

THE HONOURABLE SRI JUSTICE SANJAY KUMAR
AND
THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CRIMINAL APPEAL No.1070 OF 2013

J U D G M E N T

(Per Hon'ble Sri Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 23.08.2013 of the learned III Additional District & Sessions Judge, Gadwal, in Sessions Case No.242 of 2012. The appellant was the sole accused therein and was charged with offences under Sections 302 and 498-A IPC. By the judgment under appeal, the Sessions Court held him guilty under Section 302 IPC and acquitted him of the charge under Section 498-A IPC. He was sentenced to life imprisonment and levied with a fine of Rs.10,000/-. In default of payment of the fine, he was sentenced to undergo simple imprisonment for a period of two months. The fine amount of Rs.10,000/- was directed to be invested in a fixed deposit and paid to Master Narender, the son of the accused and the deceased, upon his attaining the age of majority. Aggrieved by the conviction and sentence visited upon him, the sole accused is in appeal.

The charges framed against the appellant/accused read as under:

'Firstly : That you accused after giving birth to male child by your wife Tandoor Avula Siddamma subjected Tandur Avula Siddamma to cruelty suspecting over paternity on the child, by beating her, abusing her unnecessarily and that you thereby committed an offence punishable under section 498-A IPC and within my cognizance.

Secondly : That you accused on or about 7.11.2011 at about 10.00 A.M. at your house committed murder of Tandoor Avula Siddamma intentionally and knowingly causing death of Tandoor Avula Siddamma by pouring kerosene on her and setting her to fire and that you thereby committed an offence punishable under section 302 IPC and within my cognizance. '

The accused however denied the charges and claimed to be tried.

During the trial, the prosecution examined 14 witnesses and marked in evidence 19 exhibits and 1 MO. The accused did not lead any oral or documentary evidence.

The following salient points emerge from the evidence:

P.W.1, the younger brother of the deceased, stated that he was a resident of Narayanpet. He stated that the accused was the husband of the deceased and they had one son. They resided at Lalkota Village. According to him, the deceased set herself on fire and while she was admitted in the burns ward in the Headquarters Hospital at Mahabubnagar, he went there. He claimed that the deceased informed him that as the accused was not visiting the house and was not looking after her and her son, she poured kerosene and set herself on fire. In his cross-examination by the defence, P.W.1 stated that the marriage of the deceased took place about 17 years ago and there were no disputes between the husband and wife. He stated that the villagers brought the deceased to the hospital and after information was given by the villagers to the accused who was away from the village, he came to the hospital. The villagers were also present by the side of the deceased at the hospital and the deceased informed him that the Judge had come to the hospital and that the villagers tutored her to give a statement against the accused. According to him, the villagers tutored the deceased to give such a statement so that the accused may set himself right. He asserted that the accused had not committed the murder of the deceased and that the deceased herself was confident that she would survive after treatment. P.W.1 was declared hostile at this stage and was cross-examined by the prosecution. He then stated that he was not examined by the police and that he had not stated as in Ex.P1 statement, allegedly recorded under

Section 161 CrPC. He however admitted that he did not know the names of the persons who tutored the deceased.

P.W.2, a resident of Lalkota Village, stated that he was related to the deceased. He also claimed that she committed suicide but did not know the reason why. At the time of the incident he was away from the village grazing sheep and upon knowing about it, he came to the village. He asserted that the accused was not responsible for the death of the deceased. At this stage, he was declared hostile and was cross-examined by the prosecution. Thereupon, he denied having stated as in Ex.P2 statement, allegedly recorded by the police under Section 161 CrPC. He denied that he was deposing falsely to help the accused who was his relative. In his cross-examination by the defence, he said that the accused was not present in the village at the time of the incident and had gone away from the village to graze sheep.

P.W.3, a resident of Lalkota Village, stated that he knew P.Ws.1 and 2 and also the late father of the deceased. She stated that the accused was her husband's brother and asserted that the deceased had poured kerosene over herself and committed suicide. She was also declared hostile and in her cross-examination by the prosecution, she denied having stated before the police as in Ex.P3 statement, allegedly recorded under Section 161 CrPC. In her cross-examination by the defence, she stated that the accused was not present in the village on the date of the incident as he went away from the village to graze sheep.

P.W.4, a resident of the village, was also declared hostile and denied having made a statement before the police as in Ex.P4 statement, allegedly recorded under Section 161 CrPC. P.W.5, another resident of Lalkota Village, also spoke on the same lines and denied having made a statement before the police as in Ex.P5 statement, allegedly recorded

under Section 161 CrPC. P.Ws.6 and 7, the inquest witnesses, also turned hostile. So was the case with P.Ws.8 and 9, panch witnesses for the Crime Details Form (Ex.P18). They however identified their signatures therein (Exs.P8 and 9).

P.W.10, the Judicial Magistrate of First Class, Excise Court, Mahabubnagar, recorded the dying declaration of the deceased. She spoke of the steps taken by her in that regard. In her cross-examination, she denied the suggestion that the deceased was not conscious and coherent at the time of the recording of the dying declaration.

P.W.11, a Civil Assistant Surgeon at the District Hospital, Mahabubnagar, conducted the post-mortem examination of the body of the deceased. He stated that the percentage of burns was 90-95% and affirmed that the cause of death was cardio-respiratory arrest due to hypovolaemic shock due to extensive burns. He identified Ex.P12 as the post-mortem report issued by him.

P.Ws.12 and 13, residents of Lalkota Village, also turned hostile and denied having made statements before the police as in Exs.P13 and 14 statements, allegedly recorded under Section 161 CrPC.

P.W.14, the Sub-Inspector of Police, C.C.Kunta Police Station, stated as follows: On 08.11.2011 at about 1.00 PM, Ajilapuram Polappa (L.W.1), the father of the deceased, came and lodged a complaint about the incident. He identified Ex.P15 as the complaint lodged on that day. On the basis of Ex.P15, he registered a case in Crime No.82 of 2011. Ex.P16 is the FIR. He examined various persons under Section 161 CrPC and then conducted an inquest over the body of the deceased in the presence of P.Ws.6 and 7. He identified Ex.P17 as the inquest report. He then inspected the scene of the offence, viz., the house of the accused in Lalkota Village, and seized a five litre kerosene can from the scene. M.O.1

is the five litre can. Ex.P18 is the Crime Details Form prepared in the presence of P.Ws.8 and 9. He recorded the statements of P.W.5, P.W.12 and P.W.13 under Section 161 CrPC. As P.W.10 recorded the dying declaration of the deceased (Ex.P10), he secured a copy thereof and then altered the section of law. He filed a section alteration Memo in the Court (Ex.P19). Further investigation was then taken up by G.Govardhanagiri, Circle Inspector of Police, Atmakur (L.W.17), who completed the investigation and filed a charge-sheet. In his cross-examination, P.W.14 denied the suggestion that the deceased gave Ex.P10 dying declaration upon tutoring.

In the light of the above evidence, it is clear that the case on hand turns entirely upon the dying declaration of the deceased. As already noted *supra*, neither the family members of the deceased nor the villagers supported the case of the prosecution against the accused.

Well settled is the legal position that a truthful and reliable dying declaration can be the sole basis for a conviction. The Supreme Court affirmed that such a dying declaration can form the basis for conviction even without corroboration (See KUSHAL RAO V/ s. THE STATE OF BOMBAY¹, RAJU DEVADE V/ s. STATE OF MAHARASHTRA² and DEEPAK VERMA V/ s. STATE OF U.P.³).

Perusal of Ex.P10 dying declaration demonstrates that P.W.10 meticulously followed the procedure stipulated in Rule 33 of the Criminal Rules of Practice and Circular Orders, 1990. She posed questions to the deceased to ascertain her mental status before proceeding to record the dying declaration. That apart, she also took care to secure medical opinion as to her state of mind both before and after recording of the statement.

¹ AIR 1958 SC 22

² (2014) 14 SCC 646

³ (2015) 8 SCC 299

To the specific question posed by P.W.10 as to how she had sustained burns and what had happened, the deceased stated that her husband used to look after her quite well but since five months after her delivery, he started harassing and beating her up without reason. According to her, this was continuing since three months and she had no idea as to why he was beating and harassing her. As to the events of that day, she stated that at 10.00 AM on that morning, her husband came back home and she was feeding the baby at that point of time. She said that for about three days he was arguing with her and on that day at 10.00 AM, when he came home he poured kerosene over her and set her on fire. By the time she put the baby down and ran out, he had set her on fire. People nearby came and poured water to put out the flames and informed her co-sisters (Yarallu), who came and got her admitted in the hospital. To the question as to whether there were any disputes between them from before, the deceased stated that there were no such disputes but since three months he started harassing and beating her up without reason and on that day he had done this. To the question as to who was responsible for what had happened to her, the deceased stated that it was her husband, Narsimhulu. To the question as to whether she was stating so out of her own volition or whether someone asked her to state on these lines, the deceased stated that she was stating the truth out of her own volition and nobody had asked her to speak on those lines. To the last question as to whether she wanted to say anything else, the deceased said that she had nothing more to add.

Perusal of Ex.P16 FIR reflects that the same was registered upon the statement made by late Ajilapuram Polappa (L.W.1), the late father of the deceased, to the effect that after their marriage 18 years ago, the deceased and the accused led wedded life happily for some time and they

were blessed with a male child eight months ago. However, the deceased informed him over the phone that her husband was harassing her daily due to petty issues over last five months and was also beating her. On 07.11.2011 at about 10.30 hours, he stated that his son-in-law, the accused, informed him over the phone that his wife had poured kerosene and lit fire to herself and that he had joined her in the Government Hospital at Mahabubnagar. The father further stated that he sent his son, P.W.1, to the hospital and later, at about 22.30 hours, the accused informed him that the deceased had died due to burn injuries. Upon knowing this, he went to the hospital and found his daughter dead. He stated that his daughter was harassed by her husband and could not bear it and therefore, she poured kerosene over herself and committed suicide. Due to this report from Ajilapuram Polappa (L.W.1), the FIR was initially registered under Section 498-A and Section 306 IPC.

Sri E.Venkata Reddy, learned counsel for the appellant/sole accused, would contend that even the late father of the deceased, who set the course of law in motion, believed that his daughter committed suicide and therefore, no credence could be given to the dying declaration which was the result of tutoring. However, he has no explanation as to who had resorted to such tutoring and why they did so.

P.W.1 baldly stated that the deceased had informed him that the villagers had asked the deceased to make a statement against the accused before the Judge so that he would set himself right and that she believed that she would survive after treatment. However, it may be noted that the deceased suffered burns to the extent of 90-95% and died within a day. That apart, P.W.1 was not even in a position to identify who these villagers were who had tutored his sister, the deceased. It is not believable that P.W.1 would have not asked the deceased as to who had

tutored her, if that was really the case. Apart from the inherent weakness in this story to the effect that some random villagers, who were strangers to the family, would advise the deceased to speak against her husband and that she would have acted upon their words, Ex.P10 dying declaration remains unshaken. As already noted *supra*, the said dying declaration was recorded strictly as per due procedure and the contents thereof are fully inspiring of confidence. There is no reason as to why the deceased would have uttered such falsehoods against her husband of more than 18 years and more so, as they had a small child. A genuine dying declaration must be given due weight owing to the maxim '*Nemo Moriturus Praesumitur Mentiri*' – a man would not meet his maker with a lie in his mouth. No doubt, the deceased did not state anything about her husband suspecting her fidelity, in terms of the charges framed by the prosecution, but the motive for the crime is of no importance when the commission thereof by the husband of the deceased is clearly brought out in her dying declaration. Further, but for the *ipse dixit* statements of the hostile witnesses, there is no evidence adduced in proof of the accused being away from the village at the relevant point of time.

As regards the family members projecting it as a case of suicide, it is not unusual in cases of this nature for such family solidarity being displayed after the event, notwithstanding the death of a close relation. Perhaps the family members are guided by the misconceived notion of protecting the child from the stigma of being labeled the son of a murderer or at a more mundane and selfish level, they may seek to let off the offender so that he would himself take on the responsibility of rearing the child.

Therefore, notwithstanding the united front projected by the hostile witnesses for the prosecution to the effect that the deceased had

committed suicide, the dying declaration of the deceased clinchingly proves that it was her husband, the appellant/sole accused, who was responsible for her death. This Court finds no grounds to interfere with the cogent and well-reasoned judgment of the Sessions Court holding against the appellant/sole accused on the strength of the said dying declaration.

The appeal is devoid of merit and is accordingly dismissed.

SANJAY KUMAR, J

ABHINAND KUMAR SHAVILI, J

20th MARCH, 2019

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