

(2017) 02 AP CK 0014

ANDHRA PRADESH HIGH COURT

Case No: 1629 of 2010

Sri Harijana Avasarala
Masthanaiah

APPELLANT

Vs

The State of A.P. Rep.
by its Public Prosecutor

RESPONDENT

Date of Decision: Feb. 20, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 161, Section 313 - Examination of witnesses by police - Power to examine the accused
- Indian Penal Code, 1860, [1767-304](#)

Hon'ble Judges: Suresh Kumar Kait, U. Durga Prasad Rao

Bench: DIVISION BENCH

Advocate: Kalava Suresh Kumar Reddy

Judgement

1. This Criminal Appeal is preferred against the judgment dated 11.08.2010 delivered in S.C.No.527 of 2009 by VI Additional Sessions Judge (Fast Track Court), Gooty, Anantapur District, whereby the appellant - accused was found guilty of the offence punishable under Section 302 IPC, and accordingly, convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.100/-, in default, to undergo Simple Imprisonment for one month.

2. In brief case of the prosecution is that on 09.11.2008 at 03:15 p.m., PW11, the then Sub-Inspector of Police, I Town Police Station, Guntakal, on receiving medical intimation Ex.P14, rushed to the hospital and found the deceased undergoing treatment for burn injuries. He recorded Ex.P15 statement of the deceased in the presence of PW7 - P. Sarojamma, duty doctor. At the time of recording Ex.P15, the deceased was conscious and coherent and PW7 certified mental condition of the deceased vide Ex.P4 -

endorsement. On the strength of Ex.P15, he registered a case in Cr.No. 83 of 2008 for the offences under Sections 498-A and 307 IPC and issued F.I.R. On the same day, he gave Ex.P2 - requisition to PW7 to record dying declaration of the deceased as her condition was serious and on the ground that the Judicial Magistrate of First Class, Guntakal and the Mandal Executive Magistrate, Guntakal were not available for recording the same. Later, he recorded the statement of the deceased under Section 161 Cr.P.C.

3. To substantiate the case of the prosecution, it examined PWs.1 to 11 and got marked Exs.P1 to P17 and M.Os.1 to 6.

4. After closure of the prosecution evidence, the appellant was examined under Section 313 Cr.P.C. wherein he denied the incriminating evidence led against him. However, no defence witness was examined nor got marked any documents on behalf of the appellant.

5. In Ex.P3 dying declaration, the deceased H. Vijaya Lakshmi, sated that she married the appellant three years ago, however no children were born to them. Her husband was working as tipper cleaner. Since 3 years, he was not looking after her well and always used to come home in a drunken condition and beat her. He used to suspect her fidelity. While so, on 09.11.2008, at about 01.00 p.m., her husband came home. As it was Sunday, he went to mutton shop and bought kg. of mutton and asked her to prepare mutton dish. She went for cooking. Her husband returned in drunken state and abused her for not cooking. They had discussion on the issue on his coming home in drunken state and quarrelled with her. In order to frighten her husband, she poured some kerosene from the stove on her body. Questioning her as to why she was frighten him and stating that he himself would pour kerosene on her, he lifted the stove and poured the remaining kerosene, lit match stick and set fire to her. Her entire body was burnt. When she raised cries, her elder sister Rajyalakshmi came and spread blanket on her and saver her. She was brought to Government Hospital, Guntakal in 108 Ambulance and was admitted in hospital.

6. Sri Kalava Suresh Kumar Reddy, learned counsel for the appellant, submits that the entire case rests on the Ex.P3 dying declaration and Ex.P15 statement of the deceased recorded by PW11 as the other material witnesses have not supported the prosecution case, and they are declared hostile.

7. PW1 is the father, PW2 is the mother, PW3 is maternal grandfather, PW4 is sister and PW5 is the brother of the deceased. PW6 is a panch witness for inquest. PW7 is the doctor, who recorded Ex.P3 dying declaration of the deceased. PW8 is another doctor, who conducted autopsy over the dead body of the deceased and prepared Ex.P5 Post mortem certificate.

8. The learned counsel submits that even if the prosecution case is believed, the appellant bought kg of mutton and asked her wife to prepare a dish and on that issue, hot

discussion had taken place between them; and in order to frighten the appellant, the deceased herself poured kerosene on her body, due to which, the appellant became angry and he also poured on her remaining kerosene from the stove, lit fire to her and fled away from the place and the entire episode would reveal that the appellant was not pre-determined nor he intentionally poured kerosene on her, however he wanted to teach her a lesson that if she threatened him by pouring kerosene on herself, he would also do in the same way, but the only mistake committed by him was that he set fire to her. Thus, he had knowledge that if she caught fire she might die, however he had no intention to kill her and he was not predetermined to execute this crime.

9. On the other hand, the learned Public Prosecutor appearing on behalf of the respondent-State, submits that from the prosecution case, it is established that there was no intention of the appellant to kill his wife. However, when sudden quarrel took place between them on the issue of preparing mutton dish, the altercation took place and the deceased frightened the appellant by pouring some kerosene on her. The learned Public Prosecutor submitted that in pouring kerosene and setting fire, the appellant had knowledge that the deceased may die, but he had no intention to put an end to her life. He has fairly conceded that the present case is culpable homicide not amounting to murder, and thus, would fall under Exception No.4 of Section 300 IPC.

10. Heard the learned counsel for both the parties and perused the material placed on record.

11. For the sake of convenience, Exception No.4 of Section 300 IPC is reproduced as under:

Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offenders having taken undue advantage or acted in a cruel or unusual manner.

12. Even as per the prosecution case, the appellant had no premeditation, however this incident had happened followed by a sudden quarrel, and in the heat of passion. The appellant, after committing the offence, left the place. Thereafter, PW4 - sister of the deceased, covered her with blanket to extinguish fire and immediately shifted to hospital in 108 Ambulance.

13. Section 304 IPC prescribes punishment for the offence of culpable homicide not amounting to murder. As per this Section, whosoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing

such bodily injury as is likely to cause death;

14. It cannot be disputed that the quarrel took place between the appellant and the deceased on the issue of the appellant coming in drunken state. Meanwhile, some altercation took place, due to which, the deceased herself, just to frighten her husband, poured on her some kerosene from the stove. The deceased felt bad and being her husband, more so, under the influence of liquor, picked up the stove and poured remaining kerosene on her. Thereafter, the appellant set her ablaze and left the place. Thus, the alleged incident was not premeditated to kill the deceased, however in a fit of anger, the appellant committed the offence. Therefore, Section 304 Part-I IPC is not applicable to the present case as there was no intention of the appellant to kill the deceased.

15. Accordingly, if the accused is not liable for punishment for the offence of culpable homicide under Section 304 Part-I IPC, then obviously the present case would fall under Section 304 Part-II IPC. As per Section 304 Part II IPC, the accused shall be punished if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

16. In the present case, admittedly the appellant had no intention to kill his wife, however by pouring kerosene oil and setting fire to her, it can be safely inferred that the appellant had knowledge that the deceased might die with such bodily injuries as may be caused by severe burns. Therefore, the alleged offence falls under Section 304 Part-II IPC and not under Section 302 IPC.

17. Therefore, in the light of the facts and circumstances of the case and the clinching evidence both oral and documentary, we hereby make the following observations:

a) The conviction imposed on the appellant-accused by the learned VI Additional Sessions Judge (Fast Track Court), Gooty, Anantapur District for the offence punishable under Section 302 IPC, vide judgment dated 11.08.2010 in S.C.No. 527 of 2009, is hereby converted into one under Section 304 Part-II IPC as this case falls under Exception 4 of Section 300 IPC.

b) In respect of the sentence, the trial Court sentenced him to undergo life imprisonment. As per the record, the appellant has already undergone imprisonment for a period of more than eight years. Hence, we hereby modify the sentence by limiting it to the period of sentence already undergone by him.

c) Hence, the Superintendent, Central Jail, Kadapa, is hereby directed to set the appellant at liberty forthwith if he is not required in any other case.

18. Accordingly, the Criminal Appeal is partly allowed. **19.**As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.