
(2014) 03 AP CK 0082

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1895 of 2009

Obulalppagari Narasimha Raju @ Raju

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 302, 307

Citation : (2014) 03 AP CK 0082

Hon'ble Judges : M.S.K. Jaiswal, J; L.N. Reddy, J

Bench : Division Bench

Advocate : Bathula Raj Kiran, Advocate for the Appellant

Final Decision : Allowed

Judgement

M.S.K. Jaiswal, J.—The appellant was tried in S.C. No. 858 of 2008 by the Additional Sessions Judge, Hindupur for the charge that he killed Sumangamma (hereinafter referred to as "the deceased") and thereby committed an offence punishable u/s 302 of I.P.C., Through Judgment, dated 23-09-2009, he was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs. 100/-. The same is challenged by the accused in this appeal.

2. The facts, in brief, are as under:-

The accused and the deceased are the residents of Madhudi village, Agali Mandal, Anantapur District. The husband of the deceased - Bojappa died long ago. She had a daughter Sreelakshmi (P.W.6). The accused developed illicit intimacy with the deceased and they were living together. The daughter P.W.6 of the deceased was living with Nagappa P.W.7 and Jayamma P.W.8, who are her paternal uncle and aunt. T. Govindappa P.W.1 is the brother of the deceased. Girjamma, Eswarappa and Gangamma P.Ws. 2, 3 and 4 are the neighbouring residents of the house where the deceased and accused were living whereas Dasappagari Sreenivasulu P.W.5 was residing at some distance.

It is alleged that on 09.08.2008 at about 10.00 p.m., the deceased asked the accused about the expenditure of Rs. 1,000/-, which was given to him by her, but the accused did not respond. The deceased is said to have asked the accused not to come to her house and upon that the accused got wild and by suspecting her fidelity, poured kerosene on her and set her ablaze. The deceased came out of the house and fell down on the street. The neighbours P.Ws.2, 3 and 4 are said to have come and that the deceased informed them that the accused has set fire to her in order to kill her. The deceased was shifted to the house of P.Ws.7 and 8, where her daughter P.W.6 was living. P.W.5 informed about the incident in the next morning to the brother of the deceased P.W.1, who came there. The deceased was shifted to Government Hospital, Madakasira on 10-08-2008.

On the information reaching the police through the hospital, the S.I. of Police, Agali P.W.14 went to the hospital and recorded the statement of the victim. On its basis, Cr.No.19 of 2008 was registered u/s 307 of I.P.C. P.W.14 visited the scene of offence and observed the same under a panchanama. Material objects were seized. In view of the health condition of the deceased, she was shifted to Government Hospital, Hindupur. The jurisdictional Magistrate Sri Ramanaiah P.W.13 visited the hospital and recorded her statement.

On 14-08-2008 at about 03.15 a.m., the deceased succumbed to the burns. In view of the same, the provision of law was altered from Section 307 of I.P.C., to Section 302 of I.P.C. P.W.15 - the Inspector of Police, Madakasira, took up the investigation, held inquest over the dead body which was also subjected to post-mortem examination and after completing the investigation, he filed charge-sheet in the Court of Judicial Magistrate of First Class, Madakasira. The same was taken cognizance of, as P.R.C.No.24 of 2008 and after complying with the mandatory requirements, the case was committed to the Court of Sessions, Anantapur.

P.Ws.1 to 16 were examined and Ex.P.1 to Ex.P.17 and M.Os.1 to 8 were filed on behalf of the prosecution. The contradictory portions in the statements of P.Ws. 1, 5 and 7 were marked as Exs.D.1 to D.5 on behalf of the accused.

When examined u/s 313 Cr.P.C., the accused denied the incriminating evidence adduced against him and stated that he has been falsely implicated.

The result in the Sessions Case is mentioned at the threshold.

3. Learned Counsel for the accused submits that the trial Court erred in relying upon the evidence of the prosecution witnesses, which is full of inconsistencies and discrepancies. It is contended that the evidence of the material witnesses is completely at variance with the case of the prosecution. As regards the two Dying Declarations recorded from the victim, one by the Police Officer and another by the Judicial Magistrate of First Class, it is argued that they are contradictory and still were relied upon by the trial Court. It is further submitted that the deceased was tutored by the people, who are inimical to the accused

and this aspect is evident from the fact that her statements were recorded long after the alleged incident. Learned Counsel submits that the impugned Judgment is not based on proper appreciation of the material evidence on record and the same is liable to be set aside.

4. Learned Additional Public Prosecutor submits that even though the independent neighbouring residents turned hostile, the two Dying Declarations of the deceased are consistent insofar as the material aspects are concerned, and that by itself is sufficient for holding the appellant-accused guilty of the charge. Learned Additional Public Prosecutor contends that the evidence on record has been properly appreciated and the Judgment is based upon legally admissible evidence, warranting no interference.

5. The point for consideration is as to whether the prosecution proved its case against the accused beyond reasonable doubt so as to sustain the conviction and sentence or whether it needs to be set aside, modified or varied?

6. POINT:- The deceased had a daughter, aged about 17 years. After the death of her husband, Bojappa, the deceased developed illicit intimacy with the accused and they were openly living together. This was not to the liking of the relations of the deceased and therefore she was virtually driven out by P.W.7, the elder brother of the husband of the deceased. This is said to have continued for about 5 or 6 years. It is alleged that the accused was a vagabond with all vices and that he used to have suspicion about the character of his kept-mistress viz., the deceased. It is alleged that the deceased met unnatural death in the hands of a person enamoured by whom she discarded her own people including a daughter of marriageable age.

7. Briefly stated, the allegation is that on the night of 09-08-2008 at about 10.00 p.m., there was a dispute in between the deceased and the accused in the matter of some amount, which the deceased gave to the accused in the morning. Not satisfied with the explanation offered by the accused, the deceased is said to have told the accused to stop coming to her. Infuriated by this remark of the deceased, the accused is said to have poured kerosene on her and set her ablaze. The deceased ran out of the house and fell down on the street. The immediate neighbours - P.Ws.2, 3 and 4 came out hearing the screams and shifted her to the house of P.Ws.7 and 8 where her daughter P.W.6 was staying. She was in that house throughout the night.

8. Next day morning another neighbour P.W.5 informed P.W.1, the brother of the deceased, who was a resident of Rathnagiri village, which was at a distance of 25 KMs., from Madhudi village and he shifted his injured sister firstly to Madakasira hospital and thereafter to Hindupur Government Hospital. The deceased died on 14-08-2008 i.e., 5 days after the incident. It is also the case of the prosecution that during her treatment, on 10-08-2008, the statements of the victim were recorded both by a Police Officer and the Judicial Magistrate of First Class and in both the statements, she has consistently stated that it is the accused who

poured kerosene on her and set ablaze. The plea of the accused is one of denial and according to him, he has been falsely implicated by P.W.7, with whom he has certain disputes. Here itself, it may be noticed that P.W.7, in his evidence, admitted that he is not on talking terms with the accused for about two years prior to the incident.

9. The material evidence on record is that of P.Ws.2, 3 and 4, who are the immediate neighbouring residents. They are said to be the persons who first came in contact with the deceased minutes after the incident. According to the prosecution, the deceased told them that it is the accused, who caused the burn injuries on her. However, these three independent neighbouring witnesses denied the entire allegation. They deposed that they came to know about the death of the deceased due to burn injuries but they do not know as to how she sustained the burn injuries. They denied having stated before the police as in Exs.P.1, P.2 and P.3.

10. P.W.1 is the brother of the deceased, who came to the village nearly 12 hours after the incident. He claims that her sister informed him that it is the accused who poured kerosene on her and set fire. This happened nearly 12 hours after the incident and during that period, throughout the night, the deceased was in the house of P.Ws.6, 7 and 8. This aspect gives strength to the contention of the accused that it is the tutoring made by P.W.7, which made the deceased to implicate the accused. The three neighbours, who are alleged to have spoken to the deceased within minutes of the incident, denied that the deceased informed them of any incident implicating the accused.

11. P.W.5 is another neighbouring resident of P.W.7. He deposed that on the night of the incident at about 11.00 p.m., he heard the cries of the deceased and immediately he went to her house and noticed the deceased lying with burn injuries. He claims to have questioned the deceased as to how she sustained burn injuries, and that the deceased told him that the accused poured kerosene on her and set fire. He further claims that on the next day morning, he went to P.W.1 and informed him about the incident. This part of the evidence of P.W.5 is palpably false for he has introduced altogether new dimension to the case. According to him, his house is near the house of P.W.7, where the deceased was not staying. His house was far off from the house where the incident is said to have taken place. He further claims that when the deceased informed him about the incident, Jayamma (P.W.8) and Sreelakshmi (P.W.6) were also present. He has also stated that when the injured was in the house of P.Ws.7 and 8 throughout the night, one local Doctor of Madhudi village came and gave treatment to her. He admits that in the village, there is phone facility and there were several vehicles.

12. The jurisdictional Police Station is at a distance of 5 KMs., from the village. P.W.5 did not think it proper to inform the police either by telephone or by going over there but instead the next morning, he went to the village Rathnagiri, which is at a distance of 25 KMs., and informed about the incident to P.W.1, the brother

of the deceased. The Doctor, who is said to have treated the injured in the night, has not been examined. That apart, none of the witnesses gave such an account. It is further in the evidence of P.W.5 that he went to P.W.1 at about 09.00 a.m., and informed about the incident. According to P.W.1, he reached his sister's house much before that and P.W.1 specifically asserts that by 09.15 a.m. itself, the ambulance was requisitioned and the injured was shifted to the Government Hospital, Madakasira.

13. P.Ws.6, 7 and 8 are the persons to whose house the deceased is said to have gone immediately after the incident. The evidence of these witnesses is that the accused and the deceased were living together in a separate house and on 09-08-2008 at about 11.00 p.m., the deceased sustained burn injuries, and they were informed by the deceased that it is the accused who poured kerosene on her and set fire. The case of the prosecution is that immediately after the incident, the deceased fell down in front of the house and she was shifted by neighbouring residents to the house of P.Ws.6, 7 and 8. This has been denied by P.Ws.2, 3 and 4. However, it is in the evidence of P.Ws.6, 7 and 8 that the deceased herself came to their house and on the door being tapped, they opened the door and found the deceased with burn injuries. It means that even after sustaining 90% burns as noted in Ex.P.12, the deceased still walked all along, by herself, to the house of P.Ws.6, 7 and 8. It is stated by P.W.6 that the deceased succumbed to the burn injuries three days after the incident, whereas according to P.W.7, the deceased died two days after the incident. P.W.8 also deposed that the deceased died three days after the incident. This version of P.Ws.6, 7 and 8 is factually incorrect. The incident is said to have taken place at 10.00 p.m., on 09-08-2008, the deceased died on 14-08-2008 i.e., nearly five days after the incident.

14. According to PW.6, there was illicit intimacy in between her mother (deceased) and the accused for about six years prior to the death of the deceased. However, according to PW.1, the brother of the deceased, the illicit intimacy developed just two months prior to the death of the deceased. According to PW.1, the deceased was being maintained by PW.7, the elder brother of her husband. However, according to PW.6, since the character of the deceased was questionable, she was sent away from the house of PW.7. PW.8 in her evidence stated that she is working as an Angawadi worker for 22 years. She deposed that the deceased came to their house at about 1030 pm., in the night and was there through out the night with burn injuries. A person like PW.8 would not have kept the injured woman with substantial burn injuries in her house through out the night, without even rendering the first-aid, or without informing the police. Further, PW.8 asserts that she did not think of informing the police about the incident, nor took any steps to shift the injured to a hospital. In contrast, PW.6 stated that the injured was treated in the night by a local doctor while she was in the house of P.Ws.7 and 8.

15. Ex.P.12 is the medico legal intimation sent by the Madakasira Hospital

officials to the Police Station Agali. It is mentioned there in that the victim sustained 90% burns. If what is stated therein is correct, the victim could not have walked all the way herself from her house to the house of P.Ws.6, 7 and 8, which was far away and she would not have been in their house for more than 12 hours without any medical aid. As per Ex.P.13, the deceased tried to put off the flames by herself by pouring water, but whereas as per Ex.P.11, it is the accused who poured a pot full of water on her and ran away from there.

16. According to PW-1, his deceased sister died on 11.8.2008. The fact is that the deceased died on 14.8.2008, but not on 11.8.2008. According to PW.1, the accused was produced by PW-7 before the Police two days after the incident. PW-15, the Investigating Officer denied that statement and stated that he effected the arrest of the accused on 6.9.2008 i.e., more than 25 days after the incident.

17. Upon perusing the testimony of above witnesses what is manifest is that their evidence is discrepant and contradictory on several material aspects and that their conduct is also unnatural.

18. The trial Court has not relied upon the evidence of the prosecution witnesses, but based its conclusions on the two dying declarations of the deceased, which were recorded by PW-14, Sub-Inspector of Police, and PW13, Judicial Magistrate of First Class. Dying Declaration of a person is regarded as a reliable for the reason that the statement emanates from the mouth of a person, who is in the jaws of death. It is regarded as credible, because no person in that condition will try to implicate any person other than the one, who has driven him/her to that stage. This is an exception to the general rule that the statement of any person cannot be relied upon unless it is subjected to cross-examination. Corroboration to the contents of a Dying Declaration need not necessarily be searched. However, if any other evidence is adduced, it must substantially correlate with the statement of the injured, whose presence could not be secured for being subjected to cross-examination. In the absence of any other evidence, the contents of a Dying Declaration can also be made the sole basis for determining the guilt or otherwise of the accused, provided it satisfies the requirement of being spontaneous and having been recorded immediately after the incident, ruling out the possibility of the declarant being tutored or the words being put in the mouth of that person. If there is considerable unexplained delay between the incident and recording of the statement, which subsequently became Dying Declaration, it gives rise to suspicion and possibility of any advise of a third person intervening.

19. In the instant case, there are two statements, which are said to have been recorded from the deceased one day after the incident and four days prior to her death. The incident is said to have taken place in the evening of 09.08.2008. According to the prosecution witnesses, the incident of the accused pouring kerosene on the deceased and setting her on fire has taken place at about 10.00 p.m. in the night. She is said to have walked all alone to the house of P.Ws.6, 7

and 8 and spent there the entire night, without any first-aid or treatment. Next day morning i.e., on 10.08.2008 at about 11.30 a.m., the deceased reached the Government Hospital, Madakasira and the intimation was sent by the Hospital people to the jurisdictional police, and accordingly PW.14, Sub-Inspector of Police reached the Hospital at Madakasira by about 1.20 p.m., in the afternoon. It may be recalled that till the medico-legal intimation being sent to the police, none informed the police even though the incident has taken place more than 15 hours prior thereto. PW-14, Sub-Inspector of Police, recorded a statement Ex.P.13 from the deceased. Thereafter, the injured was shifted to Hindupur hospital for better treatment. There again, that very Sub-Inspector of Police i.e., PW-14 went and recorded another statement from the injured/deceased at about 8.00 p.m., under Sec. 161 Cr.P.C., but the said statement is not made part of the record.

20. PW.1, the brother of the deceased in his evidence stated that while the injured was in Madakasira Hospital for a day, none of the police officials visited there, nor any statement was recorded, and only after reaching the Hindupur Hospital, the police came and recorded the statement of his sister. This statement of PW.1, who was along with the injured through out the day raises a strong suspicion against the authenticity of Ex.P.13, the Dying Declaration said to have been recorded by Sub-Inspector of Police, PW-14, at Madakasira Hospital. As observed earlier, the subsequent statement recorded at 8.00 p.m., at Hindupur Hospital has not been filed.

21. Ex.P.13 reads as under:

Since 6 years back from now I am having illicit intimacy one with Narsimharaju @ Raju, s/o. Narsimhappagari Obulappa, resident of Madhudi villager, age 35 years. He is unmarried. Since one year back from now, he was addicted to bad vices. Today i.e., on 9.8.08 morning he came to my house and took Rs. 1,000/- went out of my house, and returned on the same day night at about 10.00 p.m. I asked Narasimha Raju, what to do that amount, but he did not give proper reply. For that I told with him, you are addicted to bad vices more, hence you need not come to my house. For that Narsimharaju picked up galata with me are you asking money? You kept somebody, hence you did not alive, I will kill you. Saying so, he picked up kerosene can, poured kerosene and set fire with match box on me. Then I raised huge cries, he ran away from that place. I put off my flames with water, came out of my house by raising huge cries one Girijamma, who is residing in front of my house asked me what had happened. I told her that Narasimha Raju poured kerosene and set fire on me. Afterwards I went to my brother-in-law Nagappa's house, narrated what had happened to my daughter, and inmates of that house, stayed there on that night. Today morning my elder brother Dasappagari Sreenivasulu, my younger brother Govindappa of Rathnagiri were send word to then Govindappa shifted me to Madakasira Government Hospital in 108 Van, so said night at about 11.00 p.m. he set fire on me.

22. The above statement was recorded at about 1.20 p.m., on 10.08.2008 by Sub-Inspector of Police. On the same day in the evening at about 6.40 p.m., the

Magistrate (PW-13) was requisitioned and PW-13 recorded the Dying Declaration of the victim, which is Ex.P.11. The relevant portion of the said statement reads as under:

I left the houses. Yesterday I asked Raju what happened for Rs. 1,000/-. For which he told me that I have purchased Kadapa slabs for Rs. 500/-. Then I asked Raju, what about Rs. 500/-. For which he told me that he is not having that amount. I asked him what you have committed that amount? He replied that I utilized that amount as he likes. Then I questioned him to state how I lead my life. If you behaves like this. He replied I did not give that amount, so you did not come to my house. Yesterday evening at about 7.00 p.m., while I was sleeping in my house, he poured kerosene and set fire on me; he also poured one pot of water, left and ran away from that place. He is always consuming alcohol.

23. When the two Dying Declarations are juxtaposed, it is noticed that there are material discrepancies in between them. In Ex.P.11 the deceased told the Magistrate that at about 7.00 p.m., while she was sleeping in her house, the accused poured kerosene and set her on fire; and also poured one pot of water and ran away from there; whereas in Ex.P.13, the victim stated that the accused picked up kerosene can, poured kerosene on her and set fire with match box and then she raised huge cries and the accused went away from that place. She further stated that she herself put off the flames with water. Even with regard to the time of the incident there is discrepancy. As per Ex.P.11, the incident took place at 7.00 p.m.; whereas according to Ex.P.13, the incident took place at 11.00 p.m. A person on the death-bed is not expected to give exact timings, but if it is mentioned, it must be consistent or near about. There cannot, however, be a difference of four hours.

24. In view of the nature of the statements and the other evidence on record, we find it difficult to hold that, the case against the accused is established beyond reasonable doubt. The trial Court has not appreciated the above evidence in proper perspective and held the accused guilty, which finding cannot be sustained. The point is answered accordingly.

25. In the result, the Criminal Appeal is allowed. The conviction and sentence ordered in S.C. No. 858 of 2008 on the file of the Additional Sessions Judge, Hindupur, dated 23-09-2009, against the appellant-Accused, are set aside. The appellant-Accused shall be set at liberty forthwith, unless his detention is needed in any other case. The fine amount, if any, paid by the appellant-Accused shall be refunded to him.