
(2016) 02 AP CK 0046
In the Andhra Pradesh High Court
Case No : CrI. A.No. 847 of 2010

Mohd. Osman Ali and others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (2016) 4 AICLR 834 : (2016) 2 ALTCrI 351 : (2016) 2 AndhLDCriminal 593

Hon'ble Judges : C.V. Nagarjuna Reddy and M.S.K. Jaiswal, JJ.

Bench : Division Bench

Advocate : Sri K. Venkatesh Gupta, Counsel, for the Appellant; Public Prosecutor (TS), for the Respondent

Final Decision : Disposed Off

Judgement

C.V. Nagarjuna Reddy, J.—The husband, mother-in-law and sister-in-law of one Smt. Saleha (hereinafter referred to as "the deceased"), who received serious burn injuries on the night of 20.11.2007 at Old Palamoor, Mahabubnagar town and met her tragic end on 05.12.2007, having been convicted for the offences punishable under Sections 498-A and 302 I.P.C., and sentenced to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs. 500/-, in default of payment of fine, to suffer simple imprisonment for one month for the offence punishable under Section 498-A I.P.C., and to suffer life imprisonment and to pay a fine of Rs.1,000/-, in default of payment of fine, to suffer simple imprisonment for three months for the offence punishable under Section 302 I.P.C., have filed the present appeal assailing the judgment, dated 16.09.2009, of the learned IV Additional Sessions Judge, Fast Track Court, Mahabubnagar in S.C.No.236 of 2008.

2. The prosecution case, in brief, is as follows:

On 21.11.2007 at about 3.30 p.m., PW.9, Ahmed Pasha, A.S.I., I Town P.S.,

Mahabubnagar, received a medical intimation regarding the admission of the deceased in the Government Headquarters Hospital, Mahabubnagar, with burn injuries. He went to the hospital and recorded Ex.P8, statement, between 4.00 p.m. and 5.30 p.m. In that statement, the deceased stated that she was married to appellant No.1 (accused No.1) about eight years back, that her husband is having two younger brothers and one elder brother, that after their marriage, her father-in-law and one of her younger brothers-in-law died, that her husband and his brothers are leading their lives by maintaining a tyre puncture repair shop beside Haji Gaffar petrol bunk and that the deceased is having a son - Khadar of five years age and daughter - Maharunnisa of three years age. That since one month after their marriage, her husband used to beat her now and then without any reason and demand money from her parents' house and that as her father died and mother being poor and penniless, she bore the harassment of her husband and continued her conjugal life. That her mother-in-law, Zaheda (appellant No.2/accused No.2) and elder brother-in-law, Akram, sister-in-law, Fathima (appellant No.3/accused No.3) used to reside in Sasabgutta, that for the last three years, the deceased and her husband have been residing in the house of PW.4 as tenants, that four months back, appellant Nos. 2 and 3 took a rented room beside the house of the deceased and residing in it and that since their arrival, her husband used to beat the deceased on the former's instigation occasionally without any valid reason. That the deceased advised her husband not to take liquor keeping in view the future educational expenses of their children and asked him to save money by giving up his drinking habit and that not liked by the said advise, her husband warned the deceased to go to her parents' house by taking the children or get Rs.2,000/- from her parents to satisfy his needs. That as she was not having any other go, she bore the harassment.

3. The deceased has further stated that on 19.11.2007 in the evening, her husband (appellant No.1/accused No.1) came in a drunken state and beat her and asked her to get away from the house on the plea that he will contract another marriage, that on 20.11.2007, the deceased was bed ridden suffering from high fever, due to the injuries caused by her husband on the previous day, that at 6.00 p.m., her husband came, scolded and beat her for not cooking food, and thereafter, he went to her mother-in-law's house, that the deceased went to her mother-in-law's house and requested her husband to come to their house for having chapaties and promised him to prepare food after he eats the same and that her children were also in her mother-in-law's house at that time. That at 6.30 p.m., her husband came to their house by scolding her, by calling her "Chinaal" and appellant Nos.2 and 3 have followed her husband by saying as to why the deceased was quarrelling with her husband, that her husband asked appellant Nos.2 and 3 to catch hold of the deceased by stating that he will pour kerosene and kill her by burning and accordingly, they caught hold of the deceased and that her husband (appellant No.1/accused No.1) went into the house, got a kerosene bottle, poured kerosene on the body of the deceased and

set her ablaze, by lighting a match stick. That the deceased came out of the house with unbearable flames, that on seeing the neighbours gathering, her husband (appellant No.1/accused No.1) brought water in a bucket and appellant No.3 poured water on her and put off the flames to misguide the neighbours, that the deceased got burn injuries on her back, hands, chest and legs, that all the appellants have brought her in an auto, admitted her in the hospital, threatened her not to reveal the real facts to anybody and warned her to state that she set herself ablaze or else they will kill her children by throwing them under a running train and that due to the affection on her children, the deceased could not disclose the true facts before the Magistrate.

4. After recording Ex.P8, statement, PW.9 registered Crime No.186 of 2007 under Sections 498-A and 307 IPC. On receipt of requisition, PW.10, learned Special Judicial Magistrate, also recorded the dying declaration of the deceased on the same day. On receipt of the information that the deceased succumbed to injuries on 05.12.2007, the provision of law was altered to Sections 498-A and 302 IPC., and a charge sheet was filed. The accused have pleaded not guilty, when they were examined under Section 228 Cr.P.C., and hence, the trial was conducted.

5. The prosecution examined PWs.1 to 11 and marked Exs.P1 to P16 and produced MO.1. The defence did not adduce any evidence. On appreciation of the oral and documentary evidence, the trial Court has convicted the appellants and sentenced them as noted hereinbefore.

6. Sri K. Venkatesh Gupta, learned counsel for the appellants, submitted that the FIR was registered with a delay of 21 hours after the alleged incident which is fatal to the case of the prosecution, that the deceased has given contradictory statements in her dying declarations given to PW.10, Special Judicial Magistrate, Excise Court, Mahabubnagar and also to PW.9, Assistant Sub-Inspector, who has recorded Ex.P8, statement of the deceased, and that the earliest version given by the deceased is in conformity with the evidence on record and that in the absence of any independent witness supporting the case of the prosecution, the conviction of the appellants cannot be sustained. He has further argued that the prosecution miserably failed to prove the charge of dowry harassment of the deceased by the appellants and that the evidence on record placed by the prosecution in this regard is wholly inadequate to find the appellants guilty of the charge for the offence under Section 498-A of IPC.

7. The learned Public Prosecutor (TS) sought to sustain the conviction and sentence imposed by the lower Court on the appellants.

8. We have carefully considered the respective submissions of the learned counsel for the parties with reference to the evidence on record.

9. This is a case based on circumstantial evidence. The alleged incident is stated to have taken place in the house of appellant No.1 and the deceased. It is the case of the prosecution that the deceased was set on fire by appellant No.1 by

pouring kerosene while appellant Nos. 2 and 3 caught hold of the deceased. It is the further case of the prosecution that after the deceased got engulfed in fire, she ran out of the house and on hearing the cries of the deceased, several neighbours gathered outside the house of the deceased.

10. Among the neighbours who allegedly gathered, one Haleema Bee who is the landlord of the house in which the deceased and appellant No.1 were residing was alone examined as PW.4. Even this witness turned hostile. While PW.1 was the mother of the deceased, PW.2 was her brother. Thus, they are interested witnesses and therefore, their evidence needs to be carefully scrutinised. In her evidence, PW.1 deposed that she is a resident of Nagarkurnool, that on being informed about the incident by PW.4, she came to Mahabubnagar where the deceased and appellant No.1 were living, in the morning on the following day. However, PW.2 who is the son of PW.1 and the brother of the deceased has given out a different version regarding their arrival. He has deposed that on being informed by PW.4, himself and his mother came to Mahabubnagar on the same night and found the deceased in an unconscious state.

11. Ex. P10, the requisition given by the police to the Special Judicial Magistrate of First Class, Excise Court, Mahabubnagar, shows that the Magistrate has received it at 8.20 pm on 20.11.2007. Interestingly, no FIR was registered either before the said requisition was sent or immediately thereafter. From the deposition of PW.9, Assistant Sub-Inspector, it is evident that at 3.30 pm on 21.11.2007, medical intimation was received from the Headquarters Hospital, Mahabubnagar about the admission of the deceased in surgical ward due to burn injuries, that the FIR was registered immediately thereafter and that PW.9 has proceeded to the Headquarters Hospital and recorded the statement of the deceased at 4.00 pm. On a fresh requisition given by PW.9 to PW.10, the latter has again visited the hospital and recorded another dying declaration at 7.25 pm on 21.11.2007.

12. From the above admitted facts, it is clear that though the incident of the deceased receiving burn injuries has taken place at around 6.30 pm on 20.11.2007 and the said fact was intimated through police to PW.10 at 8.20 pm and the Magistrate himself has recorded first dying declaration of the deceased at 9.07 pm, FIR was not registered till 3.30 pm on 21.11.2007.

13. Contrary to the above facts, in his evidence, PW.9 has deposed that on 21.11.2007 at 3.30 pm he has received intimation from the Headquarters Hospital, Mahabubnagar suggesting that till then, the police had no information about the incident which has occurred nearly 21 hours back. By the very fact that the Magistrate was informed by the police whereupon he has promptly acted by recording the dying declaration, we are convinced that the police have not come out with true version on the point of time at which they had received the information about the incident.

14. The above discussed evidence would clearly prove that immediately after the

incident, the police had knowledge of the same prompting them to inform the Magistrate about the same for the purpose of recording the dying declaration. In *Thulia Kali v. State of Tamil Nadu*, AIR 1973 SC 501, H.R. Khanna, J, has highlighted the importance of the FIR in a criminal case. It was held that FIR is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial and that the importance of the report can hardly be overestimated from the standpoint of the accused, that the object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence and that delay in lodging the FIR quite often results in embellishment which is a creature of afterthought. It was further held that on account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation and that it is therefore essential that the delay in the lodging of the FIR should be satisfactorily explained.

15. In *Meharaj Singh v. State of U.P.*, (1994) 5 SCC 188, the Supreme Court held that with a view to determine whether the FIR was lodged at the time it is alleged to have been recorded, the Courts generally look for certain external checks; one of the checks is the receipt of the copy of the FIR, called a special report in a murder case, by the local Magistrate; if this report is received by the Magistrate late, it can give rise to an inference that the FIR was not lodged at the time it is alleged to have been recorded, unless, of course, the prosecution can offer a satisfactory explanation for the delay in dispatching or receipt of the copy of the FIR by the local Magistrate and that the object of insisting upon prompt lodging of the FIR is to obtain the earliest information regarding the circumstances in which the crime was committed, including the names of the actual culprits and the parts played by them, weapons, if any, used, as also the names of the eyewitnesses, if any.

16. As the FIR was registered nearly 21 hours after the incident has taken place, despite the police having the knowledge of the incident, this delay in our opinion is fatal to the case of the prosecution.

17. As regards the charge for the offence under Section 498-A IPC, PWs.1 and 2 testified that the accused used to harass the deceased by demanding money and beat her up. However, no independent witness has been examined in support of this accusation. In the absence of any corroboration by an independent witness, it is not safe to rely upon the testimony of these two interested witnesses. The whole prosecution case is based upon the harassment of the deceased by appellant No.1. As the prosecution failed to prove this part of the charge against the appellants, there could be no motive for the appellants to kill the deceased.

18. As noted above, the case is based only on circumstantial evidence and the

dying declarations. Coming to the dying declarations, the earliest version of the deceased is reflected in Ex.P11, dying declaration recorded by PW.10, the Special Magistrate, Excise Court, Mahabubnagar who responded to the requisition of the police and recorded the first dying declaration of the deceased at 9.07 pm on the same day i.e., 20.11.2007. In her statement made by the deceased, she stated that at 6.30 pm on that day when she was lighting the stove for making food, kerosene got spilt on her and flames erupted, as a result of which, she sustained injuries, that her husband was outside the house and shouted loudly, that thereafter appellant Nos. 2 and 3 came for putting out the fire and that she was brought to the hospital. She has further stated that no one was responsible for the same. However, the deceased came out with a diametrically opposite version in the subsequent dying declarations, one given to PW.9 vide Ex.P8 and the other given to PW.10 vide Ex.P14.

19. While it is the case of the prosecution that the deceased who was brought to the hospital in an auto by all the accused/appellants was under their overbearing influence and they have threatened her to state that the occurrence was accidental, the stand of the defence is that the deceased has changed her version on the influence of her mother and other close relatives.

20. As regards the legal position relating dying declarations, the law is well settled. In *Munnu Raja and another v. The State of Madhya Pradesh*, (1976) 2 SCR 764, the Supreme Court held that there is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

21. In *State of Uttar Pradesh v. Ram Sagar Yadav and others*, AIR 1985 SC 416 and *Ramavati Devi v. State of Bihar*, AIR 1983 SC 164, it was held that if the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. In *K. Ramachandra Reddy and another v. The Public Prosecutor*, AIR 1976 SC 1994, the Supreme Court held that the Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination and that the deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration. In *Lingaiah v. State of A.P.*, 1994 CrLJ 1242, it was held that where there are serious contradictions between two dying declarations of the deceased, in the absence of clear evidence on record proving the guilt of the appellant, he is entitled to the benefit of doubt.

22. In *Laxman v. State of Maharashtra*, (2002) 6 SCC 710, a Constitution Bench of the Supreme Court dealing with the probatory value to be attached to the dying declaration recorded by the Magistrate, held that Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that he had any animus against the accused or was in any way interested for fabricating a dying declaration, the question of doubt on the declaration, recorded by the Magistrate does not arise.

23. From the legal position emerging from the judgments referred to above, it is

clear that ordinarily a dying declaration recorded by a superior officer has higher evidentiary value and also the earliest version given out by the victim deserves more credence. In the instant case, the earliest version was recorded by the Judicial Magistrate. However, the same Magistrate has recorded Ex.P14, another dying declaration which was preceded by Ex.P8, statement recorded by PW.9. When there are conflicting dying declarations, the statement given out in the dying declaration which is more consistent with the circumstances and the evidence on record deserves acceptance.

24. As regards the case of the prosecution that the deceased was coerced into giving a false statement in her first declaration, the said plea falls in the realm of a hypothesis without there being any basis. In the absence of any evidence, the Court cannot hold with certainty that the deceased would have been under the influence of the appellants for giving an incorrect statement. It would quite well be that there would have been a possibility of the deceased retracting her earlier statement made under Ex.P11 and coming out with a false version under Exs.P8 and P14. Under these circumstances, this Court is not prepared to accept the case of the prosecution that the deceased was under the influence of the appellants to give a false statement under Ex.P11.

25. As noted above, the prosecution has failed to prove motive for the appellants to cause harm to the deceased and the police have failed to register the FIR within a reasonable time despite its having knowledge of the occurrence. This inordinate delay in registering the FIR throws any amount of doubt on the version of the prosecution and embellishment, confabulations and false implications could not be ruled out on account of the long and unexplained delay in registering the FIR.

26. For the above-mentioned reasons, we are of the opinion that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt and the lower Court has committed an error in convicting the appellants for the offences for which they are charged.

27. In the result, the Criminal Appeal is allowed. The conviction and sentence recorded against the appellants/accused in the judgment, dated 16.09.2009, in Sessions Case No.236 of 2008, on the file of the learned IV Additional District and Sessions Judge (FTC) at Mahabubnagar for the offences punishable under Sections 498-A and 302 r/w 34 I.P.C., are set aside. Consequently, the accused shall be set at liberty forthwith, if they are not required in any other case or crime and the fine amount, if any, paid by them shall be refunded to them.