

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE B. KRISHNA MOHAN

Criminal Appeal No. 86 of 2015

JUDGMENT: *(Per Hon'ble Sri Justice C.Praveen Kumar)*

Heard Sri. Srinivasa Rao Narra, learned Legal-Aid Counsel appearing for the appellant and Sri. S. Dushyanth Reddy, Additional Public Prosecutor for the State, through Blue Jeans video conferencing APP and with their consent, the appeal is disposed of.

1) Sole accused in Sessions Case No. 214 of 2012 on the file of II Additional Sessions Judge, Kadapa, is the appellant herein. He was tried for the offences punishable under Sections 302 and 498-A of Indian Penal Code [**I.P.C.**]. By its Judgment, dated 09.10.2014, the learned Sessions Judge convicted the accused for the offence punishable under Section 498-A I.P.C. and sentenced him to suffer rigorous imprisonment for a period of two years and to pay fine of Rs. 1,000/- in default to undergo simple imprisonment for four months. He was further found guilty for the offence punishable under Section 302 I.P.C., and sentenced to suffer imprisonment for life and to pay fine of Rs.1,000/- in default to undergo simple imprisonment for four months. The substantive sentences were directed to run concurrently. M.O.1 to M.O.3 were directed to be destroyed after the appeal time is over.

2) The gravamen of the charges against the accused is that, on 02.04.2012 at about 11.30 P.M., in his house, the accused caused death of his wife, by name, Muttaluru Lakshmi Devi [**deceased**] by pouring kerosene and setting her on fire.

3) The facts, as uncovered from the evidence of the prosecution witnesses, are as under:

- i) The accused is the husband of the deceased. PW2 is a resident of Lakshmi Nagar Street of Jammalamadugu Town whose house is situated opposite to the house of accused. PW1 is also a resident of Munireddy Colony of Jammalamadugu Town, who knows the accused and the deceased.
- ii) The marriage between the accused and deceased took place about 15 years prior to the date of incident. They were blessed with a daughter and son. The accused was eking out his livelihood by doing welding work, while the deceased was doing tailoring work. After marriage, both of them lead a happy married life for some time. Later, the accused got addicted to vices and started spending his earnings for other vices. It is further stated that the accused was harassing the deceased by demanding her to give money for his vices.

- iii) While things stood thus, on 02.04.2012, the accused returned home in drunken condition and demanded the deceased to give money but she refused to oblige his request. Thereafter, the deceased along with her children had dinner and all of them slept. At about 11.30 P.M. the accused poured kerosene on the deceased and set her on fire. With the flames on her body, the deceased came out of the house raising cries. PW2, who is her neighbour, noticed the same and when accosted, the deceased replied stating that on that day when she did not meet the requirement of the accused, by giving money, the accused poured kerosene and set her on fire while she was sleeping. PW2 and others put off the flames on the body of the deceased. On seeing them, the accused ran away from the scene. Thereafter, the information about the incident was furnished to the relatives of the deceased, who came there and shifted her to the Government Hospital, Jammalamadugu, where she died.
- iv) On 03.04.2012 at about 1.10 A.M., while PW6 - the Circle Inspector of Police, Jammalamadugu Police Station, was on night duty, received a phone call from the Head Constable of Jammalamadugu Police Station, with regard to the intimation received about the admission of M. Lakshmi Devi, with burn injuries in the hospital. He instructed the Head Constable to receive the accident

intimation and, thereafter, collected the intimation, which is placed on record as Ex.P10. He then proceeded to Government Hospital, Jammalamadugu, and recorded the statement of the injured in the presence of duty doctor. He also obtained 'left thumb impression' of the injured and also a certificate of Medical Officer [PW4] to show that the injured was conscious while giving the statement. Ex.P11 is the said statement. Basing on the said statement, he registered a case in Crime No. 42 of 2012 under Sections 498A and 307 I.P.C. Ex.P12 is the First Information Report.

- v) PW7 – the Junior Civil Judge, Jammalamadugu, also received requisition from Government Hospital, Jammalamadugu, at 1.45 A.M., for recording the dying declaration, which is marked as Ex.P16. Accordingly, PW7 proceeded to the hospital and recorded the statement of the injured after indentifying the injured with the help of PW4 [doctor]. Ex.P17 is the dying declaration recorded by the Magistrate.
- vi) PW6, the investigation officer, proceeded to the scene of offence and recorded the statement of PW1 and others. He then visited the house of the deceased and prepared a panchanama of the scene, apart from that Ex.P13 – rough sketch of the scene. At the scene, he seized M.O. 1 to M.O.3. He also examined PW2 and recorded her statement.

- vii) On 04.04.2012 at about 6.00 A.M., PW6 received death intimation of the injured from Government Hospital, Jammalamadugu, which is marked as Ex.P14. Basing on the death intimation, he altered the section of law from 498A and 307 I.P.C. to 498A and 302 I.P.C. Ex.P15 is the altered First Information Report. After altering the section of law, he proceeded to the mortuary room of Government Hospital, Jammalamadugu, and conducted inquest over the dead body of the deceased at 10.30 A.M. Thereafter, the body was forwarded for post-mortem examination. PW4 the Medical Officer, Government Hospital, Jammalamadugu, conducted autopsy over the body and issued Ex.P4 is the post-mortem certificate. According to him, the cause of death was due to *extensive mixed burns*.
- viii) On receipt of credible information, PW6 arrested the accused near Peddapasupula bye-pass road, when he was found sitting on a pial. On questioning, the accused disclosed his identity and confessed about pouring kerosene on the deceased. He was arrested and remanded to judicial custody. After completing the investigation, he filed a charge-sheet, which was taken on file as P.R.C. No.21 of 2012 on the file of Judicial Magistrate of First Class, Jammalamadugu.

4) On appearance of the accused, copies of documents as required under Section 207 Cr.P.C., came to be furnished. Since the case is triable by Court of Sessions, the matter was committed to the Sessions Court under Section 209 Cr.P.C. Basing on the material available on record, charges as referred to above came to be framed, read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

5) In support of its case, the prosecution examined PW1 to PW7 and got marked Ex.P1 to Ex.P17, beside marking M.Os. 1 to M.O.3. After completion of prosecution evidence, the accused was examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against him in the evidence of prosecution witnesses, to which he denied, however, no documentary evidence was adduced.

6) Believing the two dying declarations recorded by PW6 and PW7 coupled with the oral evidence of PW2, the learned Sessions Judge convicted the accused. Challenging the same, the present appeal came to be filed.

7) Sri. Srinivasa Rao Narra, learned counsel appearing for the appellant mainly submits that except the two dying declarations recorded by the Magistrate [PW7] and the Police [PW6], there is no other material to connect the accused with the crime. He further submits that in the absence of any direct evidence, it is not be safe to convict the accused for the offence punishable

under Section 302 I.P.C. According to him, when the deceased sustained 80% burns, the doctor could not have certified that the injured was in a fit condition to make a statement. He further submits that deceased committed suicide and not homicide as projected by the prosecution. He further submits that when the case of the prosecution is that the accused demanded money for his vices but the dying declarations does not reflect the same. Since, there is a variance with regard to 'motive', he would submit that it may not be safe to base a conviction on the two dying declarations.

8) On the other hand, Sri. S. Dushyanth Reddy, learned Additional Public Prosecutor submits that, when the two dying declarations are consistent with each other, 'motive' pales into significance and the conviction can be made if they are believable. He further submits that there are no reasons to disbelieve the dying declaration as nothing is suggested to PW7 to doubt its veracity. He further submits that death of the deceased was due to burns and the evidence adduced clearly shows that it was not a case of suicide. Viewed from any angle, he would submit that the order of conviction requires no interference.

9) The point that arises for consideration is, *whether the prosecution was able to bring home the guilt of the accused beyond doubt?*

10) The fact that the dying declaration can be made the sole basis to convict the accused, if it is otherwise found to be voluntary and reliable, is not in dispute. In-fact, the Hon'ble Apex Court in catena of cases has categorically held that the dying declaration can be made the basis to convict the accused if the maker is in a fit condition to make it. The Hon'ble Supreme Court further held that if the dying declaration is genuine and free from doubt, the same can be made the basis to convict the accused even if there is no other evidence on record.

11) In ***Atbir v. Government of NCT of Delhi***¹, the Apex Court, after noting earlier judgments, has laid the following guidelines with regard to admissibility of the dying declaration:-

- i. ***Dying declaration can be the sole basis of conviction if it inspires the full confidence of the court.***
- ii. *The court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.*
- iii. *Where the court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.*
- iv. ***It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.***
- v. *Where the dying declaration is suspicious, it should not be acted upon without corroborative evidence.*
- vi. *A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.*

¹ 2010 AIR 3477

- vii. *Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.*
- viii. *Even if it is a brief statement, it is not to be discarded.*
- ix. *When the eyewitness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.*
- x. *If after careful scrutiny, the court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it the basis of conviction, even if there is no corroboration.”*

12) Keeping in view the law laid down, we shall now proceed to deal with the case on hand.

13) It may not be necessary for us to go in to the oral evidence available on record except that of PW2, who in her evidence categorically stated that, on the date of incident at about 11.30 P.M., the deceased came out of the house with flames. When PW2 asked the injured as to how the incident occurred, she replied stating that the accused demanded money for drinking alcohol and when she refused to give money, the accused poured kerosene and set her on fire while she was sleeping. Thereafter, PW2 put off the flames over the body of the deceased and shifted the injured to Government Hospital, Jammalamadugu. Though she was cross-examined at length, but nothing useful came to be elicited to discredit the statement made by the deceased. Apart from the oral declaration made before PW2, there are two other written dying declarations made before PW6 and PW7.

14) PW6 – Inspector of Police, in his evidence states that, on 03.04.2012 at about 1.10 A.M., he received information about

the admission of the injured in the hospital. After receiving the intimation; he proceeded to the hospital and after identifying the injured, recorded the statement of the injured. The evidence of PW6 categorically discloses that he obtained certificate from the Doctor [PW4] as to the mental condition of the deceased before recording the statement. Ex.P11 is the said statement. It is also to be noted here that the said statement was also made the basis for issuance of the First Information Report [Ex.P12].

15) PW7 – the Junior Civil Judge, Jammalamadugu, who also received the intimation from the hospital, proceeded to the hospital and recorded the dying declaration of the deceased, which is marked as Ex.P17.

16) The evidence of PW6 and PW7 categorically show that before recording the dying declaration, they not only recorded the satisfaction as to the mental state of the deceased, but also obtained a certificate from the doctor with regard to consciousness and fitness of the deceased in making the said statement.

17) A reading of the dying declaration would show that on 02.04.2012 night, her husband came home in a drunken condition and asked for money. When she refused to give money, an altercation took place. After sometime, they had dinner and slept in the room. At about 11.30 P.M., while she was sleeping along with children, her husband poured kerosene on her body. When she raised cries, her husband lit a match

stick and set fire to her. On hearing her cries, the neighbour came there and put off the flames on her body. It is further stated that, thereafter, PW1 came to the scene and shifted her to Government Hospital, Jammalamadugu. The declaration also discloses that when she refused to give money to her husband for taking liquor, her husband resorted to the same.

18) The Magistrate who recorded the dying declaration was also cross-examined, but nothing useful came to be elicited to discredit his evidence. It was not even suggested to him that said statement was an outcome of tutoring.

19) At this stage, the learned counsel for the appellant tried to contend that there is variance with regard to motive in the two dying declarations. According to him, the accused demanded money from his wife [deceased] for his vices, but, the version in dying declaration is something different. A perusal of the said dying declaration does not indicate much of variance. The deceased categorically stated that the accused used to quarrel for money. Apart from that, she also stated that her husband [accused] borrowed some money at the time of construction, for which he used to harass her to give money. Even assuming for the sake of the argument that the accused demanded money for repaying the borrowed amount, this could be one another demand made at times for money. The fact which is consistent is that the accused was demanding money and while the deceased was sleeping along with her children, the accused poured

kerosene and set her on fire. The contents of two dying declarations also get corroboration from the evidence of PW2 before whom the deceased made an oral dying declaration. In view of the two dying declarations, which according to us are consistent, the same can be relied upon to convict the accused for the offence punishable under Sections 498A and 302 I.P.C.

20) At this stage, the learned counsel for the appellant would contend that when the deceased sustained 80% burns, the doctor could not have certified that the injured was in a fit condition to make a statement.

21) In ***Mafabhai Nagarbhai Raval v. State of Gujarat***², the Court dealt with a case wherein a question arose with respect to whether a person suffering from 99 per cent burn injuries could be deemed capable enough for the purpose of making a dying declaration. The learned trial Judge thought that the same was not at all possible, as the victim had gone into shock after receiving such high degree burns. He had consequently opined, that the moment the deceased had seen the flame, she was likely to have sustained mental shock. Development of such shock from the very beginning, was the ground on which the Trial Court had disbelieved the medical evidence available. This Court then held, that the doctor who had conducted her post-mortem was a competent person, and had deposed in this respect. Therefore, unless there existed some inherent and

² AIR 1992 SC 2186

apparent defect, the court could not have substitute its opinion for that of the doctor's. Hence, in light of the facts of the case, the dying declarations made, were found by this Court to be worthy of reliance, as the same had been made truthfully and voluntarily. There was no evidence on record to suggest that the victim had provided a tutored version, and the argument of the defence stating that the condition of the deceased was so serious that she could not have made such a statement was not accepted, and the dying declarations were relied upon.”

22) In view of the above judgment and as the evidence of PW4 show that the deceased was in a fit state to make a declaration, there is no reason for us to disbelieve the same. It is also to be noted that the presence of PW1 and PW2 and others coupled with the contents of dying declarations show that there was consistent harassment in the form of beating and demanding money by the accused to meet his vices.

23) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/accused beyond reasonable doubt and the trial court rightly convicted the appellant.

24) In the result the appeal fails and it is accordingly **dismissed**, confirming the conviction and sentence recorded against the appellant/accused in the judgment, dated 09.10.2014 in Sessions Case No. 214 of 2012 on the file of II Additional Sessions Judge, Kadapa.

25) Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE C. PRAVEEN KUMAR

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Date: 18/08/2021
S.M./

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