

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No. 1118 OF 2010

Between:

Appala Srinivas,
S/o. Appala Agnhothudu

... Appellant/
Accused

And

The State of A.P. rep. by its
Public Prosecutor, High Court of A.P.,
Hyderabad.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED: 27.06.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 1118 OF 2010

% Dated 27.06.2023

Appala Srinivas,
S/o.Appala Anghothudu

...Appellant/
Accused

And

\$ The State of A.P. rep. by its
Public Prosecutor, High Court of A.P.,
Hyderabad.

... Respondent/
Complainant

! Counsel for the Appellant: Sri T.L.Nayan Kumar

^ Counsel for the Respondents: Public Prosecutor for State

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER
CRIMINAL APPEAL No.1118 OF 2010

JUDGMENT:

This Criminal Appeal is filed by the appellant aggrieved by the judgment of conviction dated 05.08.2010 in S.C.No.104 of 2010, on the file of V Additional Metropolitan Sessions Judge, Criminal Courts Complex, Nampally, Hyderabad, for the offence under Section 304-II of IPC.

2. Heard the learned counsel for the appellant and the learned Assistant Public Prosecutor appearing for respondent-State.

3. Briefly, the case of the prosecution is that Investigating Officer/P.W.11 having received information of woman burning, went to the Osmania General Hospital on 10.01.2009 at 10:00 a.m. and recorded the statement of the deceased. In the said statement, the deceased informed that she was married to the appellant herein 12 years prior to the incident and they had a daughter. For two years, after marriage, the accused treated her properly, thereafter, started harassing her on the ground that the deceased was having affairs with others and was beating her on a regular basis in a drunken condition.

5. Deceased further stated that on 09.01.2009 around 7:45 p.m., the appellant went to the house in a drunken condition. While the deceased was sitting in front of the house, he took her into the house, beat her and threw kerosene on her from a plastic bottle and lit her with match box. The deceased ran out in flames. P.W.9 who was the neighbor witnessed the deceased running out of the house in flames. The appellant was present and called for Ambulance. She was taken in an Ambulance to a private hospital and from there to Government hospital.

6. In the statement made to the Police, which was treated as dying declaration, the deceased stated the above facts that it was the appellant who poured kerosene on her and set her ablaze. The said statement was recorded by the Police at 10 a.m. Half an hour thereafter, the learned Magistrate/P.W.10 recorded the statement of the deceased. In the said statement also, she narrated that the appellant was beating her in a drunken condition regularly and on the date of incident, he poured kerosene on her and set her on fire.

7. Learned Sessions Judge having examined the witnesses P.Ws.1 to 11 and also considering the documents Ex.P.1 to P.9 brought on record by the prosecution, found that the appellant was guilty of the offence under Section 304-II of IPC and not

under Section 302 of IPC. Learned Sessions Judge also acquitted the appellant for the offence under Section 498-A of IPC.

8. Learned counsel appearing for the appellant would submit that the investigation in the present case had commenced even before the registration of FIR. As seen from the FIR/Ex.P.4, it was registered on 10.01.2009 at 10 a.m., however, the occurrence reflects on 09.01.2009 at 7:45 p.m. Once the deceased was shifted in an Ambulance, which is a private Ambulance, the Police should have known the incident. However, no statement was recorded till next day and the said delay in recording the statement is not explained by the prosecution.

9. Learned counsel further argues that from the evidence of P.W.1/brother, P.Ws.2 and 3 it is apparent that the relation in between the appellant and the deceased was not cordial. In fact, P.W.1 admitted that he did not like the marriage of the deceased with the appellant and he never went to the house of the accused. In the said circumstances, the defence version that P.Ws.1 to 3 had tutored the deceased even before giving the statement to the Police and the Magistrate has to be believed. Further, the conduct of the appellant also falsifies the

case of the prosecution. He had shifted the deceased to the hospital, stayed in the hospital and till funeral had taken place, he was very much present. He had never absconded and his conduct reflects that he has nothing to do with the alleged incident as projected by the prosecution. Counsel further argued that the version of appellant pouring kerosene is incorrect and the Doctor who endorsed on the dying declaration was not examined. In the said circumstances of non-examination of Doctor to certify the health condition and in the background of tutoring by the relatives, no reliance can be placed on both the dying declarations.

10. On the other hand, learned Assistant Public Prosecutor would submit that the witnesses who were examined by the prosecution have clearly stated regarding harassment that was meted out to the deceased. In both the statements recorded, the deceased has mentioned that it was the appellant who has poured kerosene on the deceased and set her on flames. In the said circumstances, minor discrepancies in registration of crime or delay are of no consequence.

11. Two dying declarations are admittedly made by the deceased. At 10 a.m., the Police recorded her statement in which she specifically narrated regarding harassment of the

accused on regular basis in drunken condition on a suspicion that she was having affairs with others. The very same version is given at 10:35 a.m. to the Magistrate. The Doctor, who was present at the time of dying declaration endorsed on the dying declaration that the deceased was conscious, coherent and in fit state of mind throughout recording of the statement. The said endorsement was spoken to by P.W.10/Magistrate who had recorded the statement of the deceased.

12. The assumption that P.Ws.1 to 3 had tutored the deceased before giving statement cannot be accepted. The denied suggestions during cross-examination have no evidentiary value. Nothing is placed on record or adduced by the accused during the course of trial to show that P.Ws.1 to 3 were taking to the deceased at the time of being treated either in the private hospital or in the Government hospital. In the absence of any such evidence to show that P.Ws.1 to 3 met the deceased and talked to her, prior to recording of statement by Police and Magistrate the question of accepting the version of tutoring does not arise.

13. However, it is consistently stated by P.Ws.1 to 3 that the accused was harassing the deceased saying that she was having affairs with others. The said version is corroborated by

the version of the deceased in both the statements made before the Police as well as before the Magistrate. There is nothing inconsistent or contradictory that has crept into either in the statement before the Police or in the statement made before the Magistrate.

14. I do not find any infirmity in the findings of the learned Sessions Judge in convicting the appellant for the offence under Section 304-II of IPC and accordingly, conviction is confirmed. However, the incident is of the year, 2009 and nearly 15 years have passed by. According to the counsel, the appellant has responsibility of his daughter and parents. Accordingly, considering the circumstances, the sentence of imprisonment is reduced to 5 years.

15. Accordingly, the Criminal Appeal is partly allowed. The trial Court shall cause appearance of the accused and send him to the prison to serve out the remaining part of the sentence imposed. Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 27.06.2024

Note

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