

HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE P.KESHA RAO

CRIMINAL APPEAL No.256 OF 2013

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

1) The appellants, who are Accused Nos.1 and 2 in Sessions Case No.465 of 2011 on the file of the V Additional District and Sessions Judge, Tirupati, were tried on two charges. The first charge against accused No.1 was under Section 302 IPC and against accused No.2 was under Section 302 read with 34 IPC for causing the death of one K.Selvi (hereinafter referred to as "the deceased") by setting her on fire. The second charge was against both the accused for the offence punishable under Section 498-A IPC for harassing the deceased. Vide judgment, dated 05.12.2012, the learned Sessions Judge, Tirupati, convicted accused No.1 for the offence punishable under Section 302 IPC and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/- in default to suffer rigorous imprisonment for a period of three months, while acquitting him for the offence punishable under Section 498-A IPC. Accused No.2 was acquitted of both the charges.

2) The facts are as under:

i) Accused No.1 is the husband of the deceased while accused No.2 is said to be the second wife of accused No.1.

PW.1 is the son-in-law of the deceased. PW.2 is the daughter of the deceased. The marriage of the deceased with accused No.1 was performed about 20 years prior to the date of incident. Out of wedlock, they were blessed with three daughters. The allegations in the charge sheet would show that accused No.1 got addicted to bad vices from the beginning of marriage and he has not looking after the welfare of the deceased. It is said that he developed illicit intimacy with accused No.2 and was not regularly coming to the house since three years and whenever accused No.1 comes home, he used to picked up quarrels with the deceased and with his daughters also. The same was informed by the deceased to her relatives and village elders, which lead to mediations. But accused No.1 did not change his attitude and continued his affair with accused No.2 and also harassed the deceased by coming home in a drunken state. It is further stated that at the instigation of accused No.2, accused No.1 used to beat the deceased indiscriminately and also warned the deceased that he would kill her on one day. It is said that on 05.12.2010 at about 1.00 p.m., the accused came home, picked up a quarrel with her in connection with the illegal affair with accused No.2 and beat her with hands. Saying that if he kills her, there will be none to rescue her, pushed her down, picked up a kerosene tin, poured the same on the deceased and set her on fire. It is said that on seeing LWs.2 to 6 coming towards the house, the accused run away.

ii) On 05.12.2010 at 2.45 p.m., while PW.11-the Sub-Inspector of Police, Pichatur, was in police station, received a telephonic message from Community Health Centre, Puttur, stating that one victim by name K.Selvi, was admitted with burn injuries. Immediately he left the police station, reached the hospital, identified the victim and after obtaining the certificate from the duty doctor with regard to the mental condition of the deceased, recorded the statement of the injured. Ex.P12 is the said statement. Thereafter, he returned to the police and registered a case in Crime No.41 of 2010 for the offences punishable under Sections 498-A, 307 read with 109 IPC on the basis of the said statement. Ex.P13 is the first information report. On the next day, he visited S.V.R.R.G. Hospital, Tirupati at 9.00 a.m., and examined PW.2, who is the daughter of the deceased and recorded her statement. Ex.P14 is the statement of the victim recorded under Section 161 of Cr.P.C. Thereafter, he visited the scene of offence situated at Appambattu Harijanawada of Pichatur Mandal and observed the scene of offence in the presence of mediators. Ex.P15 is the scene of offence panchanama. Thereafter he prepared a rough sketch of the scene which is placed on record as Ex.P16. During the said proceedings, he recorded the statements of PWs.3, 4 and others. On 08.12.2010 at 8.00 a.m., when PW.11 was in the police station, PW.5 came there and produced accused Nos.1 and 2 along with his written report stating that both the accused approached him and confessed about the commission of offence.

Ex.P17 is the report. In the presence of PW.7, he interrogated both the accused who are alleged to have confessed about the commission of offence. Accordingly, PW.11 arrested both the accused.

iii) PW.10, who was working as IV Additional Judicial Magistrate of First Class, Tirupati, received a requisition from S.V.R.G.G. Hospital, Tirupati, at 6.40 p.m., on 05.12.2010 for recording the dying declaration of Selvi. Immediately, she proceeded to the hospital, identified the patient with the help of the duty doctor, obtained a certificate from the duty doctor with regard to mental condition of the injured and thereafter recorded the dying declaration of the deceased, which is placed on record as Ex.P11.

iv) On 09.12.2010 while PW.11 was in the police station, PW.1 submitted a report stating that while the deceased was being shifted to Chennai for better treatment, died on the way. Ex.P2 is the report. Basing on which, PW.11 altered the section of law to 498-A and 302 IPC. Ex.P18 is the altered first information report.

v) Further investigation in this case was taken over by PW.12-the Inspector of Police. According to him, after receiving the altered first information report, he proceeded to the hospital and conducted inquest over the dead body of the deceased. Ex.P8 is the inquest report. During inquest, he examined PWs.1

to 4 and others and recorded their statements. Thereafter, the dead body was sent for postmortem examination.

vi) PW.9-the Civil Assistant Surgeon, Community health Centre, Sathyavedu, conducted autopsy over the dead body of the deceased and issued Ex.P9-the postmortem certificate. According to him, the cause of death was “due to shock and cardio respiratory arrest due to burns”.

vii) After collecting all the material, PW.12 filed a charge sheet which was taken on file as P.R.C.No.8 of 2011 on the file of the Judicial Magistrate of first Class, Sathyavedu. After complying with the requirements of Section 207 Cr.P.C., the case was committed to Sessions Division under Section 209 of Cr.P.C. On committal the same came to be numbered as S.C.No.465 of 2011.

3) On appearance, charges under Sections 302 and 498-A IPC came to be framed against accused No.1, while charges under Section 302 read with 34 and 498-A IPC against accused No.2 came to be framed, read over and explained to the accused, to which the accused pleaded not guilty and claimed to be tried.

4) In support of its case, the prosecution examined PWs.1 to 12 and got marked Exs.P1 to P19 and MOs.1 to 3. After the closure of evidence, the accused were examined under Section 313 Cr.P.C., with reference to the incriminating

circumstances appearing against them, in the evidence of the prosecution witnesses, to which they denied. Neither oral nor documentary evidence was adduced on behalf of the accused.

5) Out of 12 witnesses examined by the prosecution, PWs.1 to 7 did not support the prosecution case and they were treated hostile. Relying upon the two dying declarations of the deceased, the trial Court convicted accused No.1 in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) The main ground urged by the learned counsel for the appellant is that multiple dying declarations made by the deceased, which are relied upon by the prosecution to base a conviction, cannot be acted upon as they are inconsistent with each other. In the absence of any other material, he pleads acquittal of the accused. He further submits that the deceased was Malayali and that there is any amount of doubt that she could have made the dying declaration in telugu. No evidence has been produced before the Court to show that the deceased knows telugu. He contends that if really the deceased was aware of telugu, she would have signed the dying declaration in telugu and not in Malayalam.

7) On the other hand, the learned Public Prosecutor submits that since both the dying declarations consistently say that it was the accused No.1, who poured kerosene and set fire, the same can be made the basis to convict accused No.1 though

motive for the incident is different in both the dying declarations.

8) Insofar as the argument of the learned counsel for the appellant with regard to deceased not knowing telugu, no suggestion was given to any of the witnesses to show that the deceased does not know telugu. The said plea is taken here for the first time.

9) As seen from the record all the material witnesses turned hostile and did not support the prosecution case. Even the family members of the deceased did not depose about the differences between the deceased and accused No.1 and about accused No.1 having illicit intimacy with accused No.2. Therefore, we are left with the two dying declarations recorded by PW.11 and PW.10. Before dealing with the same, it is to be noted that the cause of death was due to burns. PW.9-the doctor, who conducted autopsy over the dead body of the deceased, in his evidence deposed the same. Therefore, without any hesitation, it can be held that the death was a homicidal one.

10) Coming to the two dying declarations, it would be useful to refer to both of them. The first dying declaration was recorded by PW.11-the Sub-Inspector of Police, while the second dying declaration was recorded by the Magistrate. Both the dying declarations were said to have been signed by the deceased and the contents of which are also read over to the

deceased. Ex.P12, which was recorded by the Sub-Inspector of Police at 6.00 p.m., on 05.12.2010 at S.V.R.R.Hospital, Tirupati, form the basis for registering the first information report. The contents of which are as under:

“..on 05.12.2010, while I was working in the house, my daughters were not in the house and all of them went away and on seeing it, my husband Munaswamy came to house at about 01.00 p.m. and made galata with me with regard to family and his illegal intimacy with Vanamma and beat me with hands and legs and then I begged him not to beat me and to give up the relationship with Vanamma and he without hearing my words, uttered that he would kill me and nobody would be there against him. By saying so, he laid me down on the floor and beat me with hands and legs and took kerosene tin available in the house and poured kerosene on my body and by uttering that he would kill me, he took a match box available in the house and lit fire with the help of a match stick and threw it upon my body and flames caught hold of my body. When I was crying and fell down outside with flames, the neighbouring people came and put off the flames and I was shifted through a 108 ambulance to Puttur Government hospital and after treatment from there I was shifted to Ruia (SVRR) Hospital, Tirupati. I have sustained burnt injuries from my neck upto end of both two legs. On hearing malicious words of Vanamma, my husband used to quarrel with me to give money and today he poured kerosene on my body and set fire and tried to kill me and against it, I reported the matter to Pichatur police by narrating the entire episode to them in Tamil version and they wrote down it into telugu language duly understating

my narration, for the purpose of taking necessary action against my husband and Vanamma according to law and to justice to me.”

11) Thereafter at about 6.40 p.m., PW.10 recorded the dying declaration of the deceased at S.V.R.R.G.G. Hospital, in which a different version was given as to the cause of death. Ex.P11 is the dying declaration recorded by the Magistrate. The contents of which are as under:

“Today i.e., on 05.12.2010 at 02.00 p.m., my husband came to the house and beat me. When I question him as to why he beat me, he told that as I was wandering with some one. I questioned him why should I go with some one. For which, he will be in the house as it belongs to him. For the answer why I should go out, he took kerosene which was available in the house and poured it on me and threw upon me a match stick. He took a match box and lit it and threw upon me. By that time nobody were present in the house. My neighbour by name Velu brought me to hospital and admitted me in it.”

12) A reading of the second dying declaration would show that the cause of the incident was a quarrel that ensued when the deceased questioned the accused No.1 about beating her. On that day at 2.00 p.m., accused No.1 came to the house and beat her. When the deceased questioned him as to why she should go with someone, he took kerosene tin which was available in the house, poured kerosene on her and set her on fire.

13) In the statement recorded by the police a total different version was given. The said statement was a lengthy one running into two pages. While referring to the earlier history of quarrels between both of them, she stated that on 05.12.2010 at 1.00 p.m., while she was working in the house, accused No.1 made galata with her with regard to family and his illegal intimacy with accused No.2 and beat her with hands and legs. Then she begged him not to beat her and to give up the relationship with accused No.1. Without hearing her words, the accused No.1 uttered that he would kill her as there is nobody to protect her. Saying so, he laid her down on the floor, beat her with hands and legs, poured kerosene and set her on fire.

14) In *Sudhakar v. State of Maharashtra*¹ the Apex Court held as under:

“21. Having referred to the law relating to dying declaration, now we may examine the issue that in cases involving multiple dying declarations made by the deceased, which of the various dying declarations should be believed by the court and what are the principles governing such determination. This becomes important where the multiple dying declarations made by the deceased are either contradictory or are at variance with each other to a large extent. The test of common prudence would be to first examine which of the dying declarations is corroborated by other prosecution evidence. Further, the attendant

¹ (2012) 7 SCC 569

circumstances, the condition of the deceased at the relevant time, the medical evidence, the voluntariness and genuineness of the statement made by the deceased, physical and mental fitness of the deceased and possibility of the deceased being tutored are some of the factors which would guide the exercise of judicial discretion by the court in such matters.”

15) A reading of the two dying declarations would show that the motive for which accused No.1 is said to have set fire is totally different in the two dying declarations. There is no reference to the illegal intimacy between accused Nos.1 and 2; the deceased requesting the accused No.1 not to beat and to discontinue his relationship with accused No.2, in the dying declaration recorded by the Magistrate. The dying declaration recorded by the Magistrate does not show that the accused No.1 threatened her saying that if he kills her nobody would be there to protect her. Since the substance of the prosecution is found to be inconsistent in the two dying declarations we feel that it may not be safe to base a conviction in picking one of the two dying declarations.

16) Having regard to the judgment referred to above and in view of the inconsistency with regard to motive and the circumstances in which the incident took place, we feel that it cannot be safe to act upon any one of the dying declarations, more so when there was a gap of only ½ hour between two dying declarations. Merely because both the dying declarations show

that the accused poured kerosene and set the deceased on fire, when the other contents of the dying declarations are inconsistent with each other, we feel that it cannot be safe to act upon the dying declarations and convict the accused No.1 in the absence of any other evidence to support the contents of the dying declarations.

17) Accordingly, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellant/ accused No.1 in the judgment dated 05.12.2012, in Sessions Case No.465 of 2011 on the file of the V Additional District and Sessions Judge, Tirupati, for the offence punishable under Section 302 IPC, are set aside and he is acquitted for the said offence. Consequently, the appellant/ accused No.1 shall be set at liberty forthwith, if he is not required in any other case or crime.

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

JUSTICE C. PRAVEEN KUMAR

JUSTICE P. KESHAVA RAO

30.06.2018
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