

High Court for the State of Telangana

The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice T.Amarnath Goud

Crl.A.No.1128 of 2012

Date: 06-02-2019

Between:

Jarpati Sreenu

...Appellant

and

The State of A.P.,
Rep. by its Public Prosecutor
High Court of A.P., Hyderabad

...Respondent

Counsel for the appellant:

Mrs.A.Gayatri Reddy

Counsel for the respondent:

Public Prosecutor

The Court made the following:

Judgment: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Aggrieved by the conviction and sentence of life imposed upon him for the offence under Section 302 IPC, aggrieved by the imposition of fine of Rs.2,000/-, and further aggrieved by the direction that in default thereof, he shall undergo simple imprisonment for a period of one month, the appellant, Jarpati Sreenu, has challenged the legality of the judgment dated 01-10-2012, passed by the VII Additional Sessions Judge (FAC) Judge, Family Court -cum- Additional District and Sessions Judge, Mahabubnagar.

Briefly, the facts of the case are that, Pasupula Sayanna had submitted a complaint (Ex.P.12) before the Sub-Inspector of Police, PS Koilkonda (PW.14), wherein he had alleged that about four months ago, he had performed the marriage of his youngest daughter, Savithri, with the appellant, Jarpati Srinu. Ever since the date of the marriage, the appellant and his mother, Venkatamma (accused No.2 in the Sessions Case), were physically and mentally harassing his daughter. His daughter informed him and his wife, Bheemamma (PW.1), that on 11-04-2011, they are going to Hyderabad for working as coolies. Therefore, she requested them to visit her at her matrimonial home. Hence, on 10-04-2011, both the complainant and his wife, Bheemamma (PW.1), reached her

home at Rampur village. After having meals, his daughter, and his son-in-law slept in a room; his wife, his daughter's mother-in-law and he slept outside. At about 1:00 a.m., his daughter's mother-in-law woke up his daughter, and told her to prepare the food. But his daughter did not wake up. However, later when she saw her mother-in-law cleaning the rice, she went and prepared the food. At about 2:00 a.m., his daughter went back to her husband, and slept. The other inmates of the house also slept. However, at 4:00 am, his daughter came out crying "*Daddy I am dead*". While she was descending from the steps, she fell down. While his daughter was in flames, he put out the flames with a blanket. Immediately, he and his wife shifted their daughter to the Government Hospital, in 108 ambulance, for treatment. He does not know as to how his daughter got burnt, but he suspects his son-in-law, Sreenu (appellant), and his daughter's mother-in-law, Venkatamma.

On the basis of this complaint (Ex.P.12), a formal FIR, namely FIR No. 43 of 2011 (Ex.P.11), was chalked out for offence under Section 498-A IPC. Subsequently, with the death of Savithri, the offence was altered from merely Section 498-A IPC to Sections 302 and 498-A IPC. During the course of investigation, the appellant and his mother, Venkatamma, were arrested and put up for trial.

In order to support its case, the prosecution examined fourteen witnesses and submitted thirteen documents. The defence did not choose to adduce any oral, or documentary evidence. After going through the evidence, while acquitting Venkatamma (accused No.2), the learned trial court convicted the appellant (accused No.1) for the offence under Section 302 IPC, but acquitted him of offence under Section 498-A IPC as aforementioned. Hence, the present appeal before this Court.

Mrs. A. Gayathri Reddy, the learned Counsel for the appellant, has raised the following contentions before this Court:-

Firstly, according to Pasupula Bheemamma (PW.1), the mother of the deceased, when her daughter was being rushed to the hospital, this witness asked her as to how she was burnt? The daughter informed her that she was burnt by her mother-in-law, Venkatamma (accused No.2). However, Venkatamma has already been acquitted by the learned trial court.

Secondly, in her dying declaration (Ex.P.9), the victim has clearly stated that she does not know as to how she was burned. Thus, there is no evidence worth the salt against the present appellant.

Thirdly, although the Prosecution claims that the appellant was present in the house when the incident took place at the dead

of the night, there is no evidence to this effect. Therefore, the prosecution has failed to prove the presence of the appellant at the place of the occurrence.

Fourthly, according to the Investigation officer, Laxmayya (PW.14), he did not find any burnt clothes, burnt bedding or any other item, which was burnt in the bedroom.

Lastly, since, on the same set of evidence, Venkatamma (accused No.2), the mother-in-law, has been acquitted, the benefit of acquittal should also be granted to the present appellant. Hence, according to the learned Counsel, the appellant has been convicted on the basis of surmises and conjectures, and not on the basis of cogent and convincing evidence.

The learned Public Prosecutor has raised the following counter-contentions:-

Firstly, in her Dying Declaration (Ex.P.9), the victim has clearly stated that while she was sleeping, at about 4.00 a.m., a cloth was tied to her face. Therefore, she could not know as to what had happened. But, despite her inability to reveal as to who had ignited her, according to the learned Public Prosecutor, the fact remains that the incident had taken place at 4:00 a.m., in the early hours of 11-04-2011, in the house of the appellant, and in his presence.

Secondly, Pasupula Bheemamma (PW.1) clearly states in her examination-in-chief that the appellant was very much present in the house. Therefore, relying on the case of **State of Rajasthan vs. J Ram**¹, the learned Public Prosecutor has pleaded that where the death of a woman takes place in the privacy of the house of the husband, at the dead of the night, and the husband is present in the house, it is for the husband to explain as to how the death had occurred. According to the Public Prosecutor, this burden of proof has been placed upon the accused by Section 106 of the Indian Evidence Act, 1872. He further pleads that in case, no explanation is given by the accused, such an omission would clearly point unerringly to his guilt. In the present case, the appellant has not offered any explanation as to how his wife, Savithri, had caught fire while she was sleeping in his room.

Thirdly, Pasupula Bheemamma (PW.1), Paspula Shiva (PW.2), Paspula Raju (PW.3) and Orusu Kurmaiah (PW.4) clearly stated in their testimonies that the appellant and his family members were demanding dowry from the deceased. Thus, there is a clear motive for getting rid of her. Hence, the prosecution has established the fact that the appellant is the culprit of the heinous crime.

¹ 2008 Vol 2 ALT (Crl.) 59

Fourthly, since the appellant has failed to give any explanation as to how his wife was burnt in his house at the dead of the night, such an omission would point to his guilt.

Lastly, Dr. Sampath Kumar (PW.11), has clearly stated, in his testimony, that he had performed the autopsy of the dead body. According to him, the deceased had sustained 80 to 90 percent of burns. She died after a week due to septicaemia caused by the extensive burns. Therefore, the prosecution had succeeded in establishing that the deceased had died due to homicidal death, and not due to accidental, or suicidal death. Therefore, the learned Public Prosecutor has supported the impugned judgment.

Ms. M. Vani (PW.12) is the Special Judicial Magistrate of First Class, Mobile Court, Mahabubnagar, who had recorded the dying declaration (Ex.P.9) of the victim on 11-04-2011 at 9.20 a.m. In her testimony, she clearly stated that, having received the requisition from the Government Hospital, Mahabubnagar, to record the dying declaration of one Savithri, she had proceeded thereto. She reached the Hospital at 9.55 a.m. The patient was identified by the duty doctor. She requested the duty doctor to certify the state of mind of the patient. The duty doctor certified that the patient is conscious and coherent. In order to decipher the coherence of the patient, she posed certain preliminary questions to her. On the

basis of the coherent answers given by the patient, this witness concluded that she is conscious and logical. Therefore, she proceeded to record the dying declaration. According to this witness, the patient informed her that she was sleeping in the house at 4.00 a.m. Somebody tied cloth on her face, and lit the fire. Therefore, she is not aware of what was happening to her. The dying declaration (Ex.P.9) was proved by this witness.

According to Dr. Sampath Kumar (PW.11), on 19-04-2011, he received a requisition from the Tahsildar, Harilal (PW.10), for conducting the postmortem examination of the dead body of Jarpati Savithri. According to him, the deceased had sustained 80 to 90% of burns. She had died due to extensive burns, and due to septicaemia. This witness had proved the postmortem examination report (Ex.P.7). It is obvious that Savithri had died a homicidal death.

The issue before this Court is whether the appellant is the culprit, who had burnt his wife, Savithri, or not ?

In the case of **Trimukh Maroti Kirkan v. State of Maharashtra**², while dealing with the scope and ambit of Section

² 2007 CrL.J. 20

106 of the Indian Evidence Act, 1872, the Hon'ble Supreme Court

opined as under:-

*“If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (See *Stirland v. Director of Public Prosecutions* [1944 AC 315] quoted with approval by Arijit Pasayat, J. in *State of Punjab v. Karnail Singh* MANU/SC/0585/2003 : 2003CRLJ3892 . The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:*

(b) A is charged with travelling on a railway without ticket.

The burden of proving that he had a ticket is on him.

Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house

cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

Admittedly, in the present case, the deceased caught fire in the privacy of her home. According to Paspula Bheemamma (PW.1), on the fateful night, the appellant was not only present in the house, but he also slept with his wife, Savithri, in his room. Therefore, under Section 106 of the Indian Evidence Act, 1872, it was the bounden duty of the appellant to explain as to how his wife, who was sleeping inside his room, caught fire in the early hours of 11-04-2011.

In catena of cases, the Hon'ble Supreme Court has also observed that in case there is no explanation, or a vague explanation is given by the husband with regard to the burning of the wife, such an omission, or a vague explanation should be seen as unerringly pointing towards the guilt of the accused, husband. In the present case, the appellant has not offered any explanation in his statement under Section 313 Cr.P.C. In fact, he has merely denied the occurrence. Therefore, his silence speaks voluminously about his guilt.

The learned Counsel for the appellant is unjustified in claiming that the presence of the appellant is unknown, as Paspula Bheemamma (PW.1) clearly states that the appellant was very much present. Even Orusu Kurmaiah (PW.4) also claims that the appellant was present in the house. Therefore, his presence cannot be doubted by this Court.

In large number of cases, this Court has noticed that the Police does not carry out a thorough investigation. It seems to purposefully leave certain aspects of investigation untouched in order to benefit the accused. In the present case, despite the fact that G.Laxmaiah (PW.14), the Investigation officer, claims that he seized the plastic can, but he never sent the plastic can for any finger printing report by the FSL. Moreover, even the panchanama for the scene of crime is bereft of details of the room where the dead body was discovered. Instead of preparing a separate sketch of crime panchanama, the scene of crime was merely shown in the inquest report (Ex.P.6). It is a settled principle of law that the benefit of the weaknesses of the investigation cannot be given to the accused. Therefore, even if G.Laxmaiah (PW.14), Investigation officer, states in his cross-examination that he did not observe any burnt mat, blanket or clothes at the scene of crime, the said statement would not dilute the veracity of the prosecution case.

For the reasons stated above, this Court does not find any merit in the present criminal appeal. It is, hereby, dismissed. The conviction and sentence recorded against the appellant/accused No.1 for the offence punishable under Section 302 IPC in the Judgment, dated 01.10.2012, in Sessions Case No.524 of 2011, on the file of the Special Sessions Judge –cum- VII Additional Sessions Judge (FAC), Judge, Family Court –cum- Additional District and Sessions Judge, Mahabubnagar, are hereby confirmed.

(Raghvendra Singh Chauhan, J)

(T.Amarnath Goud, J)

Dt: 6th February, 2019
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