Chirra Shivraj vs State Of A.P on 26 November, 2010

Equivalent citations: AIR 2011 SUPREME COURT 604, 2011 AIR SCW 286, AIR 2011 SC (CRIMINAL) 19, (2011) 1 MADLW(CRI) 38, (2011) 1 MAD LJ(CRI) 812, (2011) 48 OCR 330, (2010) 12 SCALE 487, (2011) 1 ALD(CRL) 428, (2011) 2 CHANDCRIC 7, (2011) 1 CRILR(RAJ) 164, (2011) 1 UC 444, (2011) 97 ALLINDCAS 226 (SC), 2011 CRILR(SC&MP) 164, (2011) 2 RAJ LW 1450, (2011) 2 RECCRIR 96, (2010) 4 CURCRIR 470, 2010 (14) SCC 444, 2011 CRILR(SC MAH GUJ) 164, (2011) 72 ALLCRIC 302, (2011) 1 CRIMES 92, 2011 (1) KCCR SN 40 (SC)

Author: Anil R. Dave

Bench: P. Sathasivam, Anil R. Dave

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.514 OF 2010

CHIRRA SHIVRAJ .....APPELLANT.

VERSUS

STATE OF ANDHRA PRADESH .....RESPONDENT

JUDGMENT

ANIL R. DAVE, J.

1) Being aggrieved by the Judgment and order dated 3rd July, 2009, passed in Criminal Appeal No.579 of 2004 by the Andhra Pradesh High Court, confirming the order of conviction passed by the trial court, this appeal has been filed by the appellant who has been convicted under the provisions of Section 304 Part II of the Indian Penal Code and has been sentenced to undergo simple imprisonment for five years. The case of the prosecution in a nut shell is as under.

2) Chirra Shantha (the deceased) had strained family relations with her husband's brother, the appellant. There was a family dispute with regard to a property wherein the husband of the deceased and the appellant were residing and the appellant wanted his brother Nagabhushanam to leave the property. It is alleged that the appellant used to regularly abuse the deceased and on 21st April, 1999, around 1.30 p.m., he had abused the deceased to such an extent that the deceased was fed up with the abusive language and so as to get rid of the appellant for the time being, she had poured kerosene on herself, believing that the appellant would go away because of her pouring kerosene on herself but while using abusive language, the appellant lit his cigarette and threw the lighted match stick on the deceased. As a result thereof, the deceased was in flames and the appellant left the place by further abusing her and telling that she should die.

3) At the time when the deceased was in flames, her husband, Nagabhushanam arrived and upon seeing his wife in flames, he immediately took her to the Government Civil Hospital, Nizamabad. Upon police being informed, R. Gangaram, Assistant Sub Inspector (P.W.11) rushed to the hospital and recorded the statement of the deceased. FIR No.46 of 1999 was filed on the basis of the statement made by the deceased against the appellant for commission of an offence under Section 307 of IPC. Looking to the nature of burn injuries suffered by the deceased, her dying declaration was recorded by Mr. Narsimha Chary, First Class Judicial Magistrate (Special Mobile Court), Nizamabad (P.W.10) around 8 p.m. The deceased specifically stated in the said statement that she was being abused by the appellant and on that day also, as usual, when she was being abused, she poured kerosene on herself and thereafter the appellant had thrown a lighted match stick on her, because of which she was in flames and she was severely burnt and her husband Nagabhushanam had brought her to the hospital.

4) Because of the burn injuries, the deceased suffered from septicemia and as a result thereof she died on 1st August, 1999. The said fact was brought to the notice of the authorities by the husband of the deceased. The said information was recorded as FIR No.152 of 1999 on 2nd August, 1999. As a result of the death of the deceased, the appellant was also charged under Section 302 of the IPC. At the time of the trial, most of the witnesses, who are family members of the deceased as well as the appellant, turned hostile. However, on the basis of the dying declaration (Ext.P.12) recorded on 21st April, 1999, which supported the contents of the FIR filed by the complainant, the trial court convicted the appellant for the offence punishable under Section 304 Part II of the IPC and sentenced the appellant to undergo simple imprisonment for five years.

5) Being aggrieved by the order of conviction, the appellant filed Criminal Appeal No.579 of 2004, before the High Court of Andhra Pradesh. After hearing the concerned counsel and upon perusal of the record, the High Court confirmed the order of conviction passed by the trial court by the impugned order and the said order of the High Court has been challenged in this appeal.

6) Mr. A.D.N. Rao, learned counsel appearing for the appellant mainly submitted that the trial court had substantially erred in convicting the appellant only on the basis of the dying declaration. He submitted that except the dying declaration, there was no other evidence, and to convict a person solely on the basis of a dying declaration would be neither just nor legal.

7) He also submitted that the case of the prosecution was based on the second FIR bearing No.152/99, which was filed on 2nd August, 1999, upon the death of the deceased on 1st August,1999. He submitted that there could not have been a second FIR. According to him, investigation was made under the first FIR and ultimately the order of conviction was passed in pursuance of the second FIR, which is bad in law. He submitted that if filing of the second FIR is permitted, the sanctity of the first FIR would be lost and, therefore, the second FIR ought not to have been filed and as the order of conviction was passed in pursuance of the second FIR, the order of conviction is bad and it deserves to be quashed and set aside.

8) The learned counsel appearing for the appellant relied upon the Judgment delivered in T.T. Antony etc. v. State of Kerala and others, 2001(6) SCC 181, to substantiate his case to the effect that there can not be a second FIR.

9) On the other hand, the learned counsel appearing for the prosecution submitted that the order of conviction is just and proper and she drew our attention to the fact that the dying declaration was supporting the complaint, which had been filed on the same day, and there was nothing to doubt the dying declaration. According to her, the courts below had rightly relied upon the said dying declaration for convicting the appellant. She also submitted that all the witnesses were family members and, therefore, they did not support the prosecution case when they were examined. She also submitted that merely because family members who were interested in supporting the appellant and had turned hostile, would not make the case of the prosecution weak, especially when no infirmity could be found by the courts below in the dying declaration, which clearly indicated that the appellant had committed the offence.

10) We have heard the learned counsel and perused the relevant record.

11) In our opinion, the order passed by the High Court confirming the order of conviction passed by the trial court cannot be said to be bad in law. In our opinion, the trial court had duly considered the fact that the dying declaration was trustworthy and reliable and it was supported by the complaint and as a result thereof, the order of conviction was also confirmed by the High Court in the appeal.

12) If dying declaration is trustworthy and if it can be shown that the person making the statement was not influenced by any exterior factor and made the statement which was duly recorded, it can be made basis for conviction. In the instant case, immediately after the incident, the deceased was taken to the Government Hospital, Nizamabad and upon getting information with regard to the offence, the ASI had rushed to the Government Hospital, Nizamabad and the deceased had made her statement before him and thereafter she had made her dying declaration before a judicial officer around 8 p.m. The said statement was scrupulously recorded by the Judicial Officer who had found the deceased to be conscious and fit to make statement. Very recently, this Court had examined whether a dying declaration can be the sole basis for conviction. After examining several judgments on the subject, this Court had observed in Puran Chand v. State of Haryana, 2010 (6) SCC 566, as under:

> "15. The courts below have to be extremely careful when they deal with a dying declaration as the maker thereof is not available for the cross- examination which poses a great difficulty to the accused person. A mechanical approach in relying upon a dying declaration just because it is there is extremely dangerous. The court has to examine a dying declaration scrupulously with a microscopic eye to find out whether the dying declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation or which may be negligent while recording the dying declaration.....
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> 18. The law is now well settled that a dying declaration which has been found to be voluntary and truthful and which is free from any doubt can be the sole basis for convicting the accused. ...."

13) Looking to the law laid down by this Court as stated hereinabove and on perusal of the record we find that in the instant case there was no doubt with regard to the truthfulness of the dying declaration and, therefore, in our opinion, it cannot be said that on the sole basis of dying declaration the order of conviction could not have been passed.

14) So far as the submission with regard to the filing of second FIR is concerned, in our opinion, the said submission cannot be accepted. First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the First Information Report. Learned counsel appearing for the accused relied upon the judgment delivered in the case of T.T. Antony (supra). This Court had examined the said Judgment in the case of Babubhai v. State of Gujarat & Others on 26th August, 2010, in Criminal Appeal No.1599 of 2010 (arising out of SLP(Crl.) No.2077 of 2010. In the said Judgment, after considering T.T. Antony's (supra) Judgment, this Court observed in para 13 as under:

> 13. ".....the investigating agency has to proceed only on the information about commission of a cognizable offence which is first entered in the Police Station diary by the Officer In-charge under Section 158 of the Code of Criminal Procedure, 1973, (hereinafter called the Cr.P.C.) and all other subsequent information would be covered by Section 162 of the Cr.P.C. for the reason that it is the duty of the Investigating Officer not merely to investigate the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and the Investigating Officer has to file one or more reports under Section 173 of the Cr.P.C. Even after submission of the report under Section 173(2) of the Cr.P.C., if the Investigating Officer comes across any further information pertaining to the same incident, he can make further investigation, ..."

15) In the case in hand, the first FIR, i.e. FIR No.46/99 was recorded on 21st April, 1999, the date on which the offence had taken place. On that day, R. Gangaram, Assistant Sub Inspector (P.W.11) had

recorded the statement made by the deceased, when she was admitted to the Government Civil Hospital, Nizamabad and on the basis of the said statement the aforesaid FIR was recorded. At the relevant time, the deceased had received serious burn injuries and, therefore, offence under the provisions of Section 307 of the IPC had been registered. Subsequently, the deceased suffered from septicemia, which was caused due to the burn injuries and as a result thereof she expired on 1st August, 1999. The said fact was reported by the husband of the deceased to the police authorities and thereupon the said fact was recorded as FIR No.152/99 on 2nd August, 1999. Thus, by virtue of the second FIR, further development which had taken place had been recorded. The said development was with regard to the death of the deceased and, therefore, an offence under the provisions of Section 302 of the IPC had been registered.

16) If one looks at the facts of the case and both information given to the authorities, it is clear that in fact FIR No.46/99 was recorded on the basis of the statement made by the deceased when the deceased was alive and upon her death, which had nexus with the injuries, further information was given on 2nd August, 1999, and that was recorded as FIR No.152/99. In our opinion, it was not necessary to record another FIR as the death was result of septicemia which was due to the burn injuries.

17) Looking to the facts of the present case, in our opinion, in fact the second FIR was nothing but a consequence of the event which had taken place on 21st April, 1999. In the circumstances, the contents of the so called second FIR being FIR No.152/99, could have been incorporated in the police diary as a result of further information or event which had been taken place in pursuance of the first offence, which had been recorded under FIR No.46/99.

18) It is true that the second FIR being FIR no.152/99, had been lodged on 2nd August, 1999, when the report with regard to the death of the deceased was reported. As a mater of fact, in our opinion, it was not necessary to note the same as a new FIR but simply because the S.H.O made a mistake by recording it as a fresh FIR, it would not make the case of the prosecution weak especially when no prejudice had been caused to the appellant or any other person because of the aforestated further information with regard to the death being recorded as a new FIR. The submission made by the learned counsel appearing for the appellant was to the effect that by adopting such a method, the prosecution can involve someone wrongly in the offence and, therefore, such a course should not have been adopted and as it was adopted by the prosecution, the appellant must get benefit of such a mistake by getting an order of acquittal. We do not agree with the aforestated submission for the reason that there is no allegation to the effect that the contents of second FIR are incorrect or malicious or there was any oblique motive behind giving further information. The information which was given to the Authorities was only with regard to the death of the deceased which resulted due to septicemia and septicemia was only on account of the burn injuries suffered by the deceased. Be that as it may, it is a fact that there was no fresh investigation in pursuance of the second FIR and, therefore, even the judgment delivered in the case of T.T. Antony (supra) would render no help to the accused.

19) Even the learned counsel for the appellant could not show that the information with regard to the death of the deceased, which was recorded as second FIR no.152/99 caused any prejudice to the

accused. In the aforestated circumstances, we do not agree with the submission made by the learned counsel for the appellant that merely because second FIR was filed, the entire investigation was defective and that should result into acquittal of the accused.

20) We do not find any substance in the submissions made on behalf of the appellant and, therefore, the appeal is dismissed.

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.....J. (P. SATHASIVAM) .....

.....J (ANIL R. DAVE) New Delhi November 26, 2010