

ONGOLE RAVIKANTH

v.

STATE OF A.P.

(Criminal Appeal Nos. 840-841 of 2003)

JUNE 17, 2009

[B. SUDERSHAN REDDY AND AFTAB ALAM, JJ.]

PENAL CODE, 1860:

s.304(part-I) – In the course of quarrel, wife fetched kerosene and a match box and poured kerosene on herself – Husband lit the match stick resulting in fire – Death of wife by burn injuries – Conviction of husband by trial court u/s 324 – Altered by High Court into s.304(part-I) – Held : Accused knew that deceased was drenched with kerosene yet he indulged in the cruel act of lighting the match stick – It cannot be said that he was not aware that his act was likely to cause serious burn injuries to deceased – Since State has not filed appeal against acquittal of accused u/s 302, the lenient view taken by High Court in convicting the accused u/s 304 (part-I) with 7 years R.I. affirmed – Dying declaration.

EVIDENCE

Dying declaration – Conviction based on – Held : A dying declaration can form the sole basis for conviction – In the instant case statement was voluntarily made without any coercion or tutoring by anyone – It was natural and coherently made by deceased in a fit state of mind – There is no reason not to accept the dying declaration.

The appellant faced trial for commission of offences punishable u/s 498-A and 302 IPC. The prosecution case was that after about one and a half years of the marriage of the appellant, differences arose between the couple because of the wayward habits of the appellant resulting

A in frequent quarrel. On the specified night a quarrel took place between the couple. The wife, hurt by the behaviour of the husband, went to the kitchen and fetched kerosene and a match box. She poured kerosene on herself. The appellant-husband snatched the match box from her and
 B lit a match stick as a result of which her clothes caught fire. She was taken to the hospital with 60% burn injuries. Later, she succumbed to her injuries. The trial court convicted the appellant u/s 324 IPC. On appeal, the High Court converted the conviction into one u/s 304 (part-I) IPC and sentenced the accused to 7 years R.I.

C In the instant appeals filed by the accused, it was contended for the appellant that according to the prosecution case itself, it was the deceased who poured kerosene on herself and came with a match box. It was
 D submitted that in the circumstances the High Court erred in convicting the appellant.

Dismissing the appeals, the Court

E HELD: 1.1. The incident took place in the house of the appellant. PW-4, the father of the appellant, stated in his evidence that the deceased rushed out of the bedroom crying loudly. He extinguished the fire by pouring water on the deceased and covered her with a bed sheet. The prosecution case rests upon the dying
 F declaration (Ext.P-4) recorded by PW-2, the Judicial Magistrate. [Para 8] [162-B-D]

1.2. The deceased in her dying declaration stated that the appellant used to quarrel with her whenever she questioned him about his illegal and immoral activities of
 G having illicit intimacy with some women. The deceased in clear and categorical terms stated that she poured kerosene on herself and it was the appellant who lit the match stick resulting in fire and causing 60% burn

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injuries which ultimately led to her death. The appellant instead of preventing the deceased from pouring kerosene upon herself, lit the match stick resulting in fire and causing burn injuries. The appellant knew very well that the deceased was drenched with kerosene, yet, he indulged in the cruel act of lighting the match stick. In the circumstances, it cannot be said that the contents in dying declaration (Ex.P-4) do not disclose the commission of any offence by the appellant. It cannot be said that the appellant was not aware that his act was likely to cause the serious burn injuries to the deceased. [Paras 10 and 15] [163-C-D; 165-F-H; 166-A-B]

2.1. A dying declaration can form the sole basis for conviction but, at the same time, due care and caution must be exercised in considering the weight to be given in dying declaration. There is no doubt whatsoever that the statement by the deceased was voluntarily made without any coercion or tutoring of anyone. The statement is natural and coherently made by the deceased in a fit state of mind. There is nothing on record to doubt the evidence of PW-2, the Judicial Magistrate, who recorded the dying declaration, and the duty doctor (PW-13), who certified that the deceased was in a fit state of mind to make her statement. Except PW-2 and PW-13 no other individual was present when the victim made the statement. There is no reason whatsoever not to accept the dying declaration. [Paras 14 and 15] [164-G-H; 165-A-B-D-F]

Smt. Paniben Vs State of Gujarat 1992 (2) SCC 474; K. Ramachandra Reddy and Anr. Vs. The Public Prosecutor 1976 (3) SCC 618; Darshan Singh @ Bhasuri & Ors. Vs State of Punjab 1983 (2) SCC 411; Kanchy Komuramma Vs State of A.P. 1995 Supp. 4 SCC 118; Maniram Vs State of M.P. 1994 Supp. 2 SCC 539; Laxman VS State of Maharashtra

A 2002 (6) SCC 710 and *Nalapati Sivaiah Vs Sub-Divisional Officer, Guntur, A.P.* AIR 2008 SC 19, referred to

B 2.2. The appellant in fact was charged with offences punishable u/ss 498-A and 302 IPC. But, the State did not file any appeal against acquittal of the accused of the offence u/s 302 IPC. The High Court took a very lenient view in convicting the appellant for the offence punishable u/s 304 (part-I) IPC and sentencing him to undergo rigorous imprisonment only for a period of 7 years. In the circumstances, the conviction and the sentence are confirmed. [Para 15 and 16] [166-B-D]

Case Law Reference:

	1992 (2) SCC 474	referred to	para 14
D	1976 (3) SCC 618	referred to	para 14
	1983 (2) SCC 411	referred to	para 14
	1995 Supp. 4 SCC 118	referred to	para 14
E	1994 Supp. 2 SCC 539	referred to	para 14
	2002 (6) SCC 710	referred to	para 14
	AIR 2008 SC 19	referred to	para 14

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 840-841 of 2003.

From the Judgment & Order dated 19.11.2002 of the High Court of Andhra Pradesh at Hyderabad, in Criminal Appeal Nos. 1613 of 1997 and 1461 of 1998.

G A.D.N. Rao (for A. Subba Rao) for the Appellants.

Prabhakar Rao, Voruganti, Altaf Fatima and D. Bharathi Reddy for the Respondents.

H The Judgment of the Court was delivered by

B.SUDERSHAN REDDY, J. 1. The appellant has preferred these appeals against the judgment of the High Court of Andhra Pradesh passed in Criminal Appeal No. 1613 of 1997 and Criminal Appeal No. 1461 of 1998 whereby the High Court altered the judgment of conviction against the appellant, recorded under Section 324 IPC by the Sessions Court, Guntur in Sessions Case No. 274 of 1976. The High Court while setting aside the conviction and sentence under Section 324 IPC convicted the appellant for the offence punishable under Section 304 Part I of the Indian Penal Code (IPC) and sentenced him to undergo rigorous imprisonment for seven years.

2. The prosecution story, briefly stated, is that the deceased was married to the appellant in the year 1994 and led marital life for about 1 ½ years and gave birth to a daughter in 1995. It is alleged that even while living with his wife the accused developed illegal intimacy with other women and was found flirting with them and some times he used to bring those women to the matrimonial home. Naturally, the deceased raised serious objections as to the conduct of the appellant indulging in such immoral and objectionable activities. The appellant instead of mending his ways frequently used to taunt her saying that "you can also have a paramour if you want". On 11.1.1997 at about 9.00 p.m. when both the deceased and the appellant were in the bedroom, the accused switched on the tape-recorder; on that the deceased asked him to put off the same but the appellant did not stop it and on the contrary he slapped the deceased which led to a quarrel between them. The appellant mockingly suggested to the deceased to go away with someone of her choice and leave him alone. Having been hurt by the provocative words and the vulgar behaviour of the appellant she rushed into the kitchen and brought kerosene and a matchbox. She poured the kerosene on herself. The appellant obviously having snatched the match box from her lit the match stick and threw the same on the deceased resulting in severe burns to her vital organs of the body. Immediately, the deceased

A came out of the bedroom with flames crying loudly. On hearing the cries and on seeing her in flames, the father of the appellant and other neighbours poured water on her body and covered her with a bed sheet. In the meantime, the appellant arranged an auto and took her to her parents' house in the same locality and from there she was shifted to Government General Hospital, B Guntur by her brother (PW-1).

3. On requisition from the Hospital authorities, the Special Judicial First Class Magistrate, Guntur recorded her dying declaration in the presence of the Medical Officer. Based on C the statement (Ex.P-4) the Police Station Pattabhipuram, Guntur issued First Information Report (Ex. P-16) and registered the same as Crime No. 2 of 1997 for the offences punishable under Section 498-A and 307 IPC against the appellant. While undergoing treatment the deceased succumbed to the burn D injuries on 18.1.1997 at 4.45 p.m. in the Government Hospital, Guntur. Upon receiving information the police altered the provisions of law into Sections 498A and 302 IPC and accordingly issued the altered FIR. After completion of the investigation, the police filed charge sheet against the appellant E under Sections 498A and 302 IPC.

4. The prosecution in order to establish its case against the appellant altogether examined 15 witnesses (PW-1 to PW-15) and 21 documents were got Exhibited (Ex. P-1 to P-21). F The appellant pleaded of his false implication in the case.

5. The learned Sessions Judge upon appreciation of the evidence available on record held that prosecution established its case beyond doubt that the appellant lit the match stick when the deceased herself poured kerosene on her body. However, G the learned Sessions Judge came to the conclusion that the appellant had no intention to kill his wife. In the result, the learned Sessions Judge held that in the circumstances it cannot be said that the appellant was having any knowledge that the burn H injuries were likely to cause the death of the deceased. But his act would certainly cause hurt to a person and accordingly found

the appellant guilty under Section 324 IPC. We must express our anguish about the manner in which the learned Sessions Judge has dealt with the matter.

6. The appellant as well as the State preferred appeals against the judgment of the learned Sessions Judge. The High Court upon re-appreciation of the evidence and more particularly relying upon the evidence of PWs -1, 3 and 4 coupled with the dying declaration (Ex. P-4) held that there were serious disputes between the appellant and his wife with regard to the wayward habits of the appellant resulting in frequent quarrels between them which led to the incident on the fateful day. The High Court also found the appellant himself put her on fire which resulted in causing 60% burns all over the body and more particularly on vital parts resulting in death of the deceased. The High Court found the incident took place on the "spur of the moment" due to quarrel that had developed in the bed room due to which the deceased poured kerosene on herself, the accused lighted the match stick which ultimately resulted in her death. In the result, the High Court found the appellant guilty of the offence punishable under Section 304 Part I IPC and sentenced him to undergo rigorous imprisonment for a period of seven years. Hence, these appeals by the accused against his conviction and sentence under Section 304 Part I IPC. The State did not prefer any appeal though it filed the charge sheet against the appellant for the offence punishable under Section 498A and 302 IPC.

7. Shri A.D.N. Rao, learned counsel for the appellant submitted that the High Court committed serious error in coming to the conclusion that the appellant snatched the match stick from the deceased and set her on fire which resulted in causing 60% of the burns all over the body. It was submitted that admittedly even according to the prosecution the deceased poured kerosene on herself and came with the match box, thereafter what happened is a matter for guess and in the absence of any reliable evidence, there was no justification to

A convict the appellant under Section 304 Part I of IPC.

8. The short question which arises for our consideration in these appeals is whether the High Court committed any error in convicting the appellant under Section 304 Part I IPC? The entire prosecution story rests upon the dying declaration (Ex. P-4) recorded by the learned Judicial First Class Magistrate at about 11.30 p.m. on 11.1.1997. Be it noted that the incident had taken place on 11.1.1997 at about 10.00 p.m. in the house of the appellant. PW-4 who is none other than the father of the appellant who did not support the prosecution case on account of which he was declared hostile stated in his evidence that the incident had taken place on 11.1.1997 at about 10 or 10.30 p.m. in his house in the bedroom of the appellant and the deceased. The deceased rushed out of the bedroom crying loudly. He extinguished the fire by pouring water on the body of the deceased and covered her with a bed sheet. The appellant took the deceased in an auto to her parents house and thereafter got her admitted in the hospital. Dr. CH. Raghukula Kiran (PW-13) stated in his evidence that on 11.1.1997 at about 11.00 p.m. the deceased was brought to the casualty ward with burn injuries by the appellant. He gave first aid to the injured and thereafter sent Ex. P-3 requisition to the Judicial First Class Magistrate (PW-2). According to him PW-2 came to the casualty ward of the hospital and recorded the statement of the deceased. He was present at the time of recording of the statement and found that the deceased was conscious and coherent at the time of recording her statement by PW-2. He made an endorsement on the statement recorded by PW-2 to the effect that the patient was conscious and coherent and she was in a fit condition to give the statement. Ex. P-14 is the endorsement made on Ex. P-4.

9. PW-2, the Judicial First Class Magistrate in his evidence in clear and categorical term stated that having received the requisition from the hospital authorities on 11.1.1997 at about 11.20 p.m. he proceeded to casualty ward

of the hospital and reached there at about 11.30 p.m. The duty doctor PW-13 was present at that time. In order to satisfy himself as to whether the deceased was in a fit condition to make her statement put some preliminary questions. Having been satisfied that she was in a fit state of mind to give statement proceeded to record the dying declaration (Ex. P-4) as per her narration. He obtained the left thumb impression of the deceased on Ex. P-4. In the cross examination he stated that the deceased narrated the entire statement without any break or stop and the actual words as stated by the deceased were incorporated in Ex. P-4. There were no corrections in it. The duty doctor PW-13 made an endorsement to Ex. P-4 to the effect that the patient was in a fit condition to give statement.

10. The deceased in her dying declaration stated in clear and categorical terms that the appellant used to quarrel with her whenever she questioned him about his illegal and immoral activities of having illicit intimacy with some women. He used to taunt her to develop illicit intimacy with someone of her choice. It may be relevant to extract the relevant portion from her statement recorded by the Judicial First Class Magistrate, which is as follows:

"Today night during bed time he switched on the tape recorder. I objected for it saying that it is allergy to me. Then he beat me on my cheek. He advised me to develop illicit intimacy with some one and go away. On hearing it, I felt very much and *brought kerosene and myself poured kerosene on me and brought a match stick. Then my husband lit the match stick. Then the time was 10 or 10.30.* Then I ran out. My father in law Ongole David covered me with blanket and poured water. Later I was brought to the hospital."

(Emphasis is of ours)

11. The deceased passed away on 18.1.1997 while undergoing treatment in hospital at Guntur. PW-10 is the

A Professor of Forensic Medicine, Guntur College, Guntur who in his evidence stated that he received a requisition from the Executive Magistrate to conduct the post-mortem examination of the dead body of the deceased. He conducted the post-mortem examination during which he found the following injuries:

B "1. 60% infected burns present over face, front of neck, chest and upper 2/3rd part of abdomen over all sides, upper limbs except dorsum of hands on both sides, left glutei region, part of front of middle part of both thighs.

C 2. Two venesection wounds with sutures and dressing present, one on the inner aspect of each ankle."

D 12. Whether this evidence is not sufficient to convict the appellant? Shri A.D.N. Rao, learned counsel for the appellant did not make any submission as regards Ex. P-4 dying declaration except contending that the contents of Ex. P-4 do not disclose that it was the appellant who lit the match stick resulting in fire and causing burns on the body of the deceased. The submission was that courts below indulged in guess work in the absence of any evidence in convicting the appellant.

F 13. An objective and critical assessment of the material available on record discloses that requisition was immediately sent to the Judicial First Class Magistrate after the victim was taken to the hospital at about 10.00 p.m., on 11.1.1997. The recording of the dying declaration by PW-2 commenced at about 11.30 p.m. and went on till about 11.55 p.m. It means the victim was speaking coherently and was in a fit condition to make a statement.

G 14. It is well settled and needs no restatement at our hands that dying declaration can form the sole basis for conviction. But at the same time due care and caution must be exercised in considering weight to be given to dying declaration inasmuch as there could be any number of circumstances which may affect the truth. It has been repeatedly held by this Court that

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the courts have always to be on guard to see that the dying declaration was not the result of either tutoring or prompting or a product of imagination. It is the duty of the courts to find that the deceased was in a fit state of mind to make the dying declaration. In order to satisfy itself that the deceased was in a fit mental condition to make the dying declaration, the courts have to look for the medical opinion. [See: *Smt. Paniben Vs. State of Gujarat* (1992) 2 SCC 474, *K. Ramachandra Reddy and Anr. Vs. The Public Prosecutor* (1976) 3 SCC 618, *Darshan Singh @ Bhasuri & Ors. Vs. State of Punjab* (1983) 2 SCC 411, *Kanchy Komuramma Vs. State of A.P.* (1995) Supp. 4 SCC 118, *Maniram Vs. State of M.P.* (1994) Supp. 2 SCC 539, *Laxman Vs. State of Maharashtra* (2002) 6 SCC 710 & *Nallapati Sivaiah Vs. Sub-Divisional Officer, Guntur, A.P.* AIR 2008 SC 19].

15. In the light of the law laid down by this Court we have critically examined dying declaration (Ex. P-4) made by the deceased and the surrounding circumstances. There is no doubt whatsoever the statement made by the deceased was on her own volition. It was voluntarily made without any coercion or tutoring of anyone. The statement is natural and coherently made by the deceased in a fit state of mind. There is nothing on record to doubt the evidence of PW-2 who recorded the dying declaration and evidence of duty doctor (PW-13) who certified that the deceased was in fit state of mind to make her statement. Except PW-2 and PW-13 no other individual was present when she made the statement. We do not find any reason whatsoever not to accept the dying declaration. The question is whether the contents do not disclose any offending act by the appellant? The deceased in clear and categorical terms stated that she poured kerosene on herself and it was the appellant who lit the match stick resulting in fire and causing 60% burns which ultimately led to her death. The appellant instead of preventing the deceased pouring kerosene upon herself lit the match stick resulting in fire and causing burns. The appellant knew very well that the body of the deceased was

- A drenched with kerosene yet he indulged in the cruel act of lighting the match stick. In the circumstances, we find it difficult to accept the submission that the contents of dying declaration (Ex.P-4) do not disclose the commission of any offence by the appellant. Can it be said that the appellant was not aware that
- B his act was likely cause serious burn injuries to the deceased. The appellant was in fact charged for the offences punishable under Sections 498A and 302 IPC. We do not know what view the court would have taken had there been an appeal by the State as against the acquittal of the appellant under Section
- C 302 IPC? Suffice it to say that the High Court took a very lenient view in convicting the appellant for the offence punishable under Section 304 Part I IPC and sentencing him to undergo rigorous imprisonment only for a period of seven years.

D 16. No other point is urged.

17. For the aforesaid reasons we confirm the conviction of the appellant for the offence punishable under Section 304 Part I of IPC and the sentence awarded by the High Court.

E 18. These appeals fail and are accordingly dismissed.

R.P.

Appeals dismissed.