

Vajrala Paripurnachary

Vs

State of A. P.

Criminal Appeals Nos. 897-898 of 1994

(CJI M. M. Punchhi, K. T. Thomas JJ)

28.07.1998

JUDGMENT

THOMAS, J. –

1. A young lady aged about 25, Kadari Lingamma, was burnt to death. The crime has been attributed to her paramour Vajrala Paripurnachary (appellant herein) who was indicted for her murder. He was acquitted by the Sessions Court but was convicted by the High Court on an appeal under Section 302 IPC and sentenced to imprisonment for life. So he has filed this appeal as of right.
2. Kadari Lingamma was given in marriage first to one Chella Venkanna, but that marriage was short-lived. Later she was married to one Bari Venkanna which also ended in failure. Thereafter she stayed with her parents and during that time, she developed intimacy with the appellant who was a married man having children. The appellant used to make nocturnal visits to her house and was maintaining an illicit relationship with the deceased.
3. According to the prosecution, on the night of 28-2-1991, the appellant went to the house where deceased was staying. Her father was not in the house then as he had gone out to watch his cattle. The presence of a teenaged brother of the deceased (PW 2 Ramamurthy) did not deter the appellant and the deceased to resort to libidinous cooing and they indulged in drinking and liaison. In the night, a visitor knocked at the door of the house. When the appellant opened the door, the visitor said that he came to see the deceased's father. The said visitor, however, left the house on being told that her father had gone out of the house. The appellant suspected whether the visitor was actually somebody who came to see her in the night. He questioned her on it but she denied having any acquaintance with him. The appellant seemed unsatisfied with her explanation. In the night, he doused kerosene on her and set her ablaze. Hearing her loud cries, her brother (PW 2 Ramamurthy) woke up and saw his sister writing in flames. She told him that it was the appellant who set fire to her. The noise created by her brought some neighbours to the house who made all efforts to extinguish the fire and save her. Then PW 2 Ramamurthy went to the cattle field and reported the matter to his father. He rushed to the house and heard the story from his daughter. They all shifted her to the hospital. On the way, they visited the local police station with whom she lodged her complaint Ext. P-13. At the hospital, PW 12, the Judicial Magistrate recorded the dying declaration of the deceased. She succumbed to her burn injuries on the next day.
4. The trial Judge was not inclined to act on the dying declaration recorded by the Judicial Magistrate mainly on the ground she stated that the incident had taken place outside the house, and also because of other discrepancies. Ultimately the trial court acquitted the appellant.

5. But the Division Bench of the High Court which heard the State's appeal through the Public Prosecutor took the view that the dying declaration recorded by the Judicial Magistrate should not have been overlooked on the strength of a mere discrepancy regarding the exact place of murder. The Division Bench took into account other evidence and reached the unavoidable conclusion that it was the appellant who set her ablaze.

6. There can be no two opinions that Lingamma died of burn injuries which she would have sustained on the night of 28-2-1991. No suggestion has been put forward from any quarters that the deceased did it by herself for committing suicide. From all appearances and circumstances, we have no doubt that Lingamma's death is a case of homicide. The limited question before the Court in such a situation is, who the assailant was.

7. While considering that aspect, which is the decisive issue before us, we have to take note of certain broad features. The first person to whom she talked about the incidence was her own brother (PW 2 Ramamurthy). She told him that it was the appellant who did it. To her father and sister (PW 3) also, she told the same version. At the police station she said the same thing. Her statement was recorded by the police and got signed by her (Ext. P-13). In the hospital, she told the same version to PW 8, the doctor.

8. In this case even in the absence of Ext. P-12 (the dying declaration recorded by the Judicial Magistrate), there is overwhelming evidence to show that the deceased had previously told everybody concerned that she was set fire to by the appellant. The value of the dying declaration made to the Judicial Magistrate can be estimated from the preceding utterances of the deceased. Nobody can possibly contend that the Judicial Magistrate had concocted a dying declaration and falsely ascribed it to the deceased.

9. Ext. P-12 is the document recorded by PW 12, the Judicial Magistrate which contains a detailed narration of the incident. Of course PW 12 put questions to her and both the questions and their answers were recorded by him in Ext. P-12. The Sessions Judge expressed a doubt that the Judicial Magistrate would have ascertained whether the deceased was in a fit condition to make the declaration. But that doubt was not entertained by the Magistrate himself because he said clearly that he found the deceased in a fit condition to make the statement. In fact when the Judicial Magistrate was examined in the Court, he said in clear terms that he had satisfied himself that the deceased was in a fit condition to make the statement. Of course that aspect was not separately highlighted by him in Ext. P-12. It does not matter as the witness himself said in court that the declarant was in a fit condition. The impression of the Magistrate is seen reflected in Ext. P-12, reading the questions put by him and the answers put by him and the answers given by the injured to each one of them. Not even one answer would show that her cognitive faculties were then impaired.

10. One of the main reasons to side-step Ext. P-12 is that the deceased told the Magistrate that the incident had happened "outside the house". We do not think that much can be read into it as the word "house" used by her need not necessarily be interpreted as the entire building. It could be an interior area of the building or it could be the defect of selecting the equivalent English word for what she used in her own dialect. Even if it is so, it does not matter and on that account, the identity of the assailant is not blurred. The exact spot where she was set ablaze, whether just outside the building or inside, does not affect the credibility of her dying declaration.

11. We have no doubt that the trial court committed serious error in rejecting the sturdy dying declaration given by the deceased to the Judicial Magistrate and also in rejecting the other dying

declarations spoken to by PW 2 Ramamurthy, PW 3 Dasari Vamma (sister of the deceased), PW 13, the Sub-Inspector of Police and PW 8 Dr. B. Vishwanathan. By setting aside the wrong order of acquittal, the Division Bench of the High Court set right the error committed by the trial court and prevented a miscarriage of justice. Hence the conviction and sentence entered by the High Court do not warrant any interference. The appeals are accordingly dismissed.