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T.K. REDDY  
v.  
STATE OF A.P. AND ORS.

AUGUST 23, 2002

B

[S. RAJENDRA BABU AND P. VENKATARAMA REDDI, JJ.]

*Penal Code, 1860: Section 302:*

C

*Murder—Charge against husband of deceased—Two dying declarations—One stating that her husband set her on fire and another stating that she set herself on fire—Presence of accused-husband at the time of incident contradictory to facts on record—Conviction—Correctness of—Held, it is not open to Court to surmise on facts and convict a person—Hence conviction under Section 302 IPC cannot be sustained—Evidence Act, 1872—Dying declaration.*

D

According to the prosecution, on the fateful day, wife of the accused-appellant came out of the house with her clothes aflame. PW1 and PW2, her neighbours extinguished the fire and took her to hospital. PW7, a Police Officer, recorded her statement (Exhibit P-5) and subsequently, PW4, the local Magistrate also recorded the statement (Exhibit P-2) of the victim/deceased.

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In Exhibit P-2, she stated that her husband had been harassing her for last three months and on the day of incident he set her on fire after pouring kerosene-oil on her body and her brother PW3 brought her to hospital.

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In Exhibit P-5, she stated that her husband had been harassing her since her marriage and on the day of incident he came in a drunken state, abused and beat her. She could not bear such harassment, therefore she poured kerosene oil on her body and set herself on fire. Though her husband was present in the house he did not help her, instead her neighbours PW1 and PW2 brought her to hospital.

Trial Court convicted the accused-husband relying on the statement of the deceased as per Exhibit P-2, since statement as per Exhibit P-5 was

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made when she was hopeful of her survival and wanted to shield her husband but statement as per Exhibit P-2 was made when chances of her survival was bleak, therefore, she spoke the truth. High Court sustained the conviction. Hence this appeal. A

It was contended for the appellant that there was a time gap between recording of the two statements which provided ample opportunity for others to influence the mind of the deceased; besides statement Exhibit P2 is contrary to the facts available on record. B

Allowing the appeal, the Court

**HELD:** PW1 stated that when the incident occurred the appellant was not in the house and he came after his wife, the deceased, was shifted to the hospital. The evidence given by PW2 does not disclose the presence of the appellant at the time of the incident and, according to him, she stated that the cause of incident was her destiny or fate. The statement made by her as per Exhibit P-2 as regards the presence of the appellant in the house at the time of incident is totally belied. When these hard facts stare in the face it was not open to the High Court or the Trial Court to surmise on facts and draw an inference that the deceased made the statement as per Exhibit P-5 in the hope of her survival and wanted to save her husband from trouble. That aspect of the case finds no foundation if the whole evidence is considered. Therefore, the conviction made on the charge against him under Section 302 IPC cannot be sustained. [651-C-F] C D E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 538 of 1993.

From the Judgment and Order dated 25.11.1992 of the Andhra Pradesh High Court in Crl. A. No. 1992. F

A.D.N. Rao and Nirmal Chopra for the Appellant.

Ms. T. Anamika for Guntur Prabhakar for the Respondent.

The Judgment of the Court was delivered by G

**RAJENDRA BABU, J.** The appellant before us is charged with having committed murder of his wife Ramulamma on 23-12-1988 by pouring kerosene on her and setting her on fire at about 1:30 p.m. in his house punishable under Section 302 IPC. The appellant having pleaded not guilty was tried for H

A the offence charged against him, convicted and sentenced to life imprisonment with a fine of Rs. 1500 in default to undergo imprisonment for two months.

B The appellant is the husband of the deceased Ramulamma having married her about 16 years prior to the date of her death. He is a driver with the Andhra Pradesh Road Transport Corporation. While the appellant and the deceased used to live in Shanthinagar Colony in Miryalguda Parvatha Reddy [PW.1] and Lakshmi Reddy [PW.2] are their neighbours. Laxma Reddy [PW.3] is the younger brother of the deceased Ramulamma.

C On 23-12-1988 at about 1.30 p.m., the deceased Ramulamma came out of the house with her clothes aflame. PW. 1 and PW.2 doused the fire with the help of others and took her to the hospital. PW.7, who is the Police Officer, recorded her statement as per Exhibit P.5 and Ramulamma died at 2 a.m. on 24-12-1988. Prior to her death, the Local Magistrate [PW.4] was requested to record statement of Ramulamma (deceased) and at about 7.20 p.m. on 23-12-1988 he recorded her statement in the hospital as per Exhibit D P.2. In that statement, she stated that her husband was troubling her for about 3 months and on the afternoon of the day of the incident when she was at home her husband brought kerosene in a tin and poured the same over her and set her on fire with match stick. She stated that her husband asked her not to go out by covering her with a blanket but she came out weeping, in E the meantime her younger brother Laxma Reddy came and he brought her to the hospital in a rickshaw. She further stated that her husband is used to drinking and after drinking would abuse her in vulgar terms. The police had recorded her statement as per Exhibit P.5 on 23.12.1988 at about 3.20 p.m. in the Civil Hospital to the effect that right from the time of her marriage, her husband used to abuse and beat her in his drunken state and used F to harrass her in many ways and on 23.12,1988 at about 1.30 p.m. her husband came home in a drunken state and abused and beat her at that time her children were absent in the house since they had gone to school. Unable to bear the harassment of her husband, and having got disgusted in her life. She poured kerosene on her body and set herself on fire with a match stick. She G further stated that her husband was present in the house at that time and he did not help her but her neighbours Parvatha Reddy [PW.1] and Lakshmi Reddy [PW.2] brought her to the hospital for treatment.

H The defence raised in the case is that there was a time gap between the two statement as per Exhibits P-2 and P-5 and she was obviously influenced by others during the time available between the two statements.

The Trial Court and the High Court proceeded on the basis that the statement made by her as per Exhibit P.5 to the police was in the hope of her survival and wanted to shield her husband in that event, but when she became aware that her end had come near, she decided to speak out the truth and, therefore, she made the statement as per Exhibit P.2 It is on this basis the High Court and the Trial Court sustained the conviction. Apart from the statement as per Exhibit P-2 there is no other material on record regarding the offence charged against the appellant.

The learned counsel for the appellant strongly criticized the view taken by the High Court and Trial Court and submitted that there was ample opportunity for others to influence the mind of the deceased and the statement made in the course of Exhibit P.2 is contrary to the facts available on record. We find considerable force in the submission made on behalf of the appellant. Parvatha Reddy [PW.1] stated that the incident in question occurred at about 1.30 p.m. and at that time the appellant was not in the house and he came after the deceased Ramulamma was shifted to the rickshaw to take her to the hospital. The evidence given by Lakshmi Reddy [PW.2] does not disclose the presence of the appellant at time of the incident and, according to him she stated that the cause of incident was her destiny or fate. The statement made by her as per Exhibit P.2 as regards the presence of the appellant in the house at the time of incident is totally belied. When these hard facts stare in the face it was not open to the High Court or the Trial Court to surmise on facts and draw an inference that the deceased Ramulamma made the statement as per Exhibit P-5 in the hope of her survival and wanted to save her husband from trouble. That aspect of the case finds no foundation if the whole evidence is considered. Therefore, we are of the view that the conviction made on the charge against him under Section 302 IPC cannot be sustained.

Thus the appeal stands allowed and the conviction and sentence are set aside by acquitting him of the charge under Section 302 IPC. If the appellant is still in prison, he must be set at liberty at once.

S.K.S.

Appeals allowed.