

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

Crl.A.NO. 67 of 2013

JUDGMENT: (Per Hon'ble Mr. Justice C. Praveen Kumar)

1. A1 and A2 in Sessions Case No. 380 of 2011 on the file of the Metropolitan Sessions Judge, Hyderabad were tried for an offence under Section 302 IPC, for causing the death of Smt. Gandikota Bharathamma by pouring kerosene over her body and setting her on fire to her on 14.9.2010 at about 10.00 A.M. at house bearing door No. 12-15-252, M. K.Nagar, O.U. Campus, Hyderabad. By judgment dated 7.1.2013 the learned Sessions Judge, while acquitting A2 of the offence punishable under Section 302 IPC, convicted A1 and sentenced her to undergo imprisonment for life and to pay a fine of Rs.100/- in default to suffer simple imprisonment for one month. Aggrieved thereby, the present appeal came to be filed.

2. The brief facts of the case as culled out from the evidence of prosecution witnesses are as follows,

P.W.1 is the husband of the deceased, while A1 is the wife of P.W.1's brother and A2 is the wife of P.W.1's junior paternal uncle. P.W.2 is the sister of P.W.1 and sister-in-law of the deceased. PWs 3 and 13 are the daughters of the deceased. About two years ago there was a quarrel between A1 and A2 on one hand and the deceased on the other side with regard to the claim made by A1 for occupying two rooms in the house of P.W.1. The deceased is said to have refused to give two rooms to A1. P.W.1 pacified the deceased, A1 and A2 and

went to a tea hotel. Within half an hour, he returned to his home and found the deceased-his wife Bharatmma in flames. He extinguished the fire by putting two blankets over her, but she became unconscious. Immediately he shifted the deceased to Gandhi Hospital where she died of the burns, five days after the incident.

3. P.W.1 lodged a report with P.W.6, the then Sub-Inspector of Police, Osmania University police station, who, on the basis of the said report, registered a case in Cr.No. 277 of 2010 under Section 307 IPC and issued F.I.R. Ex.P8 is the said F.I.R. He examined and recorded the statement of P.W.1. On the same day he went to the scene of offence situated at the house bearing door No. 12-15-252, Naikeshwar Nagar, conducted scene of offence panchanama in the presence of PWs 4 and 5 and seized empty kerosene tin, lighted match stick and burnt cloth pieces, which are marked as M.Os 1 to 3 respectively. Ex.P9 is the seizure panchanama. He examined and recorded the statements of PWs 2 and 3 on 19.9.2010. On 18.9.2010 he received an intimation from the Gandhi Hospital about the death of the deceased, basing on which, he altered the section of law from Section 307 to 302 IPC. Ex.P10 is the said alteration memo. Thereafter he conducted inquest over the dead body of the deceased in the presence of P.W.7 and another. Ex.P11 is the inquest panchanama. He then sent the dead body for post mortem examination. P.W.9, the Assistant Professor, Department of Forensic Medicine, Gandhi Medical College, Hyderabad conducted autopsy over the dead body of the deceased and issued Ex.P15, the post mortem examination report.

According to him, the cause of death of the deceased was due to burns.

4. On 14.9.2010, P.W.10, the then XVI-Addl. Chief Metropolitan Magistrate, City Criminal Courts, Hyderabad received a requisition from duty doctor, Gandhi General Hospital through Osmania University police station at 1.30 A.M., for recording the dying declaration of the deceased. On receipt of the said information he rushed to the hospital where he identified the deceased, put some preliminary questions to ascertain the condition of the deceased and after satisfying himself with regard to the mental condition, he obtained certificate from the duty doctor about her fitness to give the statement. Later he recorded the dying declaration, from 2.20 P.M. onwards. Ex.P17 is the dying declaration of the deceased recorded by P.W.10.

5. Further investigation was taken up by P.W.14, the then Inspector of Police, Osmania University police station on 19.9.2010. He got effected the arrest of the accused through police constables Swaroopa Rani WPC 8997, Arundhati WPC 8706 and another and on interrogation, the accused confessed about the commission of offence. After collecting the necessary documents he filed the charge sheet which was taken on file as PRC No. 6 of 2011 on the file of the IV-Addl. Chief Metropolitan Magistrate, Hyderabad. On appearance of the accused, copies of documents were furnished to them as required under Section 207 Cr.P.C. and the case is exclusively triable by the Court of Sessions, the same was committed to the Court of Sessions

under Section 209 Cr.P.C. On committal, the case came to be registered as Sessions Case No. 380 of 2011 on the file of the Metropolitan Sessions Judge, Hyderabad.

6. A charge under Section 302 IPC was framed against the accused, read over and explained to them, to which they denied and pleaded not guilty. The prosecution examined PWs 1 to 14 and got marked Exs.P1 to P21 and M.Os 1 to 3. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses, to which they denied. But however they did not lead any defence evidence.

7. It is to be noted here that out of the 14 witnesses examined by the prosecution, P.Ws. 1 to 5, 8 and 12 did not support the prosecution case and were treated as hostile. Relying upon the dying declaration recorded by P.W.10, the Magistrate, the trial Court while holding A2 not guilty of the offence punishable under Section 302 IPC, found A1 guilty of the said offence, convicted and sentenced her to undergo imprisonment for life and to pay a fine of Rs.100/- in default to suffer simple imprisonment for one month. Challenging the same, the present appeal came to be filed by A1.

8. Sri N. Avaneesh, learned counsel representing Sri A. Dattanand, learned counsel for the appellant/A1 would submit that there are any number of circumstances to indicate that the incident in question did not happen in the manner spoken to by the prosecution. According to him, the nature of the injuries sustained by the deceased

would amply establish that it was a case of suicide. He draws his support from the requisition received by the Magistrate from the hospital to show that at the earliest point of time the information which was furnished to the authorities was one of suicide and it was pleaded that the theory of homicidal death came to be introduced subsequently.

9. On the other hand, the learned Public Prosecutor would contend that though the intimation discloses about the deceased committing suicide, but the endorsement in the case sheet maintained in the hospital discloses that the deceased was set on fire. He further submits that there are no reasons to disbelieve the dying declaration recorded by the Magistrate and the same can be accepted if it inspires confidence of the court.

10. As seen from the record, all the material witnesses did not support the prosecution and were treated as hostile by the prosecution. The husband, mother, daughters and family members of the deceased did not support the prosecution case and were treated as hostile by the prosecution. What remains on record is the dying declaration recorded by the Magistrate and the evidence of P.W.11, the doctor who was present at the time of admission of the deceased in the hospital. The question that falls for consideration is,

Whether A1 is responsible for the incident and if so,
whether an offence under Section 302 IPC is made out?

11. In order to prove the same, it will be useful to go through the evidence of P.W.11, the doctor who was present at the time of admission of the deceased in the hospital. In his evidence he deposed that he was on duty on that day from 9.00 A.M. to 4.00 P.M. The deceased was admitted in female burns ward as she sustained burn injuries. He treated her in the said ward and certified that she was in a fit state of mind to give the statement. At the time of admission, the deceased told him that she sustained burns after an altercation with her relatives, who have set fire to her. The endorsement reads as *“alleged to have burns after altercation with the relatives (set fire by them) on 14.9.2010.”* She expired on 18.9.2010 at 9.45 P.M. in the hospital i.e. five days after her admission.

12. P.W.13, another daughter of the deceased, spoke about A1 and A2 pouring kerosene over the deceased and setting her on fire. However, she was not an eye-witness to the incident. Her source of information was her father who informed her about the incident over telephone. In her evidence P.W.13 states that after receipt of information from her father she went to the hospital and found her mother in burns ward. She states that her mother informed her that A1 and A2 poured kerosene upon her and lit fire to her as her mother refused to give two rooms to A1.

13. Coming to the dying declaration recorded by P.W.10, which is placed on record as Ex.P17, the deceased stated that on the date of incident in the morning at 10.00 A.M., a quarrel took place, and then her co-sister (A1) poured kerosene over her and maternal aunt (A2)

set fire to her. She further stated that her husband and her daughter went out of the house for labour work and nobody was present in her room except her grand-daughter. The deceased also stated that her maternal aunt (A2) poured water on her and tried to extinguish the fire.

14. From the version narrated in the dying declaration it is clear that there was a quarrel between A1 and A2 on one hand and the deceased on the other and pursuant to the quarrel A1 is said to have poured kerosene over the deceased and A2 set fire to her. Immediately thereafter A2 poured water on the deceased and tried to extinguish the flames. Therefore, it appears that because of the quarrel that took place between A1 and A2 on one hand and the deceased on the other and during the course of the said quarrel, A1 poured kerosene over the deceased and A2 set her on fire, but realizing the gravity of the situation, A2 is said to have poured water on the deceased and tried to extinguish the flames.

15. From the narration of the facts referred to above, it is clear that both the accused never had any intention to kill the deceased or to do away with her life. Probably their acts were to put the deceased under fear of death, hence their immediate reaction in trying to save the deceased requires to be considered. If really their intention was to kill the deceased, neither of them would not have taken any steps to extinguish the flames. Further, there was a quarrel prior to the incident which was pacified by P.W.1 and immediately thereafter the incident

in question took place. The accused, the deceased and other witnesses belong one family and the quarrel was with regard to occupancy of two rooms in the house. In similar circumstances, the Supreme Court in *Kalu Ram vs State Of Rajasthan*¹ observed as under,

“But then, what is the nature of the offence proved against him. It is an admitted case that appellant was in a highly inebriated stage when he approached the deceased when the demand for sparing her ornaments was made by him. When she refused to oblige he poured kerosene on her and wanted her to lit the match-stick. When she failed to do so he collected the match box and ignited one match-stick but when flames were up he suddenly and frantically poured water to save her from the tongues of flames. This conduct cannot be seen divorced from the totality of the circumstances. Very probably he would not have anticipated that the act done by him would have escalated to such a proportion that she might die. If he had ever intended her to die he would not have alerted his senses to bring water in an effort to rescue her. We are inclined to think that all what the accused thought of was to inflict burns to her and to frighten her but unfortunately the situation slipped out of his control and it went to the fatal extent. He would not have intended to inflict the injuries which she sustained on account of his act. Therefore, we are persuaded to bring down the offence from the first degree murder to culpable homicide not amounting to murder.”

¹ AIR 2000 SC 3630

16. In view of the judgment of the Apex Court and having regard to the manner in which the incident took place, which was an offshoot of a quarrel between the accused and the deceased and the subsequent conduct of the accused, we feel that it is a fit case where the offence can be scaled down to one Section 304, Part-II of IPC, as the appellant since she had knowledge that by her act done towards the deceased it was likely to cause her death, but she had no intention to cause her death, or to cause such bodily injury as is likely to cause death. Hence the acts of the appellant constitute an offence punishable under Section 304, Part-II of IPC.

17. Accordingly, the appeal is partly allowed setting aside the conviction and sentence passed against the appellant/A1 and she is acquitted of the offence punishable under Section 302 IPC. However, the appellant/A1 is convicted for the offence under Section 304, Part-II of IPC and sentenced to undergo Rigorous Imprisonment of Five Years. The period of imprisonment shall be given set off under Section 428 Cr.P.C. The material objects are ordered to be destroyed as per the direction of the trial Court.

Dt. 6.2.2018
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C.PRAVEEN KUMAR, J

J. UMA DEVI, J