

(2001) 10 AP CK 0007
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 70 of 2000

Kasturi Subbarao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 201, 302, 306, 498A

Citation : (2001) 10 AP CK 0007

Hon'ble Judges : Ramesh Madhav Bapat, J;Gopalakrishna Tamada, J

Bench : Division Bench

Advocate : C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Gopalakrishna Tamada, J.—The appellant, who was the sole accused in Sessions Case No.203 of 1998 on the file of the Additional Sessions Judge at Visakhapatnam, was tried for the offences punishable under Sections 498-A, 302 and 201 of the Indian Penal Code. After detailed enquiry, the learned trial Judge acquitted the appellant for the offence punishable under Sections 498-A of the Indian Penal Code, but convicted him of the other charges i.e., 302 and 201 of the Indian Penal Code and sentenced him to suffer imprisonment for life and also to pay a fine of Rs.5,000/- in default to suffer Rigorous Imprisonment for three months for the offence punishable u/s 302 of the Indian Penal Code. The accused was further sentenced to suffer Rigorous Imprisonment for three years and also to pay a fine of Rs.2,000/- in default to suffer Rigorous Imprisonment for a period of one month for the offence punishable u/s 201 of the Indian Penal Code.

2. The gravamen of the charge against the appellant was that on 20th May 1998 at about 2.00 P.M., he caused the death of his wife Anuradha by voluntarily throttling her neck for additional dowry. To screen away the evidence, he set fire to the body of the deceased by pouring kerosene.

3. The case of the prosecution, according to the legal evidence let in during the

course of trial is as follows:-

A.V. Suryanarayana Sarma, who was examined as P.W. 1, is the elder brother and Smt. A.V. Padmavathi, who was examined as P.W. 2, is the sister-in-law of the deceased Anuradha. The marriage between the appellant and the deceased was performed in the year 1988 according to Hindu custom. At the time of marriage, a sum of Rs.60,000/- was paid towards dowry along with other articles such as 'sare saman'. After the marriage, the accused and the deceased lived happily for about two years and later the appellant started harassing the deceased for additional dowry. During the year 1995, they were blessed with a child.

4. On 13-5-1998 at about 2.00 P.M., Avuluru Sarma, who is the brother-in-law of the appellant and who was examined as P.W. 6, came to the house of P.W. 1 and informed that the appellant and the deceased were quarrelling with each other and they wanted to settle the dispute. When P.W. 1 went to the house of the appellant, he was informed by the appellant that he was beating the deceased as he found another person in his house. On that, the deceased informed her brother that she did not know anything and for no reason the appellant was beating her. According to P.W. 1, he found some injuries on the right chin of the deceased. Later, after about 4 days, P.W. 1 came and took the deceased to his place, as their mother was not doing well. On 20-5-1998 at about 11.00 A.M., the accused visited the pawn shop of P.W. 1 at Chodavaram and informed him that he came to see his junior maternal aunt and at his request he went to the house of P.W.1 to have his lunch.

5. While so at about 2.30 P.M. on the very same day, the wife of P.W.1 i.e., P.W. 2 came to P.W.1 and informed that the appellant and the deceased are again quarrelling with each other at their house and requested him to come to their house by closing the pawn shop. When P.W. 1 rushed to his house along with P.W. 2, all the doors were open and found the deceased with extensive burns. Immediately, he rushed to Dr. Priyadarshini, who is their neighbour and was examined as P.W. 3, who came and examined the deceased and declared that the deceased died. On that, P.W. 1 went to Chodavaram Police Station and gave a report, which is marked as Ex. P-1.

6. P.W. 2, who is the sister-in-law of the deceased, speaks that there was a quarrel between the appellant and the deceased which took place on 20-5-1998 at her residence.

7. P.W. 3, who is the neighbour of P.W. 1 and a Doctor by profession, heard the cries of P.W. 1 and at his request, went to the house of P.W. 1 and according to her, there was no smoke sticking to any structure and she further noticed a kerosene tin with full of kerosene by her side without being disturbed. She further found half opened matchbox on the kerosene tin. As per her opinion, any person with 100% burns will not die in a short span and the appellant must have set fire to the body of the deceased after killing her.

8. On receipt of the report-Ex.P-1 from P.W.1, P.W. 11, the S.I. of Police, registered the same as a case in Crime No.42 of 1998 for the offences punishable under Sections 498-A and 306 of the Indian Penal Code and issued F.I.Rs. to all concerned. Ex. P-14 is the F.I.R. sent to Court. Afterwards, he proceeded to the scene of offence and got the scene of offence photographed through P.W. 10 and Exs. P-2, P-3, P-12 and P-13 are the photographs and negatives of the scene of offence. On 21-5-1998 at about 7.30 A.M., he secured the presence of P.W. 5 and another and conducted panchanama at the scene of offence and seized M.Os.1, 8 and 9. Ex. P-4 is the panchanama. He drew a rough sketch of the scene of offence, which is marked as Ex. P-15. After recording the statements of P.Ws.1 and 2 u/s 161 Cr.P.C., he held inquest over the dead body of the deceased and Ex. P-15 is the inquest report.

9. On 21-5-1998, the Civil Assistant Surgeon, Government Hospital, Chodavaram, who was examined as P.W.8, has conducted autopsy over the dead body of the deceased at the request of P.W.11 and opined that the cause of death was due to asphyxia and neurogenic shock and the death must have occurred 24 hours prior to the post-mortem examination. The post-mortem report is marked as Ex. P-9. Basing on the post-mortem report, the Inspector of Police, P.W.11 altered the Section of law in the First Information Report from Sections 498-A and 306 of the Indian Penal Code to Sections 498-A, 302 and 201 of the Indian Penal Code and the altered F.I.R. is Ex. P-17 and gave a requisition to P.W.8 in a proforma containing various questions, which were answered by P.W.8. The questionnaire is marked as Ex. P-10.

10. On receipt of the altered F.I.R., the Inspector of Police i.e., P.W.12 took up investigation and during the course of his investigation, he observed that the actual facts narrated in Ex. P-17 are tallying, excepting the injuries on the dead body. As per the inquest report, the entire body was burnt whereas as per the post-mortem report, some parts of the back were not burnt and the head was half burnt. On 26.5.1998 at about 8.30 A.M., the Inspector of Police arrested the accused in the presence of one Kamireddy Gowrinaidu (P.W.5) and seized the shirt which is M.O.2. After recording the statement (Ex. P-6), the accused was produced before the court and was later remanded to judicial custody. After completion of the entire investigation, he filed a charge sheet on 10-8-1998.

11. In support of its case, the prosecution has examined P.Ws.1 to 12 and got marked Exs.P-1 to P-17. D.W.1 was examined as a defence witness.

12. Learned senior counsel Sri C. Padmanabha Reddy contended that there are no direct witnesses and the entire case of prosecution rests on circumstantial evidence only and that, even if the circumstances are to be relied upon, it is not sufficient to convict the appellant-accused for the offences punishable under Sections 302 and 201 of the Indian Penal Code. Further, according to him, the death of the deceased was accidental and the finding of the trial court is contrary to the medical evidence let in by P.W.8 and also the medical jurisprudence. His further contention is that in all cases of throttling of neck, there shall be a

fracture of Hyoid bone and it would be difficult for P.W.8 to notice any external injuries on the neck in view of the fact that the entire neck portion was burnt. He drew our attention to Chapter 9 of Modi's Medical Jurisprudence and Toxicology, wherein the distinction between ante-mortem and post-mortem burns have been explained. The learned senior counsel also cited the judgments in Subedar Tewari Vs. State of U.P. and Others, , Archi Nawal Kishore Kujur v. State of Bihar 1995 [4] CRIMES 855 and Mulak Raj & Ors. V. State of Haryana 1996 [1] SC 521.

13. First of all, we have to decide whether the deceased died of homicidal death or not. After receiving Ex. P-1 report, P.W.1, the S.I. of Police who registered a case in Crime No.42 of 1998 proceeded to scene of offence and conducted the inquest over the dead body in the presence of P.W.5 and according to Ex. P-5-inquest report, P.W.5 who acted as mediator at the time of inquest opined that the deceased died of having received burns using kerosene. Dr. K.V. Sanyasi Rao, the Civil Assistant Surgeon, who was examined as P.W.8, opined that the cause of death was due to asphyxia and neurogenic shock. According to P.W.8, there are eight burn injuries which are as follows:-

1. Dermo epidermal burn injuries present over the head and neck with white base, skin peeling off and charring present. (percentage of burns - 9%).
2. Dermo epidermal burn injury present over the upper part of chest, front and back with white base, skin feeling of and charring present here and there at the inter scapular area, skin present. (percentage of burn 18%)
3. Dermo epidermal burns present on the abdomen with white base, skin peeling off and the charring present. (percentage of burns - 9%).
4. Dermo epidermal burn injuries present over the right upper limb on both sides with white base skin peeling off and charring present. (percentage of burns - 9%)
5. Dermo epidermal burn injuries present over the left upper limb on both sides with white base skin peeling off and charring present. (percentage of burns - 9%)
6. Dermo epidermal burn injuries present over the right lower limb on both sides including feet planter surface with white base skin peeling off condition. (percentage of burns -18%)
7. Dermo epidermal burn injuries present over the left over limb on both sides including feet planter surface with white base; skin peeling off condition. (percentage of burns -18%)
8. Dermo epidermal burn injuries present over the lumbar area with white base; skin peeling off and charring present and skin over the perineum not burnt. (percentage of burns - 9%)

Total percentage of the burns - 99%.

14. The external injuries, according to him, are :

1. A white discolourisation was present at the base of the burns. Healthy skin

here and there in the inter scapular area. Right mid axillary line left extended upto left mid axillary line with formation of band present. There was formation of band in the lumbar area also here and there.

2. Dark brown discolourisation base with irregular margins with size 2 and 3 cm. Present on the forehead near hairline centre, line of redness seen.
3. Dark brownish discolourisation present with irregular margins about 5 cms and 3 cms. present over the left head near hairline, a line of redness seen.
4. Multiple dark brown colour present over the forehead of midline.
5. Brown discolourisation present over the left side of the angle of mandible with diffused border.
6. Contusion brown in colour oval in shape and size present over the left side of the neck near the left medial end.
7. Contusion brown in colour size 2 and 3 cms. present over the neck at the upper medial border of Sternomeloid muscle.

15. On an internal examination, he found the following features:

1. On opening of the neck, dark coloured blood clots were found on the surface of the skin, and dark coloured fluid was oozing out like gush. On the deep dissection of neck, congested and dark blood clots were found.
2. On the opening of the larynx, trachea and bronchi, congested dark blood clots were seen smudging muscles and deep fascia. The cut sections congested. The inner surface of the trachea smooth and congested. Soot not seen inside the trachea.
3. Hyoid bone normal and physically intact both home and body.
4. Thorax normal.
5. Ribs normal.
6. Heart normal in size and shape reddish brown in colour. The cut sections congested, dark blood clots present in chambers.
7. Lungs normal in size and shape dark brown in colour. Cut sections congested.
8. Stomach external appearance normal on opening found mucosa normal and undigested food like rice yellow in colour about 300 grams present.
9. Intestines normal, distended with gas.
10. Liver normal in size and shape, reddish brown in colour. Cut section congested.
11. Gallbladder intact and empty. Spleen normal in size and shape; white in colour. Cut section congested.

12. Kidneys both normal in size and shape; reddish brown in colour. Cut section congested.

13. Urinary bladder empty.

14. Uterus normal.

15. Head - on opening the scalp, dark blood clots were found under the surface of the scalp front, right parietal seen, vault of skull normal; on opening the vault, found brain layers in tact and congested.

16. Petechial haemorrhages present. On opening the brain layer, found dark blood clots on the frontal lobes of the brain. The base of the skull is normal.

16. P.W.8 further opined that the external injuries were ante mortem in nature and burn injuries were post mortem in nature.

17. To a questionnaire given by the S.I. of Police, which was marked as Ex. P-10, P.W.8 gave the following answers:

? Q.No.1: Which was the fatal injury which caused the death?

Ans: The injuries over the neck, pressure over the neck leading to failure of respiratory system and mechanical interference of respiration.

Q.No.2: Whether the external injuries mentioned in the P.M. Certificate were simple or grievous?

Ans: Cannot be classified as simple or grievous on dead body.

Q.No.3: Whether the injuries were post mortem injuries or ante mortem injuries?

Ans: Ante mortem injuries.

Q.No.4: Whether the burn injuries were post mortem injuries or ante mortem injuries?

Ans: Post mortem injuries. ?

All the above evidence clearly establishes that the deceased died of homicidal death.

18. Now, the point for consideration is whether the accused herein has committed the murder of the deceased and screened away the evidence by pouring kerosene on her dead body and created a scene as if the deceased committed suicide by pouring kerosene on herself.

19. In the instant case, excepting the ocular evidence of P.Ws.1, 2 and 3, there is no direct evidence. As it is a case of circumstantial evidence, the evidence of prosecution witnesses has to be scrutinized thoroughly and seen whether the links in the chain are perfectly in order to bring home the guilt of the accused. If any of the links in the said chain are missing, the accused is entitled to benefit of doubt.

20. The evidence of P.W.1 is that on 20-5-1998 at about 11.00 A.M., the accused came to his shop and told that he came to see his junior maternal aunt by name Rukmini. The accused went to the house of Rukmini on a cycle which was given by P.W.1 and returned to the pan shop of P.W.1 at about 1.00 or 1.30 P.M. Later, the accused went to the house of P.W.1 to have lunch. At about 2.30 P.M., the wife of P.W.1 by name Venkata Padmavathi (P.W.2) came and informed P.W.1 that the accused and deceased are quarrelling and requested him to come to the house. Then P.Ws.1 and 2 went to their house. They saw the deceased with extensive burns.

21. The evidence of P.W.2 is that the accused came to the house at 10.00 A.M. on 20.5.1998 and after sitting for half an hour, left to the house of the junior maternal aunt and returned at about 1.15 P.M. When the accused demanded the deceased as to whether she would accept the mistake committed by her, she replied in the negative. In spite of his repeated threatening, the deceased did not agree that she committed any mistake. When both the accused and the deceased were quarrelling, she left the house to bring P.W.1.

22. The evidence of P.Ws.1 and 2 goes to show that in fact they were not eye witnesses to the incident at all. They reached the house of the accused and deceased when the deceased was set on fire. Therefore, their evidence will not throw any light as to who are responsible for causing the death of the deceased.

23. P.W.3 happened to be the neighbour of P.Ws.1 and 2, who is a Doctor by profession. She came to the house of the accused and examined the deceased and declared her dead. While examining, she did not notice any marks around the neck of the deceased. She simply opined that the deceased sustained 100% burn injuries. But she further stated that any person sustaining 100% burn injuries would not die immediately. One important aspect which is to be noted in this case is that though P.W.3 is a Doctor, she did not notice any ligature mark or any mark around the neck of the deceased. Therefore, we are very doubtful as to how the deceased died. It cannot be specifically stated that she died because of asphyxia only. Therefore, we hold that the evidence let in by the prosecution by examining P.Ws.1 to 3 will not conclusively prove that the accused alone was responsible for causing the death of the deceased.

24. The only other evidence that is available in this case is the evidence of P.W.9. P.W.9 was the person who had seen the accused at about 2.30 or 3.00 P.M. on the fateful day. He deposed that he saw the accused at the turning point of Sivalayam temple and his evidence also is of not much help to the case of the prosecution.

25. Now coming to the medical evidence, P.W.8 stated that the fatal injury which caused the death was the injury over the neck which led to the failure of respiratory systems and mechanical interference of respiration. Further, according to him, the injuries on the body are ante-mortem and the burn injuries are post mortem. We are of the considered view that in a case of this nature, it

cannot be held positively and beyond all reasonable doubt that the burn injuries caused on the body of the deceased were due to post-mortem burns caused by the accused after she was murdered either by strangulation or by suffocation. In Chapter 9 of Modi's Medical Jurisprudence and Toxicology, the distinction between ante-mortem and post-mortem burns has been explained in the following lines:-

? People sometimes produce burns on a dead body to support a false charge of murder, and at other times the police remove a dead body while in the act of burning on a cremating pyre and send to the medical officer for post-mortem examination, when they suspect that the body is being hurriedly cremated to conceal the crime of murder. In both cases the medical officer should be prepared to tell the difference between ante-mortem and post-mortem burns.

The main points to differentiate between the ante-mortem and post-mortem burns are -

1. Line of redness 2. Vesication 3. Reparative processes.

1. Line of Redness: - In the case of a burn caused during life a line of redness involving the whole true skin is formed round about the injured part. It is a permanent line, persisting even after death, but redness or erythema, which is found beyond this line of redness due to distension of the capillaries, is transient, disappears under pressure during life and fades after death. The line of redness, being a vital function, separates living from dead tissue, and is always present in burns caused during life, though it takes some time to appear. Hence it is possible that it may be absent in the case of a person of a very weak constitution who dies immediately from shock due to burns.

2. Vesication:- Vesication caused by a burn during life contains a serous fluid consisting of albumen and chlorides, and has a red, inflamed base with raised papillae. The skin surrounding it is of a bright red or coppery colour. This is known as true as compared with false vesication which is produced after death. False vesication contains air only, but may contain a very small quantity of serum comprising a trace of albumen, but not chlorides as in a person suffering from general anasarca. Again, its base is hard, dry, horny and yellow, instead of being red and inflamed.

3. Reparative Processes:- Reparative processes, such as signs of inflammation, formation of granulation tissue, pus and sloughs, will indicate that the burns were caused during life. Burns caused after death have a dull white appearance with the openings of the skin glands coloured grey. The internal organs are roasted, and emit a peculiar offensive odour. ?

26. In the instant case, the burns on the body of the deceased did not show any signs of body reaction which invariably occur if death was caused due to burns. The characteristic attitude of the body known as pugilistic attitude is not present in this case. In deaths on account of burns, this sort of attitude shall be found.

This confirms that the body was burnt after the death has occurred. There were no red lines and no blisters. There was no sign of congestion in the skin. All these characteristic signs on the body of the deceased would go to show that the death was not on account of burn injuries. The case of the prosecution is that the accused committed the murder of the deceased by throttling her neck and then burn the body of the deceased by pouring kerosene to screen away the evidence. P.W.8, though says during the course of chief-examination that the burn injuries are post-mortem burns, during the cross-examination, he stated that there was no fracture of hyoid bone to establish that it is a murder by throttling the neck and similarly, he says that there was no line of redness around the injuries to establish that the burns are ante-mortem burns. In the post-mortem certificate issued by him, which is marked as Ex.P-9, P.W.8 stated that the death was due to burns but he does not say whether they are ante-mortem burns or post-mortem burns. In view of the condition of the body of the deceased, it shall be held, having regard to the distinction explained in Modi's Medical Jurisprudence between the ante-mortem burns and post-mortem burns, that the burns are ante-mortem burns only. Thus, the medical evidence which is adduced in this case is also not of much help to the case of the prosecution.

27. As the links are missing to establish a chain and as the medical evidence does not corroborate the case of the prosecution, it is highly improbable to convict the accused for the alleged offence punishable u/s 302 and 201 of the Indian Penal Code and as such he is entitled to benefit of doubt. Hence, the appellant-accused is entitled for acquittal.

28. In the result, the criminal appeal is allowed and the judgment of conviction and sentence is set aside. The appellant-accused is acquitted of the charges under Sections 302 and 201 of the Indian Penal Code. The accused shall be set at liberty forthwith, if not required in any other case. His bail bonds shall stand cancelled. The fine amount, if any, paid by the accused shall be refunded to him forthwith.