

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NO.492 OF 2012

JUDGMENT: {Per the Hon'ble Sri Justice Raghvendra Singh Chauhan}

Aggrieved by the judgment dated 01.05.2012, in S.C.No.386 of 2007, passed by the III Additional District and Sessions Judge (F.T.C.), Ranga Reddy District, whereby the learned Judge has convicted the appellant, B.Ravi Kumar Goud (Accused No.1), for the offence under Section 302 of the Indian Penal Code (IPC) and has sentenced him to life imprisonment, imposed a fine of Rs.500/-, and directed the appellant to undergo simple imprisonment for a period of three months, in default thereof, while acquitting the appellant for the offence under Section 498-A IPC, and acquitting Bathula Narsimha Goud (Accused No.2) and Bathula Narayanamma (Accused No.3) for the offences under Sections 302 and 498-A IPC, the appellant has approached this Court.

Briefly, the facts of the case are that on 31.07.2006, around 06:30 P.M., the Police Station, L.B. Nagar received a telephonic message from the Osmania General Hospital, Hyderabad, that a patient, Smt. Shoba, W/o. Ravi Kumar, has been admitted with 70% burn injuries in the hospital. Immediately, Md. Yahiya (P.W.9) was deputed by the Police Station to proceed to the hospital, and to record the statement of the injured, Smt. Shoba. Having reached the hospital, Md. Yahiya (P.W.9) recorded her statement (Ex. P.7) wherein she claimed that "*My marriage was performed with one B.Ravi Kumar about one year back at Khuda*

Baksh Pally, Nalgonda District in the presence of elders. My parents given dowry of Rs.1,80,000/-, 7 thulas of gold. Since the date of marriage, my husband is not doing any work and staying idle and addicted to alcohol and beat me to bring money from my parents. During Bonala Festival my husband picked up quarrel with me and beat me. Today in the morning also my husband caught hold my hair and beat me. Today in the afternoon my husband abused me and said that I must die and he will perform second marriage after my death and thereafter my husband poured kerosene on me and set me ablaze and also scolded me as “chaavave Lanja dhaana”. The above panchanama was prepared in my presence and on hearing the contents of the same, I believed it to be true and correct and as such I put my thumb mark.”

On the basis of the said statement of the deceased, the police registered FIR.No.661 of 2006 (Ex. P.8) for the offences under Sections 498-A and 307 IPC. The investigation commenced. But, with the death of Smt. Shoba on 01.08.2006, the offence was converted to one from Section 307 IPC to Section 302 IPC. While accused Nos.2 and 3, the parents-in-law of the deceased, were arrested on 08.08.2006, the appellant did not surrender before the police till 11.08.2006. Subsequently, all the three accused persons were charged for offences under Sections 498-A and 302 IPC. They were put up for trial.

In order to support its case, the prosecution examined eleven witnesses, submitted ten documents, and produced three material objects. After going through the evidence, the learned trial Court convicted the appellant as aforementioned, and acquitted accused

Nos.2 and 3 as mentioned hereinabove. Hence, the present appeal before this Court.

Mr. P.Prabhakar Reddy, the learned counsel representing Ms. A.Gayathri Reddy, learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, Md. Yahiya (P.W.9) had recorded the dying declaration (Ex. P.7), prior to the dying declaration (Ex. P.5) recorded by the Magistrate, Y.Govind Reddy (P.W.7). Hence, there are two dying declarations in the present case.

Secondly, there is a contradiction between the two dying declarations with regard to cause of the fight between the appellant and the deceased. Therefore, neither of the two dying declarations can be relied upon for spelling out the truth.

Thirdly, according to P.Ramulu (P.W.1), the brother of the deceased, and C.Krishnaiah (P.W.2), the father of the deceased, on the fateful day, the deceased had gone to the house of one Panchala Kotamma (L.W.4), who had pacified the deceased, and sent her back to her in-law's place. But the said Panchala Kotamma (L.w.4) has not been examined by the prosecution. Thus, the prosecution has withheld a material witness from the Court. Therefore, adverse inference should be drawn against the prosecution.

Lastly, according to the dying declaration, at the time of the alleged incident, the appellant was in a drunken state. Therefore, he did not have the intention to cause the death of the deceased. Hence, the offence would not travel beyond the ambit and scope of Section 304 Part II IPC. Therefore, conviction should be altered

from one under Section 302 IPC to one under Section 304 Part II IPC.

On the other hand, T.Srikanth Reddy, the learned Public Prosecutor for the State of Telangana, has raised the following counter-contentions before this Court:-

Firstly, the substratum of both the dying declarations (Ex. P5 and Ex. P.7) is the same, namely that it is the appellant who poured the kerosene on the deceased and ignited the fire. According to Dr. Abjit Subedar (P.W.8), the cause of death was the burn injuries. The said injuries were caused by the appellant. Therefore, the prosecution has succeeded in establishing the fact that the deceased had suffered a homicidal death.

Secondly, Panchala Kotamma (L.W.4) is not a material witness. For, indisputably, according to the dying declarations (Ex. P.5 and Ex. P.7), there was a quarrel between the appellant and his wife. Therefore, in order to establish the factum of the quarrel, Panchala Kotamma (L.W.4) is not an essential witness. Hence, even though she has not been produced as a witness, no adverse inference can be drawn against the prosecution. Moreover, it is not the quantity of the witnesses, but the quality of the witnesses produced by the prosecution that would determine the guilt of the accused. Since the prosecution has produced both the dying declarations (Ex. P.5 and Ex. P.7) made by the deceased, there was no need for the prosecution to examine the said Panchala Kotamma (L.W.4) as a witness.

Lastly, the case does fall within the ambit of Section 302 IPC, and not within Section 304 Part II IPC. For, according to both the dying declarations (Exs. P.5 and P.7), it is the appellant who

poured the kerosene and lit the fire. Even after burning the deceased, he did not attempt to save the deceased. Moreover, he did not even bring the injured wife to the hospital. According to the deceased, she was taken to the hospital by her parents-in-law. Moreover, the incident had occurred on 31.07.2006, although the accused persons namely, A-2 and A-3, were arrested on 08.08.2006, the appellant continued to abscond till 11.08.2006; he did not surrender before the police till 11.08.2006. Therefore, during this interregnum period, from 31.07.2006 till 11.08.2006, the appellant tried to run away from the law. Therefore, even his post-occurrence conduct reveals his intention to kill his wife, and to escape from the clutches of the law. Hence, the case squarely falls under Section 302 IPC. Thus, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record produced before this Court.

Md. Yahiya (P.W.9) informs the Court that *"I am working as head Constable L.B. Nagar P.S. for last 5 yrs on 31.07.2006. Our Inspector of Police deputed me to the Osmania General Hospital to record the statement of V.Shobha, W/o.Ravi Kumar, aged 20 yrs, R/o. Bhupesh Gupta Nagar. I visited the Osmania General Hospital and recorded the statement of Shobha. I obtained the LTI of the patient. I get the dying declaration recorded by the Magistrate. Ex..P.7 is statement recorded by me from Shobha. I handed over statement to our SI Parevinder Rao (L.W.15)".* Therefore, he has recorded the first dying declaration (Ex. P.7). In the first dying declaration (Ex. P.7), the deceased states as under.

“My marriage was performed with one B.Ravi Kumar about one year back at Khuda Baksh Pally, Nalgonda District in the presence of elders. My parents given dowry of Rs.1,80,000/-, 7 thulas of gold. Since the date of marriage, my husband is not doing any work and staying idle and addicted to alcohol and beat me to bring money from my parents. During Bonala Festival my husband picked up quarrel with me and beat me. Today in the morning also my husband caught hold my hair and beat me. Today in the afternoon my husband abused me and said that I must die and he will perform second marriage after my death, and thereafter my husband poured kerosene on me, and set me ablaze and also scolded me as “Chaavave Lanja dhaana”.

Sri Y.Govind Reddy (P.W.7) claims in his testimony that on 31.07.2006 at 11:00 P.M., he received a requisition from SHO, L.B.Nagar to record the dying declaration of Shoba, W/o.Ravi Kumar who was undergoing treatment at Burns Ward, OGH. He reached hospital at about 11:30 P.M., where he identified the patient with the help of duty doctor, Dr. Manjula Bai. He put preliminary questions to know the fit state of mind of the declarant. The duty doctor certified that the patient was conscious, and coherent, and in a fit state of mind to give statement. Then he proceeded to record the dying declaration of the patient, and recorded the same.

The second dying declaration is as under:

“My husband in a drunken condition picked up quarrel at my house at L.B. Naga around 1:00 Noon on the pretext that I have not worked. He poured kerosene on me, and set ablaze with match stick. I raised hues and cries, and came out of the house. At that

time my parents-in-law and neighbours ceased the flames, and brought me to hospital. I don't have children. There are no disputes between us with regard to dowry. My husband used to come to the house in drunken condition daily and harassing me."

However, the learned Public Prosecutor, during the course of his arguments, informs this Court that the answer to question No.7, "*how did you receive burn injuries?*", the answer has not been correctly translated in the paper book. The translation in the paper book has been reproduced hereinabove. However, the learned Public Prosecutor submits that the actual translation of the Telugu declaration is as under "*I picked up quarrel with my husband at our residence at L.B. Nagar around 10 'O' clock. We took up quarrel with each other. He stated that I was not working and hence, he picked up quarrel with me. He poured kerosene on me and lit fire. I raised hues and cries and came out of the house. On that my parents-in-law and neighbours ceased the flames and brought to the hospital. I do not have children. There are no disputes with regard to the dowry. My husband used to come to the house in a drunken state of mind and harassing me*".

A bare perusal of both these dying declarations (Exs. P.5 and P.7) reveal that the crucial information with regard to the author of the burn injuries continues to be the same. According to the deceased, it is the appellant, her husband, who had poured the kerosene and lit the fire. Therefore, even if she gives different reasons for the quarrel, the underlying foundation of the dying declaration clearly shows the culprit who lit the fire continues to be identical. Therefore, the learned counsel for the appellant is not justified in claiming that there is a contradiction between the first

time declaration (Ex. P.7) and the second dying declaration (Ex. P.5). Since the substratum of the dying declarations (Ex. P.5 and Ex. P.7) is the same, there is no reason to disbelieve the veracity of the dying declarations.

According to Dr. Abijeet Subedar (P.W.8), *“he was working as Associate Professor in Osmania General Hospital. On 02.08.2006, he performed the Post-Mortem, on P.Shoba, between 01:30 to 03:30 PM. He had discovered antimortem epidermal burns over the face, neck, front of chest, and abdomen, complete back both upper and lower limbs up to the thigh area. Part of the burnt areas were pinkish red in colour. Part of the unburnt are in black in colour. 70% of the total body surface area covered burn injuries. All internal examination, all the organs were congested and the stomach contained 100% of greenish colour liquid with normal mucosa and no specific smell”*. According to this witness, *“the cause of death is due to burns and the patient expired on 01.08.2006 at 06:30 P.M”*. This witness had signed the Post-Mortem Report (Ex. P.6). Thus, on the basis of the two dying declarations (Exs. P.5 and P.7), and on the oral testimony of Dr. Abjit Subdear (P.W.8) and on the basis of the Post Mortem Report (Ex. P6), the prosecution has succeeded in establishing that the deceased had suffered homicidal death at the hands of the appellant.

Through the two dying declarations (Ex. P.5 and Ex. P.7), which are readily available on record, the prosecution has proven the fact that the appellant and the deceased had quarreled on the fateful day. Therefore, the non-examination of Panchala Kotamma (L.W.4) is not fatal to the case of the prosecution. For, she is not a material witness for establishing the fact that the appellant and

the deceased had quarreled on the fateful day. Hence, her non-examination by the prosecution does not lead to an adverse inference to be drawn by this Court. Therefore, the contention raised by the learned counsel for the appellant is clearly unsustainable.

In order to appreciate, if a case falls within the four corners of Section 302 IPC, or Section 304 Part II IPC, certain factors have to be kept in mind: Firstly, the circumstances in which the occurrence has taken place; secondly, the weapon used; thirdly, the gravity of the conduct; fourthly, even the post-event conduct of the accused. In the present case, admittedly, the appellant had caught hold of his wife, poured kerosene, and burned her. According to the dying declaration (Ex. P.5), it is the parents-in-law who brought her to the hospital, and not the appellant. Thus, the appellant neither attempted to put off the fire, or to shift the injured wife immediately to the nearest hospital. Moreover, even after she had expired on 01.08.2006, even after the appellant's parents were arrested on 08.08.2006, the appellant did not surrender before the police between 31.07.2006 and 11.08.2006. During this period, the police could not locate the appellant. It is only on 11.08.2006, the appellant surrendered before the police. Thus, from 31.07.2006 to 10.08.2006, the petitioner evaded the law.

The act of pouring the kerosene and igniting the fire, the said act would certainly fall within the thirdly and fourthly part of Section 300 IPC. Therefore, there is no ameliorating condition which would alter the offence from Section 302 IPC to Section 304

Part II IPC. Therefore, the third contention raised by the learned counsel for the appellant is clearly unacceptable.

For the reasons stated above, this appeal is devoid of any merit. It is, hereby, dismissed. The conviction of the appellant for the offence under Section 302 IPC, by judgment dated 01.05.2012 in S.C.No.386 of 2007, passed by the III Additional District and Sessions Judge (FTC), Ranga Reddy District is, hereby, confirmed.

Miscellaneous petitions, if any, pending shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

2nd January 2019
RRB