fire. She came out of the house in flames and, thereafter, the neighbours took her to the hospital. In the dying declaration, though the act of accused with regard to pouring of kerosene and setting her on fire is referred to, the purpose for which the accused set her on fire, is absent. As seen from Ex-P.4, the deceased stated that she was taken by her neighbours who extinguished the flames, but in the dying declaration before the Magistrate, she stated that it was the accused, who had poured water and tried to extinguish fire. The fact as to who brought her to the hospital, may not matter much. The question which falls for consideration is, whether the accused is liable under Section 302 IPC, having regard to his intention in trying to extinguish the flames on the deceased by pouring water.

9. PW-5, daughter of the deceased, in her evidence deposed that on the date of the incident, when she was present in the house, her father came to the house, quarreled with the deceased on the ground that she did not prepare the curry properly and thereafter he poured kerosene and set fire on her mother. As per her evidence, her mother ran out of the house and the neighbours extinguished the fire before taking her to the hospital.

10. The learned counsel would contend that prior to the incident, there was a quarrel with regard to cooking, pursuant to which, in a fit of anger, the accused poured kerosene and set the deceased on fire. Realizing the gravity of the situation, he himself poured water and tried to extinguish fire. He pleads that if the intention of the accused was to cause death, he would not have poured water.

11. Though the act of pouring water is missing in the dying declaration registered with police, but the same is evident in the dying declaration made before the Magistrate. Having regard to consistence in version of the deceased with regard to accused setting her on fire, we intend to accept the version stated in that dying declaration. Having regard to the fact that the accused tried to extinguish fire, the issue is whether this will alter the nature of offence.

12. In the dying declaration recorded by the Magistrate under Ex.P-5, the deceased stated that there was a dispute / quarrel between her husband and herself, when the curry prepared by her was not to the liking of the accused. She stated that initially the accused squeezed her throat and thereafter poured kerosene on her, lighted a match stick and when the body was in flames, he took out a bucket of water and poured on her. This dying declaration was recorded at about 1.35 a.m. on 7.10.2011. Whereas in the dying declaration recorded by P.W.8, the A.S.I of Police, under Ex.P-4 on 7.10.2011 at 9.00 hours, there is no reference to the accused pouring water to extinguish the flames. Therefore, the statement of the deceased – Smt. Palanati Sunitha recorded by A.S.I. of Police on 7.10.2011 during the course of investigation under Ex.P-4, is in variance with the statement recorded by the Magistrate under Ex.P-5. Moreover in Ex.P-4, there is reference to the neighbors extinguishing the frames. From these circumstances it can be inferred that the omission and the improvement in Ex.P-4, is presumably to implicate the accused in a more serious offence at the

instance of the family members of the deceased and other persons present along with the deceased at the time of recording the said dying declaration.

13. In these circumstances and in the light of the dying declaration recorded by the Magistrate under Ex.P-5, the issue that falls for our consideration is whether the accused can be convicted under Section 302 IPC?

14. Identical issue came up for consideration before the Apex Court in *KALU RAMU v. STATE OF RAJASTHAN*². It was a case, where the accused who was already in drunken condition, asked his wife to spare her ornaments presumably for raising some more money for buying liquor. As she refused to part with her ornaments, the accused therein got infuriated, poured kerosene and supplied box of match-sticks. As she failed to lit the match stick, he collected match box, and set her ablaze. When the flames were up, he poured water in a frantic effort to save her from death. Later she succumbed to burn injuries. Considering the totality of the circumstances, the Apex Court altered his conviction from Section 302 to Section 304 Part II IPC. The relevant findings in the said judgment are as under:

“3. It all happened without any premeditation, when appellant ablazed Vimala on the evening of 23-3-93. According to the prosecution version, he asked Vimala to spare her ornaments presumably for raising some more money for buying liquor. He was then also drunk. When Vimala refused to part with her ornaments and that infuriated the appellant. He doused her with kerosene and wanted her to die and supplied a box of match-sticks to her. As she failed to ignite the match-stick appellant collected the match-box and lit one match-stick and set her ablaze. When the flames were up he brought water in a frantic effort to save her from death. She was later removed to the hospital. A statement was recorded from her by the police which became the basis for the FIR. Subsequently the Munsif Magistrate(P.W.7) recorded her dying declaration. Later she succumbed to her burn injuries.

. . .

8. We, therefore, alter the conviction from Section 302 IPC TO Section 304, Part II of the IPC. Both sides conceded that appellant is continuing in jail. We impose a sentence of rigorous imprisonment for seven years on him. It is for the jail authorities to count whether the period he had already undergone would be sufficient to complete the

² AIR 2000 SC 3630

period of sentence imposed by us and if so, the jail authorities shall release him from jail. Otherwise he will continue in jail until completion of the period of seven years of imprisonment. The appeal is disposed of accordingly.”

15. In the instant case the evidence of P.W.2, who is the father of the deceased, shows that accused was not doing any work and he used to quarrel with the deceased every day in a drunken condition; that he convinced him many a times, but there was no change in his attitude and; that on the fateful day, the deceased told him that the accused came home quarreled with her for not preparing the curry to his taste, poured kerosene and set her on fire.

16. As already noted above, the deceased in her statement recorded by the Magistrate under Ex.P-5, while narrating the incident stated that when she was in flames, the accused took out a bucket of water and poured on her.

17. Having regard to the above circumstances, it cannot be said that the accused came home with an intention to cause the death of the deceased. The incident occurred in a spur of moment, i.e. when the curry prepared by the deceased was not to the taste of the accused and in view of the mental condition in which he was placed at that time, poured kerosene on the deceased and set her on fire. When the flames were up, he made frantic efforts, to extinguish the flames. Under these circumstances, we feel that the accused did not anticipate that the act committed by him would escalate to such a proportion that the deceased would die. It is to be noticed here that if the accused had intention to kill the deceased, he would not have alerted his senses to rescue the deceased. Accused, at the most, might have intended to cause some injuries and frighten the deceased, but the situation turned out of his control and it lead to the death of the deceased. In these circumstances, we feel that the offence committed by the accused does not fall under first degree of Section 300 IPC and it is not culpable homicide amounting to murder. Hence the offence committed by the accused can be scaled down to Section 304 Part –II IPC.

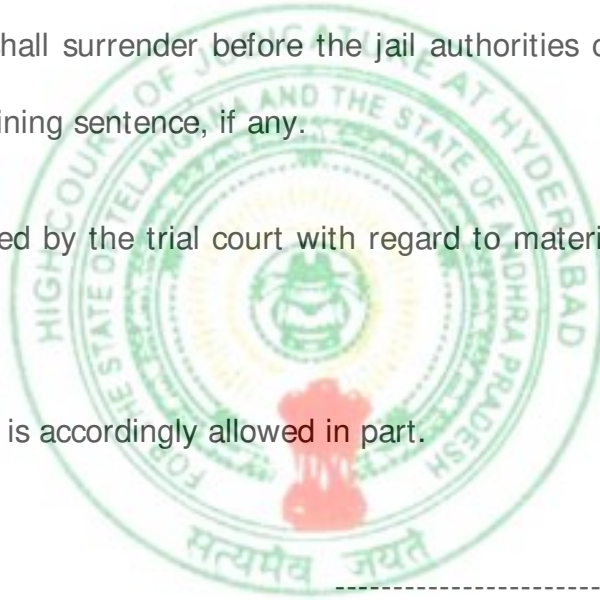
18. For the foregoing reasons, the accused is found not guilty for the offence under Section 302 IPC and the conviction and sentence imposed by the court of III Additional District and Sessions Judge (Fast Track Court) at Medak in S.C.No.359 of 2011 dated 01.07.2012 is set aside. However, the accused is found guilty for the offence under Section 304 Part II IPC and accordingly he is sentenced to suffer imprisonment for seven years. Fine imposed by trial court stands confirmed.

19. The period of imprisonment already undergone by the accused shall be given set off, if he is otherwise entitled to.

20. It is brought to the notice of this court that the accused is on bail. If that so, the accused shall surrender before the jail authorities concerned, forthwith, to serve the remaining sentence, if any.

21. Order passed by the trial court with regard to material objects, shall hold good.

22. The appeal is accordingly allowed in part.



C.PRAVEEN KUMAR,J

N.BALAYOGI ,J

msb/AVS
DATE:05.01.2018