

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T. AMARNATH GOUD

Criminal Appeal No.953 of 2012

JUDGMENT: (Per the Hon'ble Sri Justice Raghvendra Singh Chauhan)

The appellant, Kongari Ravinder Reddy, has challenged the legality of the judgment dated 10.03.2011, in Sessions Case No.140 of 2008, passed by the learned Special Judge for Trial of Offences under SC/ST (POA) Act-cum-V Additional District & Sessions Judge, Medak at Sangareddy, whereby the learned Judge has convicted him for offence under Section 302 I.P.C, and sentenced him to life imprisonment, imposed a fine of Rs.2,000/-, and directed him to undergo simple imprisonment for a period of two months in default thereof. However, the learned Judge has acquitted the appellant for offence under Section 498-A I.P.C. Hence, this appeal before this Court.

Briefly the facts of the case are that G.Sangareddy (P.W.1) submitted a written complaint (Ex.P.1) before the Sub-Inspector of Police, Sadasivpet Police Station, wherein he claims that he married off his daughter with the appellant. The appellant used to harass his daughter and forced to bring money from her parents. Three months back, his daughter came to his house, and disclosed about the unbearable harassment by the appellant. He persuaded her to go back to her matrimonial home. According to him, the appellant used to consume alcohol every day. On 26.01.2008 at about 10:30 P.M, the appellant poured kerosene on his daughter and set her ablaze.

His granddaughter, Chitti (P.W.2), witnessed the incident and informed the same. He enquired from the neighbours especially P. Hanumanthu (P.W.6), who informed him that since they smelt kerosene, they opened the door of the appellant's house and found his daughter in flames. They tried to rescue his daughter with blankets.

On the basis of the said complaint (Ex.P.1), a formal F.I.R, namely F.I.R.No.23 of 2008 (Ex.P.11), was registered for offences under Section 302 and Section 498-A I.P.C, as the victim died in the same night.

During the course of investigation, the appellant was arrested and put up for trial. In order to substantiate its case, the prosecution examined sixteen witnesses, submitted twelve documents, and produced four material objects. The learned trial Court has convicted and sentenced the appellant as aforementioned. Hence, this appeal before this Court.

Ms. A. Gayatri Reddy, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, although the prosecution has examined Kalpana (P.W.2) and Sadasiv Reddy (P.W.3), the two children of the deceased, as eye-witnesses of the alleged incident, but they are unreliable witnesses. For, allegedly the incident had taken place in the kitchen. Since the apartment consisted of two rooms, where the family was staying, it is very unlikely that the children would have witnessed an incident that took place in the kitchen. Moreover, although the children claimed that the appellant had hit their mother with a pestle, according to the medical evidence, there are no injury marks on the body of the deceased with a blunt weapon. According to Dr. Raheem (P.W.12), the cause of the death was 100% burn injuries. Hence, the testimonies of P.W.2 and P.W.3 are belied by medical evidence. Therefore, the learned trial Court has erred in relying on the testimonies of P.W.2 and P.W.3 in order to convict the appellant.

Secondly, according to M.Beergonda (P.W.11), the panch witness of the scene of offence, the police had seized the gas stove from the scene. Furthermore, the defence has suggested to the witnesses that, in fact, the deceased was burnt due to bursting of the gas stove.

However, the said defence has not been believed by the learned trial Court. But, according to the learned counsel, a grave possibility does exist that the deceased was burnt not due to any action on the part of the appellant, but due to the bursting of the gas stove. Further, even Dr. Raheem (P.W.12) does admit, in his cross-examination, that the injuries received by the deceased could possibly be due to the bursting of a stove. Hence, according to the learned counsel, the defence has fortified its case. Therefore, the impugned judgment deserves to be set aside by this Court.

On the other hand, Mr. C.Pratap Reddy, the learned Public Prosecutor, has pleaded that since the alleged incident occurred around 10 pm, the presence of the two children (P.W.2 and P.W.3) is but natural. Neither of these two witnesses were shattered in their cross-examination. It is highly unlikely that the two children would falsely implicate their father, and would let go of the real culprit.

Secondly, neither according to M.Beergonda (P.W.11), nor according to the panchanama of the scene of offence (Ex.P.6), there is any evidence, which shows that the gas stove had burst in the kitchen. If the gas stove had, indeed, burst there would be tell-tale signs available at the scene of the crime. Therefore, the mere suggestion by the defence cannot be taken as the proof of the defence claimed by the appellant.

Lastly, considering the impeccable testimonies of P.W.2 and P.W.3, considering the fact that their testimonies are further corroborated by the testimony of Dr. Raheem (P.W.12), and by the Post-Mortem Report (Ex.P.8), according to the learned Public Prosecutor, the prosecution has successfully established its case beyond a reasonable doubt. Hence, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, considered the impugned judgment, and examined the record.

Kalpana (P.W.2), a child of eight years, was initially examined by the learned trial Judge in order to see whether she would be able to withstand the examination-in-chief and the cross-examination. Certain elementary questions were posed to the child who gave free and frank answers. In her testimony, she informed the Court that *“The accused is my father. The deceased Laxmi is my mother. P.W.1 is my maternal grandfather. My father beat my mother with a pestal, and thereafter poured kerosene on her body, and set her fire. Police recorded my statement.”* In her cross-examination, she clearly stated that *“It is not true to suggest that at the time of alleged incident I was sleeping. It is not true to suggest the accused also received burn injuries. It is not true to suggest the accused never beat my mother, and he never poured kerosene on her, and set her fire and that I am deposing false at the instance of P.W.1.”* Thus, clearly this witness has not been shattered in her cross-examination. In fact, she has stood by her deposition given in her examination-in-chief. Therefore, there is no reason to doubt the veracity of her testimony. Moreover, there is no reason why she would falsely implicate her father, and would let off the real culprit.

Similar is the deposition of Sadasiv Reddy (P.W.3), a child of ten years. He too has been asked certain simple questions by the learned trial Judge. He has also answered them truthfully. In his testimony, he informed the Court that *“Presently I am residing at Manoor (V). The accused is my father. I along with my sister, mother, and father were residing at Sadasivpet. Three years back at about 12.00 clock in the mid night, while I was sleeping in the house the accused picked up a quarrel with my mother, and beat her with a pestal, and thereafter poured kerosene on her body, and set her fire with a match stick, and caused*

her death. Myself and P.W.2 witnessed the incident. After the incident neighbours came to my house. Police recorded my statement”.

In his cross-examination, he denied the suggestion that he was asleep when the incident occurred. He denied the suggestion that the deceased used to beat him. He further denied the suggestion that the accused never beat his mother with a pestle, and he never poured kerosene and set her on fire. He further denied the suggestion that he is not an eye witness, and is deposing at the instance of P.W.1.

Thus, even this witness has not been shattered in the cross-examination. Hence, both P.W.2 and P.W.3 have given a consistent narration of events in their testimonies. Therefore, the learned trial Court was certainly justified in relying on their deposition for convicting the appellant.

The testimony of P.W.2 and P.W.3 is further corroborated by the testimony of Dr. Raheem (P.W.12). According to him, while performing the Post-Mortem, he found the following burn injuries on different parts of the limbs of the deceased:

1. *Following parts of the body are burnt due to thermal burns*
 1. *Face and neck 9%*
 2. *Front and back of both upper limbs 18%*
 3. *Front and back of both lower limbs 36%*
 4. *Front and back of chest 18%*
 5. *Front and back of abdomen 18%*
 6. *Genitalia 1%*
- Totally she received 100% burn injuries*

According to him, the burn injuries are “ante-mortem in nature” and the cause of the death is “thermal burns”. He further states that “the death is caused due to shock hypovolemia due to thermal burns, which had occurred thirty hours prior to the Post-Mortem examination”. He, therefore, also proves the Post-Mortem Report (Ex.P.8). Although a suggestion was made to this witness that the injuries could be caused by bursting of a stove, although this witness has accepted the

suggestion, as a probable reason for the burn injuries suffered by the deceased, but even this admission of this witness would have to be contrasted with the other evidence available on record.

Of course, the learned counsel for the appellant has stressed on the point that the burn injuries were caused due to the bursting of the stove. However, the panchanama of the scene of offence (Ex.P.6) merely indicates that the dead body was found in the kitchen. It does not indicate that there are any tell-tale signs of the stove bursting in the room. Therefore, the defence pleaded by the appellant is belied by the panchanama of the scene of offence (Ex.P.6). It is, indeed, trite to state that “while men may lie, documents and circumstances do not”. Therefore, the mere suggestion and acceptance of the possible burning by bursting of the stove cannot be accepted as a valid defence.

Considering the fact that P.W.2 and P.W.3 have stated that it is the appellant who burnt their mother, considering the fact that the appellant did not make any attempt to save the deceased, considering the fact that it is the neighbours, who came to her rescue and rushed her to the hospital, the intention of the appellant to kill the deceased is rather apparent. Therefore, the learned trial Court was certainly justified in convicting the appellant for offence under Section 302 I.P.C.

For the reasons stated above, this Court does not find any merit in the present appeal; it is hereby dismissed.

The conviction and sentence recorded against the appellant in the judgment, dated 10.03.2011, in Sessions Case No.140 of 2008, on the file of the learned Special Judge for Trial of Offences under SC/ST (POA) Act-cum-V Additional District & Sessions Judge, Medak at Sangareddy, for offence under Section 302 I.P.C, is hereby confirmed. The appellant's bail bonds are cancelled and the appellant shall forthwith surrender before the Superintendent, Central Prison, Cherlapally.

The miscellaneous petitions pending, if any, shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

Date: 05.02.2019
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(T. AMARNATH GOUD, J)

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