
(1994) 09 AP CK 0022

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 101 of 1994

Mavari Surya Satyanarayana

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 02-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302, 498A, 85, 86

Citation : (1996) 1 APLJ 213

Hon'ble Judges : Y. Bhaskara Rao, J;P. Venkatarama Reddi, J

Bench : Division Bench

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

Judgement

Y. Bhaskar Rao, J.—This appeal is preferred by the accused against the judgment in S.C. No. 25 of 1993 on the file of the Sessions Judge, East Godavari at Rajahmundry sentencing him to imprisonment for life u/s 302 IPC.

2. The brief facts of the case are that the appellate-accused and the deceased Mangadevi are the residents of Mallikarjuna Nagar, Rajahmundry and the accused is the husband of the deceased. The accused was married to the deceased about 11 years prior to the incident and they have two sons aged about 11 years and 10 years. The accused was running a cloth shop by name "Siva Sridevi Textiles". The accused used to come late in the night that too after consuming liquor, as a result of which there were quarrels between the accused and the deceased and when the deceased protested the accused not to take liquor, the accused got angry and remained dumb for four days prior to the incident and the accused was not talking to the deceased.

3. On 31-7-1991 at about 9.30 p.m. the accused took meals, went outside and returned home with a Brandy bottle and after consuming it, he started scolding the deceased by stating that he sustained loss as he married the daughter of his maternal uncle. Further, the accused asked the deceased to sign on blank paper

saying that he would write whatever he liked on the papers for which she did not oblige. Then the accused grew wild and began beating her with hands and when the deceased tried to go out of the house, the accused caught hold of tuft of hair of the deceased and brought into the room. Thereafter the accused closed the doors and attempted to set her on fire by lighting a match stick and then the deceased put off the flames and tried to run away. Then the accused in the drunken state caught hold of the tuft and poured kerosene on her and set fire to her. Due to the burns, the deceased raised cries and the accused also raised loud voice and tried to catch hold of the deceased and in that process, the accused also sustained burn injuries. Then PW 1 heard cries and went to the house of the deceased and thereafter admitted the deceased in the Government Hospital with the help of PWs. 3 and 4. Thereafter PW 12-SI of Police went to the hospital on intimation received and recorded the statement of the deceased which is Ex. P 17. Thereafter the police registered the case as crime No. 250/92 u/s 498A IPC. Dr. Sudhakar who was on duty at that time has also recorded the statement of the deceased which is Ex. P 15 which was signed by PW 9 as a witness. Again the Sub-Inspector of Police PW 12 recorded another statement from the deceased under Ex. P 19. On 1-8-1992 the deceased died and after receiving the death intimation, the SI of Police altered the FIR as Ex. P 21. The CI of Police PW 13 held inquest over the dead body of the deceased. PW 10-Civil Assistant Surgeon, Government Hospital, Rajahmundry conducted autopsy over the dead body of the deceased on 1-8-1992 at 2 p.m. and issued Ex. P 16 postmortem certificate who noticed 95% superficial burns. PW 13-CI of Police, Rajahmundry admitted the accused in the hospital for burn injuries and on 15-10-1992, the accused was discharged from the hospital. Thereafter PW 13 arrested the accused and thereafter the accused was sent to judicial custody and after that, he filed the charge-sheet.

4. In order to establish its case, the prosecution has examined PW 1 to 13 and marked Exs. P-1 to P-24 and MOs. 1 to 3. When the accused was examined u/s 313 Cr. PC, he denied the offence.

5. The case mainly rests on the dying-declarations Exs. P-15 and P17 recorded by Dr. P. V. Sudhakar and PW 12 and PWs. 1 to 5 turned hostile and did not support the prosecution case. Therefore, we have to consider the dying declaration in Exs. P-15 and P-17.

6. Ex. P-15 is the dying declaration which was recorded by Dr. P. V. Sudhakar, Civil Assistant Surgeon, Government Headquarters Hospital, Rajahmundry in the form of questions and answers wherein the deceased stated that they led marital life for five years happily and thereafter the accused used to scold and beat her on the one pretext or the other by coming late in the night. She stated that the accused was addicted to drinking and used to harass by stating that he sustained loss by marrying the daughter of his maternal uncle. She stated that they have got two children aged 10 years and 8 years. She stated that the accused threatened to kill her by pouring kerosene and accordingly poured kerosene and

set fire to her. This dying declaration was recorded by Dr. P. V. Sudhakar on 1-8-1992 at 3.55 a.m., and the same was attested by another Dr. S. Govindarajulu, Civil Assistant Surgeon of the same hospital who was examined as PW 9. He (PW 9) stated in his evidence that he was working as Civil Surgeon, District Headquarters Hospital, Rajahmundry and on 1-8-1992 at 3.35 a.m., he signed as a witness to the dying declaration recorded by the Deputy Medical Officer to the effect that the deceased was in a position to give statement. He states that on the dying declaration EX. P-15, his signature appears as a witness and the said dying declaration was recorded by Dr. P. V. Sudhakar and he could identify the signature of Dr. P. V. Sudhakar. In the cross examination PW 9 denied the suggestion that the question form in Ex. P-15 already prepared by Dr. P. V. Sudhakar before he went there and that he was not present when the dying declaration was recorded by the said doctor. The witness adds that he cannot say whether the relatives and friends of the deceased were with her before the dying declaration was recorded. He states that at the time of recording the said dying declaration nobody were present except himself and Dr. Sudhakar. He deposed that the deceased was burnt up to 90% at the time of recording the said statement. He further deposed that when the questions were put to her, she was giving answers with some gap of haltings, that too with pain.

7. Thus the evidence of PW-9 clinchingly proves that Dr. Sudhakar recorded the dying declaration of the deceased in the early hours of 1-8-1992 immediately after she was brought to the hospital. In the said dying declaration the deceased clearly stated that her husband poured kerosene on her and set fire.

8. Sri Padmanabha Reddy, the learned counsel for the appellant, contended that Ex. P-15 is not admissible as Dr. P. V. Sudhakar who recorded the same was not examined and that it is also not proved as to what were the reasons for not examining the said doctor.

9. It is to be noticed that though dying declaration was recorded by Dr. P. V. Sudhakar, another other doctor PW-9 of the same hospital stated that the said dying declaration was recorded in his presence by Dr. P. V. Sudhakar and the patient was quite conscious and in a fit condition to give statement and accordingly she gave answers to the questions put to her by Dr. P. V. Sudhakar. Further, PW-9 identified the signature of Dr. P. V. Sudhakar on Ex. P-15. It means that though PW 9 has attested the dying declaration Ex. P-15 as a witness, he is also a doctor who is equally competent like Dr. P. V. Sudhakar and he identified the signature of Dr. Sudhakar. Therefore, non-examination of Dr. P. V. Sudhakar will not make the dying declaration Ex. P-15 inadmissible, hence we cannot accede to the contention of the learned counsel of the appellant.

10. The second dying declaration Ex. P-17 was recorded by Sub-Inspector of Police PW-12 wherein the deceased stated that the dispute arose between herself and the accused due to drinking of alcohol by the accused and they are no other disputes in between them. She stated that the accused used to come to the house after consuming alcohol in the late hours and though she requested him to

come early to the house, he used to come late on account of which the disputes between them arose. She stated that for the last four days he was not talking with her. On 31-7-1992 at 9.30 p.m. the accused came to the house, took dinner and went out and he brought a brandy bottle and after consuming it, he scolded her and stated that he sustained loss as he married the daughter of his maternal uncle and asked her to sign on the white paper stating that he would write as he likes. She further stated that as she refused to do so, he grew wild and he beat her with hands as he liked. When she tried to go out, the accused caught hold of tuft of hair and dragged her into the house and after closing the doors, he lit fire to her blouse and upon that she put off the flames and tried to run away. Then the accused in the drunken state caught hold of tuft of her hair and poured kerosene on her clothes and lit fire, as a result of which big flames emerged and her body was burnt. She stated that then, her husband also raised cries along with her and tried to catch hold of her and in that process, the accused also sustained burn injuries and her body was completely burnt.

11. The second dying declaration Ex. P-17 was recorded immediately after Ex. P-15 was recorded. PW-12 SI of Police in his evidence deposed that on 31-7-1992 on receipt of the intimation from the Government Headquarter Hospital, Rajahmundry that Mangadevi was admitted in the hospital with burns, he went to the hospital recorded the statement of the deceased which is Ex. P-17 and he read over the contents of it to the deceased and she admitted the truth of the same and affixed her thumb impression on it. He deposed that he got the endorsement of the Doctor that the patient was conscious and coherent and was giving replies properly. He further deposed that the doctor recorded the dying declaration before his coming to the hospital. In the cross-examination he stated that he recorded Ex. P-17 statement within fifteen minutes and by the time of recording the statement, the father or other relatives of the deceased were not present. Himself and doctors were alone present.

12. Thus Ex. P-17 was recorded immediately after Ex. P-15 was recorded and on the basis of Ex. P-17 the crime was registered and FIR was issued. The version in Ex. P-15 amply corroborates the version given by the deceased in Ex. P-17.

13. Sri Padmanbha Reddy, the learned counsel for the appellant, contended that neither the doctor who endorsed on Ex. P-17 was examined nor has PW-9 identified the signature of Dr. P. V. Sudhakar on Ex. P-17. The prosecution ought to have got the signature of Dr. Sudhakar identified by PW-9, but it was not done.

14. PW-12-SI of Police who recorded Ex. P-17 has clearly stated that he recorded the same in the presence of Dr. P. V. Sudhakar and it contains the signature of Dr. P. V. Sudhakar who endorsed that the patient was conscious while giving the said statement. Therefore, there is no reason why the evidence of PW-12 should be discarded merely on the ground that he happened to be a Police Officer. Further, he has no axe to grind against the accused to foist a false case. The version in Ex. P-17 clinchingly establishes that when the deceased was in flames, the accused also tried to catch hold of her and in that process, he also sustained

burn injuries. The accused who received burn injuries also underwent treatment in hospital for fifteen days. Therefore, the fact that the accused received burn injuries was also stated by the deceased in Ex. P-17. Hence not examining Dr. P. V. Sudhakar nor non-identification of the signature of Dr. P. V. Sudhakar by PW-9 will not make Ex. P-17 inadmissible. The versions in Exs. P-15 and P-17 corroborate with each other and also the evidence of PWs-9 and 12 corroborate the versions given in Exs. P-15 and P-17 by the deceased.

15. The learned counsel for the appellant contended that PW-10, the doctor who conducted postmortem examination over the dead body of the deceased has stated in the cross-examination that the person who is suffering from 95% burns may not be in a position to speak; therefore, the version of the prosecution, that the deceased was conscious when she gave dying declaration Exs. P-15 and P-17 cannot be accepted and hence Exs. P-15 and P-17 are concocted documents.

16. We are not able to agree with the said contention because PW-9 who is a doctor of the same hospital where Dr. Sudhakar is working has attested Ex. P-15 which was recorded by Dr. Sudhakar stating that the deceased was conscious and was in a fit condition to give the statement. PW-9 deposed that the patient was conscious when Dr. P. V. Sudhakar recorded Ex. P-15 and the same was recorded in his presence. Therefore, when there is a clinching evidence of PW-9 that the deceased was conscious when Ex. P-15 was recorded in his presence, the contention that the deceased received 95% burns and was not in a position to give declaration is not tenable. In fact when there is direct evidence of PW-9 regarding the condition of the deceased while giving dying declaration the evidence of PW-10 cannot be taken into consideration as he gave opinion basing on the postmortem certificate.

17. It is nextly contended that no intimation was sent to the Magistrate for recording the dying declaration. It is to be noticed that the deceased was taken with burn injuries to the hospital on 1-8-1992 in the early hours i.e. at 3.55 a.m. and immediately Dr. P. V. Sudhakar recorded her statement Ex. P-15 and again another statement Ex. P-17 was recorded and thereafter SI of Police recorded her statement u/s 161 Cr. PC which is EX. P-19 and by 6-50 a.m., she succumbed to burn injuries. Therefore, there was no practically time to send intimation to the Magistrate for recording the dying declaration. Merely because the Magistrate has not recorded the dying declaration of the deceased, the dying declarations which were recorded by Dr. Sudhakar and PW-12, which were proved to be truthful, cannot be held inadmissible. Further, it is contended that Ex. P-19 is a replica of Ex. P-17; therefore, much weight cannot be given to its efficacy. In this case, PW-12 stated that after recording Ex. P-17 statement, he went to the Police Station and after registering the crime, he recorded Ex. P-19 statement of the deceased u/s 161 Cr. PC.

18. We have gone through Ex. P-19. It is true that Ex. P-19 statement is almost in similar to language as Ex. P-17 though there is some difference with regard to the fact whether the deceased caught hold of the accused after the flames

emerged. However, even if we discard Ex. P-19 (Section 161 statement), the dying declarations Exs. P-15 and P-17 clinchingly prove the prosecution case beyond all doubt, because it is clearly established that the accused himself caused the burn injuries to his wife-deceased.

19. The learned counsel for the appellant contended that the deceased was brought to the hospital by her father as well as the maternal aunt and they were in the hospital when dying declarations were recorded and that therefore there is every possibility of tutoring the deceased in her giving the statement involving the accused.

20. It is to be noticed that when dying declarations were recorded, only PWs-9 and 12 were present. Even PW-1, though, turned hostile to the prosecution, stated in his evidence that when the Police and Doctors came to the hospital, they were sent out. Thus, it is proved that when the dying declarations were recorded, PW-1, the maternal aunt of the deceased and other relatives were not present. Further, when the deceased was in a precarious condition, no one can think of about tutoring her to give false statement so as to implicate the accused. Moreover, no domestic lady having children and living with husband will falsely implicate her husband unless there is a strong motive, which is not proved in this case.

21. The learned counsel for the appellant countended that the offence u/s 302 IPC is not made out and basing the conviction is not according to law. Further, it is contended that even according to the dying declarations, the accused has taken liquor and he was deeply intoxicated; as much it cannot be said that he has got an evil intention to do an act which will result in the death of his wife. Further, the subsequent conduct in trying to put off the flames, as a result of which he also received injuries and hospitalised for 15 days, clearly goes to show that the accused in fact has no intention to cause the burn injuries to the deceased, which resulted in her death. Therefore, the offence will be culpable homicide not amounting to murder.

22. The learned Public Prosecutor contended that the version given by the deceased in both the dying declarations was that the accused after taking dinner, went out, brought a brandy bottle, drank it and asked the deceased to sign on white paper stating that he sustained loss by marrying his maternal uncle's daughter. When she refused to sign on the papers and tried to go away, the accused lit fire to her blouse. When she put off the flames and tried to go away from the room, the accused again caught hold of her tuft of hair and dragged her into the room, closed the door, poured the kerosene and lit the fire. When the flames aroused, he caught hold of the deceased. The above facts clearly show that the accused has got not only knowledge, but also an intention that the act which he is doing will caused burn injuries, which would ultimately result in the death of his wife. Thus, the intention on the part of the accused can be inferred from the circumstances of this case. Therefore, there are no merits in the appeal and the appeal is liable to be dismissed.

23. In the light of the above contentions, the point to be decided is what is the offence committed by the appellant, who was in a state of intoxication and whether he can be imputed with knowledge or intention in the commission of offence.

24. Chapter IV of the Indian Penal Code deals with general exceptions. Section 85 deals with the act of a person incapable of judgment due to intoxication caused against his will. Section 86 deals with the offence requiring a particular intent or knowledge committed by one who is intoxicated and it reads :

"In cases where an act done is not an offence unless done with the particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless thing which intoxicated him was administered to him without his knowledge or against his will".

By reading the above section, it is clear that in the first part of the Section the words "intention or knowledge" are mentioned, but in the latter part of the Section the word "knowledge" is only mentioned and the word "intention" is omitted. In case of voluntary drunkenness, knowledge is to be presumed in the same manner as if there was no drunkenness. If really the Parliament wanted the word "intention" also to be presumed even in the case of an act done in a drunken state of mind, the said word could have been mentioned in the Second part also, but the same is omitted. Therefore, whether the accused was having intention while committing an act cannot be presumed as in case of knowledge. The cases of persons who commit the offence under the influence of intoxication have been dealt with in England. It is relevant to refer to some of them.

25. In *Rex v. Meakin* (1836) 173 ER 131, Baron Alderson observed that in presuming the intention, drunkenness may be adverted to according to the nature of the instrument used. In *Reg v. Monkhouse* (1849) 4 CCC 55. it was held :

"It is a general rule in criminal law, and one founded on common sense, that juries are to presume a man to do what is the natural consequence of his act. The consequence is sometimes so apparent as to leave no doubt of the intention Drunkenness is ordinarily neither a defence nor excuse for crime, and where it is available as a partial answer to a charge, it rests on the prisoner to prove it, and it is not enough that he was excited or rendered more irritable, unless the intoxication was such as to prevent his restraining himself from committing the act in question, or to take away from him the power of forming any specific intention. Such a state of drunkenness may no doubt exist."

26. *The King v. Meade* (1909) 1 KB 895, Darling, J., affirming the correctness of summing up to the jury stated the rule as under :

"A man is taken to intend the natural consequence of his acts. This presumption may be rebutted (1) in the case of sober man, in many ways : (2) it may also be

rebutted in the case of a man who is drunk, by shewing his mind to have been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous i.e., likely to inflict serious injury. If this be proved, the presumption that he intended to do grievous bodily harm is rebutted."

27. In *Director of Public Prosecutions v. Beard* 1920 AC 479, three rules have been laid down by the House of Lords as under :

"(1) That insanity, whether produced by drunkenness or otherwise is a defence to the crime charged;

(2) That evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime should be taken into consideration with the other facts proved in order to determine whether or not he had this intent;

(3) That evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime, and merely establishing that his mind was affected by drink so that he more readily gave away to some violent passion does not rebut the presumption that a man intends the natural consequences of his acts."

28. After referring to the above the decisions, the Supreme Court in *Basdev Vs. The State of Pepsu*, summarised the result as under (at p. 920 of Cri LJ) :

"So far as knowledge is concerned the court must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, the court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being ? If so it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, the court can apply the rule that a man is presumed to intend the natural consequences of his act or acts."

29. Therefore in view of the principle laid down by the Supreme Court, where an offence is committed by a person under deep influence of intoxication, it can be presumed that he has knowledge of the act which he is committing, but it cannot be presumed that he has got intention and the same has to be inferred from the facts and circumstances of the case.

30 In the present case, in Ex. P-17 dying declaration recorded by the Sub-Inspector, the deceased has stated that the accused was habituated to drinking. On the date of incident, after taking dinner, he went out and brought a brandy bottle and consumed it. Thereafter, the accused after consuming the liquor, scolded the deceased by saying that he sustained loss as he married the daughter of his maternal uncle and asked her to sign on white paper stating that he will write whatever he likes. When she refused to do so, the accused caught hold of her and beat her. When she tried to go out, the accused caught hold of

her tuft of hair and dragged her into room, closed the door and lit fire to her blouse. Upon that, she put off the flames and tried to run away. Again the accused in a drunken state of mind caught hold of her, poured kerosene and lit fire and big flames emerged and the body of the deceased was burnt. Then the accused also raised cries and tried to catch and in that process, he also received burn injuries.

31. The above statement shows that the accused first consumed liquor which he brought. Thereafter, he scolded the deceased stating that he sustained loss by marrying his maternal uncle's daughter and asked her to sign on a white paper, when she refused to do so, he grew wild and beat her with hands and when she tried to go out, he caught hold of her tuft of hair and dragged her into room and after closing the doors, he lit fire to her blouse. When she put off the flames and tried to run away, again the accused dragged her into the room, poured kerosene on her clothes and lit fire and then big flames emerged and the body of the deceased was burnt. Then he tried to catch her by raising cries. Thus, having regard to the acts which he has committed after taking the liquor, it cannot be said that he was in total loss of mental power and the above acts done as stated supra shows that he was having consciousness whatever he was doing particularly when the deceased the of her flames to her blouse for the first time and tried to go away from the room, he dragged her again by holding her tuft of hair and poured kerosene and lit the fire. Therefore, it cannot be said that his mental faculties were completely dominated by the intoxication. Therefore, the decision of the Supreme Court will not apply to the facts of the present case. Similarly, the decision in Ismail Ibrahim Syed v. State 1975 Cri LJ 1335 (Goa), which was decided relying on the above stated decision of the Supreme Court, also does not apply to the facts of the present case. Therefore, we are not able to agree with the above contention of the learned counsel for the appellant.

32. For the foregoing reasons, we see no merits in the appeal. Accordingly, the appeal is dismissed.

33. Appeal is dismissed.