

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.1079 OF 2012

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

Mr.Sarala Thimmappa, the appellant, has challenged the legality of the Judgment, dated 07.09.2012, passed by the III Additional District and Sessions Judge (F.T.C), Ranga Reddy District in S.C.No.503 of 2008, whereby the learned trial Court has convicted the appellant for the offence under Section 302 of the Indian Penal Code (IPC), and sentenced him to life imprisonment, imposed a fine of Rs.500/- and further directed to suffer simple imprisonment for one month in default thereof.

2. Briefly stated, the facts of the case are that on 26.02.2007 on receipt of the information from Osmania General Hospital, Hyderabad, about the admission of Sarala Nagamani (hereinafter referred to as the deceased) with 93% burn injuries, Habeeb Ahmed, (PW.8), Head Constable of Madhapur Police Station went to the hospital. He sent a requisition to the XIV Additional Chief Metropolitan Magistrate, Hyderabad (PW.9), and recorded the oral statement (Ex.P.4) of the victim. She stated that

“she was married to the accused about thirteen years prior to the incident, and was blessed with two children. The accused was working as a carpenter in Annapurna Film Studio, Banjara Hills. She was suffering with epilepsy and undergoing treatment. The accused used to threaten her to give divorce, and used to pick up quarrels with her. The deceased also questioned the accused about a phone call made to him by a lady, due to which, he

became furious and picked up quarrel. On the night of 25.02.2007, the accused brought one beer bottle, and one Thumps Up bottle. Herself and her children consumed Thumps Up, and the accused consumed beer. When her mother, Parvathamma (PW.1) visited her house, the accused gave her a glass of beer. Her mother left the house after consuming beer; the accused consumed the remaining beer. She slept on the floor, while her children slept on the cot. While she was sleeping, the accused picked up a kerosene container, and poured the same on her body and lit the match stick and threw it on her face. When she raised hue and cry, her tenant, Laxmi (LW.2) put off the fire by pouring water. In the meanwhile, her relatives rushed there, and shifted her to the hospital for treatment.”

3. On the strength of the said statement, Habeeb Ahmed (PW.8) registered a criminal case namely Crime No.85 of 2007, for offence under Section 307 IPC. But subsequently, on receipt of information that while undergoing treatment, the deceased died on 27.02.2007 at 1:45 am, S.Jayaram (PW.10), to whom the further investigation was entrusted, altered section of law to Section 302 IPC. He arrested the accused on 02.03.2007. The accused was put up for trial.

4. In order to support its case, the prosecution examined ten witnesses, exhibited nine documents, and produced five material objects. After appreciating the evidence brought on record, the learned trial Court convicted and sentenced the appellant as aforestated. Hence, the present appeal.

5. Smt. A. Gayathri Reddy, the learned counsel for the appellant, has contended that the evidence of R.Lakshmi (PW.1), B.Krishnaveni (PW.2) and S.Chandrakala (PW.3) is not reliable and trustworthy. For, R.Lakshmi (PW.1) never lodged any complaint with the police regarding the previous incidents. She further contended that S.Chandrakala (PW.3) is a minor girl. She is a tutored witness. Hence, her evidence is also not reliable one. She further pleaded that as per the case of the prosecution, the deceased had sustained 95% burn injuries. Thus, a reasonable doubt arises as to whether the deceased, with 95% burns, could give a coherent statement before her death? Therefore, no credence can be given to the dying declaration (Ex.P.7). She further argued that even if the appellant was responsible for the death of the deceased, as the contents of the dying declaration disclose that the appellant consumed beer along with the mother of the deceased, R.Lakshmi (PW.1), on the fateful day, therefore, he would neither have the intention, nor the knowledge to kill his wife. Hence at worst, he may be liable for conviction for the offence punishable under Section 304, Part II IPC.

6. On the other hand, Mr. C. Pratap Reddy, the learned Public Prosecutor for the State, contended that K.Surya Rao (PW.9), after being satisfied that the patient was in a conscious, coherent and fit state of mind for making statement, has recorded the dying declaration (Ex.P.7), wherein the deceased stated that when she questioned about the lady, who enquired about the whereabouts of the accused in the last month when he was on camp, and who

called on the last night at 11:00 pm., the accused quarreled with her and went outside on scooter. After some time, the accused came with beer bottle and Thumps Up bottle and consumed beer and her mother drunk Thumps Up. Thereafter, while she was sleeping, the accused poured kerosene on her, and set her ablaze. He further submitted that in the oral statement (Ex.P.4) also, the deceased stated the same version as that of the dying declaration and hence, the trial Court is right in convicting the accused basing on the dying declaration. Hence, the learned Public Prosecutor has supported the impugned judgment.

7. R.Lakshmi (P.W.1) is the mother of the deceased. She deposed that *'after marriage, Nagamani and the accused lived happily for three or four years. Accused developed illicit intimacy with some woman, who is making calls to the phone of the accused. The lady caller asked about the accused when my daughter answered the phone call. On 25th day of four years back, at the instance of my daughter Nagamani, I visited the house of Nagamani. At 8:00 pm., accused brought one beer bottle and offered a glass of beer to me. I heard a galata at the house of accused. Then myself and my younger daughter Krishnaveni proceeded to the house of the accused. I found my daughter Nagamani in flames. LW.2-R.Lakshmi and LW.3-R.Padma put off the flames. We took Nagamani initially to Vikram Hospital and shifted to Government Hospital. On enquiry, my daughter informed me that the accused poured kerosene and set fire to her, as the accused developed illicit intimacy with some other lady. Nagamani succumbed to injuries after 26 hours'*

B.Krishnaveni (P.W.2) also supported the version of R.Lakshmi (PW.1).

8. Coming to the evidence of S.Chandrakala (PW.3), who is the minor daughter of the accused and the deceased, she deposed that *'on 25.02.2007, the accused brought non-vegetarian, biscuits, chocolates and Thumps Up bottle. My father asked us to call R.Lakshmi (PW.1). In the first instance, R.Lakshmi (PW.1) did not come. Then myself and my brother brought R.Lakshmi (PW.1) to our house. The accused brought a beer bottle and also gave a glass of beer to R.Lakshmi (PW.1). After taking meal, R.Lakshmi (PW.1) left the house and we went to bed. At about 11:00 pm., my mother pulled the bed sheet and we found our mother in flames. When myself and my brother requested the accused to save us, the accused asked us to die in the same flames. When we raised cries, the tenants Lakshmi and Padma poured water and saved me and my brother. We stayed near almirah. Thereafter, R.Lakshmi (PW.1) and B.Krishnaveni (PW.2) and husband of B.Krishnaveni came there and took my mother to the hospital. My mother survived in the hospital for one day. The accused is responsible for the incident'*

9. It is to be noted that though R.Lakshmi (PW.1) and B.Krishnaveni (P.W.2) are the mother and the sister of the deceased, they cannot be said to be the interested witnesses. Moreover, there are no material omissions or contradictions in their testimonies so as to disbelieve their testimony.

10. Coming to the evidence of S.Chandrakala (PW.3), the minor daughter of the accused, she clearly deposed about the incident. She also deposed that when she and her brother requested the accused to save them, he asked them to die in the same flames. It is to be noted that if the accused did not pour the kerosene on the deceased, he would have tried to save the deceased and his children. Therefore, the argument of the learned counsel for the appellant that the appellant neither had the intention, nor the knowledge to kill his wife cannot be accepted.

11. At the very outset, we find that there is no dispute about certain facts. First is the death of the deceased on 27.02.2007 at about 1:45 am; and her cause of death being 95% burn injuries. The incident had occurred inside the room of her husband i.e., the appellant herein. The statement of the witnesses establishes that it is not a strange place, but the own household of the deceased where all the inmates including the accused lived. It is not the case of the appellant that some other person is responsible for the incident. These circumstances including the cause of death on account of burning, and the absence of the accused having fled away from the scene, are a clear pointer towards the involvement of accused. The accused, in the examination under Section 313 Cr.P.C., has not explained about the incident, except denying the charge leveled against him. There is no reason to disbelieve the version of Habeeb Ahemd (PW.8) and Ex.P.4, K.Surya Rao (PW.9) and Ex.P.7; where the contents of the deceased in her statement and dying declaration are consistent.

12. Insofar as the argument of the learned counsel for the appellant that since the deceased had suffered burn injuries to the extent of 95%, she was not in a fit condition to make a statement, and hence, the dying declaration is not a reliable one is concerned, in **Govindappa Vs. State of Karnataka**¹, the victim had 100% burn injuries and yet she was found to be in a fit state of mind to give her statement and affix her left thumb impression on the statement. The dying declaration was accepted by the Hon'ble Supreme Court on the evidence of the doctor that the victim was in a position to talk.

13. Thus, considering the evidence on record and totality of the circumstances, we are of the view, that it was the appellant who killed the deceased by causing burn injuries which was homicidal and anti-mortem in nature and, we are of the view, that the dying declaration was voluntarily made by the victim while she was conscious and capable of making such statement and her declaration was fully trustworthy, correct and this dying declaration inspires our confidence to accept the same as voluntary without any hesitation. It is true that the situation in which a person is on the death bed is so solemn and serene, is the reason in law to accept veracity of his/her statement. It is for this reason the requirement of oath and cross-examination are dispensed with. Thus, we see no ground to interfere with the judgment of the trial Court.

¹ (2010) 6 SCC 533

14. For the reasons stated above, the Criminal Appeal is dismissed. The conviction and sentence awarded by the learned trial Court in S.C.No.503 of 2008, by Judgment dated 07.09.2012, is hereby confirmed.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 06.02.2019
TJMR

