SUPREME COURT OF INDIA

State of Andhra Pradesh

Vs.

Shaik Moin

Crl.A.No.640 of 1998

(N. Santosh Hegde, DR. AR. Lakshmanan and B. N. Agarwal JJ.)

07.04.2004

JUDGMENT

N. Santosh Hegde, J.

1. The State of Andhra Pradesh is in appeal before us against the judgment of the High Court of Judicature at Andhra Pradesh whereby the High Court allowed the appeal filed by the respondent herein setting aside the conviction and sentence imposed by the IInd Additional Metropolitan Sessions Judge, Hyderabad.

2. The prosecution case stated briefly is that on 26-2-1991 at about 4.45 a.m. the respondent-accused poured kerosene on his wife and set her on fire, consequently, she suffered about 65% to 70% burn injuries. It is the case of the prosecution that she was taken to the hospital by the accused, PW 1 and PW 5. On receiving intimation from the said hospital PW 13 Sub-Inspector came to the hospital and recorded the statement of the deceased as per Ext. P-8. The prosecution also relies on a dying declaration made to PW 5 and another dying declaration Ext. P-2 made to the Judicial Magistrate on the very same day. The trial court relying upon the dying declaration, Ext. P-2 made to PW 3 Judicial Magistrate found the respondent guilty of the offence punishable under Section 302 IPC and sentenced him to undergo imprisonment for life while for an offence punishable under Section 498-A for which the respondent was also charged he was found not guilty and acquitted of the said charge.

3. On appeal against the said judgment the High Court considering the various dying declarations came to the conclusion that it is not safe to rely upon these dying declarations to come to the conclusion that the respondent-accused was guilty of the offence charged because there were contradictions between the said dying declarations.

4. As stated above, there are more than one dying declaration; first of which is made to PW 5, a neighbour who accompanied the deceased to the hospital. He states that the deceased at that time told him that it was the accused who poured kerosene and set her afire because of the fact that he had an illicit relationship with another woman. This witness had candidly

admitted in his cross-examination that he never told the police about this statement even though he was available to the police throughout. He did not even mention the same in the statement recorded by the police under Section 161 Cr PC. Therefore, in our opinion, it is not safe to rely on the evidence of this witness.

5. The next declaration in point of time is the statement made to the police when they were summoned to the hospital which is treated as a complaint, Ext. P-8. This statement is not certified by any doctor and there is material to show that at the time when the statement was made, the relatives of the deceased like her mother and others like PW 5 were present, therefore, we will have to consider the genuineness of this statement in the background of other material available on record.

6. The third statement is made to PW 3, the Judicial Magistrate who was summoned. This statement was recorded in the presence of a doctor who had certified that she was in a fit condition to make a statement and in the said statement, she had implicated the accused of having caused the injuries to her by pouring kerosene and setting her on fire. In the ordinary course, this statement would have been sufficient to come to the conclusion that it is the accused who had caused the injuries which led to the death of the deceased but we will have to examine the correctness of Ext. P-2, the statement recorded by the Magistrate in the following factual background : apart from the factual contradictions in the statements as per Exts. P-8 and P-2, there is an important factor to be taken note of while appreciating the genuineness of this statement. It is seen as per the behead ticket or the accident register maintained by the hospital when the deceased was admitted to the hospital, she had in specific terms stated that she suffered burn injuries due to an accident while cooking. The prosecution has not brought on record any material to show how this statement came to be recorded in the hospital register. The doctor in his evidence specifically stated that this is what she told him. The statement made in this register runs counter to the contents of Exts. P-2 and P-8.

7. That apart, the High Court noticed the fact that the Magistrate who had recorded the statement as per Ext. P-2 did not know Urdu language; he claimed only to understand the same. He also stated in his evidence that the victim gave a statement in Urdu language which he later translated into Telugu as understood by him. From the material on record, the High Court noticed the fact that his efficiency of the language was not such that he could translate the statement of the deceased into Telugu language correctly. In that background, the High Court found it not safe to place reliance on Ext. P-2. We have examined the contents of Ext. P-2 as also the entry made in the accident register maintained by the hospital. There being direct conflict in regard to the role played by the accused, we think the benefit of doubt should go to the accused, as held by the High Court. In the said view of the matter, we find no merit in this appeal. The appeal fails and the same is dismissed.