

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT
HYDERABAD**

(Special Original Jurisdiction)

**FRIDAY, THE 18TH DAY OF JUNE,
TWO THOUSAND AND TEN**

PRESENT

**HON'BLE SRI JUSTICE A.GOPAL REDDY
AND
HON'BLE SRI JUSTICE K.C.BHANU**

CRIMINAL APPEAL Nos.138, 139 AND 589 OF 2007

-

Between:

Sanivarapu Venkayamma and three others

... Appellants

And

State OF Andhra Pradesh, represented by its Public Prosecutor, High
Court of A.P., Hyderabad.

... Respondent

**THE HON'BLE SRI JUSTICE A.GOPAL REDDY
AND
THE HON'BLE SRI JUSTICE K.C.BHANU**

CRIMINAL APPEAL No.138, 139 AND 589 OF 2007

JUDGMENT: (per the Hon'ble Sri Justice A.Gopal Reddy)

A6, A5 and A1 to A4 filed the above three criminal appeals questioning the conviction and sentence recorded against them by V Additional Sessions Judge, West Godavari Division at Eluru vide judgment dated 25.01.2007, whereby they were convicted and sentenced to undergo imprisonment for life and also to pay a fine of Rs.300/- in default to suffer simple imprisonment for three months each

for the offence punishable under Section 302 r/w 34 of the Indian Penal Code, 1960 (for brief, "IPC").

2. The substance of the charge against the accused is that on the intervening night of 27/28.05.2003 at about mid night, all the accused in furtherance of their common intention caused the death of Sanivarapu Surya Chandra Rao by pouring kerosene and by lighting fire to him in front of Bharath Petroleum Station (Bunk) at Tadepalligudem.

3. The prosecution story as unfolded during the course of trial is briefly stated as under:-

Sanivarapu Surya Chandra Rao (hereinafter referred to as 'deceased') was an auto driver. A1 is the mother, A2 is the sister, A3 is the brother-in-law, A4 is the brother, P.W.2 is the grand mother and P.W.7 is the wife of the deceased. He along with his wife P.W.7 used to reside in one portion and A1 to A3 used to reside in other portion of the same building. The deceased met with an accident and sustained injury on his head and was advised by the doctor not to go out of the house as he suffered mental disorder. On the date of the incident, the deceased quarreled with someone, returned home and picked up kerosene tin. Then P.W.7 on seeing the same called her mother-in-law (A1) and informed her about the same. Then all of them followed him and at the railway station road, they saw the deceased in flames. Thereafter he was shifted to the hospital in the auto of P.W.5. On the intervening night of 27/28.05.2003 at about 3 p.m., on receiving the hospital intimation, P.W.1 the head constable in Tadepalligudem police station rushed to the hospital and recorded the statement of the deceased under Ex.P2. On the basis of Ex.P2, he registered a case in

crime No.151 of 2003 and issued F.I.R. under Ex.P4. On 28.05.2003, P.W.12-IX Metropolitan Magistrate, on the requisition from Civil Assistant Surgeon, Government Hospital, Tadepalligudem rushed to the hospital and at 4.45 a.m., he recorded the dying declaration of the deceased under Ex.P13. At about 8 a.m., P.W.1 visited the scene of offence and prepared an observation report under Ex.P3 and further he drew the rough sketch of the scene under Ex.P5. At the scene of offence, he examined and recorded the statements of P.Ws.2, 3, 5 and 7. Then at about 2.30 p.m., on receiving the death intimation of the deceased, he altered the section of law and issued altered F.I.R. under Ex.P7. Further investigation was taken over by P.W.9-the Inspector of Police, who held inquest over the dead body of the deceased in the presence of P.W.4 under Ex.P10. On 29.05.2003 on requisition, P.W.11 the then Civil Assistant Surgeon, Area hospital, held autopsy over the dead body of the deceased and opined that the cause of death was due to Hypo Bolivick shock due to deep extensive burns and issued Ex.P12 postmortem report. On 30.06.2003 P.W.9 arrested A1 to A5. On receiving all relevant documents and on completion of investigation, P.W.10 the Circle Inspector of Police filed charge sheet before the Additional Junior Civil Judge-cum-Additional Judicial Magistrate of First Class, Tadepalligudem. On 16.08.2003 A6 surrendered before the Court. Since the case is exclusively triable by the Court of sessions, the Magistrate committed the same to Sessions Court and on such committal, charge under Section 302 r/w 34 IPC has been framed against the accused, and when the same has been read over to them, the accused pleaded not guilty and claimed to be tried.

4. In order to prove the case of the prosecution, prosecution examined P.Ws.1 to 12 and marked Exs.P1 to P13 documents. On behalf of the defence, one document was marked as Ex.B1.

5. After closure of the prosecution evidence, the accused were examined under Section 313 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") on the incriminating evidence produced against them. The accused claimed no defence. Further A2 stated that the deceased was her elder brother, they have seen the deceased while he was in the hospital and found him in coma and he was not in a position to talk.

6. The learned Sessions Judge on appreciation of the oral and documentary evidence adduced by the prosecution, found the accused guilty for the offence charged against them and accordingly, convicted and sentenced them to undergo imprisonment as aforementioned.

7. Sri C.Padmanabha Reddy, learned Senior Counsel appearing for the appellants contends that all the material witnesses P.Ws.2, 3 and 7 turned hostile and the entire case rests upon two dying declarations i.e., Ex.P2 recorded by P.W.1 and Ex.P13 recorded by P.W.12-the Magistrate. When P.W.1 registered a crime on the basis of the statement of the deceased recorded under Ex.P2 and after registering the crime, he recorded the statement of the deceased under Section 161 Cr.P.C., but the same has not been produced along with the charge sheet, which itself goes to show that such statement will not support the case of the prosecution. Hence, the trial court is not justified in convicting the appellants solely basing upon the two dying declarations, which suffers from contradictions and improbabilities.

The evidence of P.W.6-Doctor, in the chief examination that at the time the deceased admitted in the hospital he was conscious and in the cross-examination that the deceased was with 95% burn injuries, itself improbabilises that the deceased was in conscious state of mind to give a statement. Due to the disputes between the accused and the deceased, all the accused were implicated in the commission of the offence, without there being any specific overt acts attributed against them about their pouring kerosene and lighting fire. Therefore, the accused are entitled for acquittal.

8. On the other hand, learned Public Prosecutor contends that in both the dying declarations under Exs.P2 and P13, when the deceased, who was conscious, categorically stated that it is the accused who poured kerosene and lit fire to him and merely because the other witnesses were declared hostile, the accused are not entitled for acquittal.

9. In the light of the above rival submissions, the point that arises for determination is: -

“Whether the prosecution is able to bring home the guilt of the accused, beyond all reasonable doubt?”

POINT:-

10. P.W.1, who was the Head Constable, Tadepalligudem town police station deposed that on receipt of the hospital intimation under Ex.P1, he proceeded to the Government hospital, recorded the statement of the deceased under Ex.P2 and obtained thumb mark of the deceased on Ex.P2, on which basis he registered a case in Crime

No.151 of 2003 under Section 307 r/w 34 IPC. He stated that he recorded the statement of the injured in the presence of the duty doctor, who endorsed on Ex.P2 that the patient is conscious at the time of recording the statement. He further deposed that the deceased stated that his parents, brothers, sisters and relatives poured kerosene on him and lit fire and after registering the crime, he proceeded to the Government hospital and recorded the statement under Section 161 Cr.P.C. and went to the scene of offence straight away and inspected the same in the presence of P.W.4 and L.W.10, prepared the scene of observation report under Ex.P3 in their presence. He seized the kerosene tin from the scene of offence, prepared a rough sketch Ex.P5. On receipt of the death intimation, on the same day at 2.30 p.m. under Ex.P6, section of law was altered from Section 307 IPC to Section 302 IPC. Ex.P7 is the altered F.I.R. and later investigation was taken up by the Inspector of Police.

11. P.W.2, the mother of A1 was declared hostile, as she has not supported the case of the prosecution. She deposed that at about 11 p.m., while deceased was running away from his house, along with kerosene tin, his wife is found following him and she also followed the wife of the deceased. Before they met him, he dowsed kerosene and set himself to fire. P.W.3 also declared hostile. P.W.4, who is the scribe of Ex.P3, deposed that the persons present at the time of inquest informed that the mother and other relatives of the deceased picked up quarrel with him and later poured kerosene on him and he was set on fire.

12. P.W.6, who is the Civil Assistant Surgeon, Area Hospital, Tadepalligudem deposed that after the deceased was admitted in the

hospital, he sent intimation to the concerned Judicial Magistrate of First Class for recording the dying declaration and he certified about the consciousness of the deceased. In the cross-examination he admitted that the patient was found with 95% of burns and observed that except feet, entire body of the patient was subjected to severe burns, which are of 4th degree. Generally when the patient was brought to the hospital, who received burns, to relieve him from pains they will administer him compose, which is a sedative. He further deposed that only after recording the dying declarations, compose will be administered. He admitted that the patients with 95% of burns would be possibly slipped into shock. He admitted that he did not give any such statement as mentioned in the dying declaration recorded by the Magistrate either before recording dying declaration by the police or by the Judicial Magistrate of First Class. P.W.7, wife of the deceased, who was declared hostile stated that her husband used to put quarrels with others and also suffering with mental disorder. On the date of the incident also, her husband (deceased) quarreled with others somewhere else and returned to the house, picked up kerosene tin and she found him going out of the house with kerosene tin and then she was called her mother-in-law, father-in-law informing about the incident and when her self and her parents-in-law came out of the house, deceased reached railway station road and found burning in flames.

13. P.W.12, the Magistrate, who recorded the dying declaration, deposed that on receipt of the requisition from Civil Assistant Surgeon, Government Hospital, Tadepalligudem, he rushed to the Government

Hospital at about 4.15 a.m. and recorded the dying declaration of the deceased, after following the procedure laid down under Rule 33 of Criminal Rules of practice under Ex.P13. In the cross-examination he admitted that Ex.P13 is in printed format and that the certificate in respect of his satisfaction was also in printed form.

14. From the above evidence, the prosecution established that the cause of death of the deceased is a homicidal death. To prove that the accused caused the death of the deceased, except the two dying declarations under Exs.P2 and P13, there is no other evidence available on record.

15. It is well settled law that the dying declaration can be the sole basis for conviction once it is found to be true and voluntary and needs no further corroboration. The principle on which the dying declarations are admitted in evidence is indicated in the legal maxim *Nemo moriturus praesumuntur mentiri* which means that a man will not meet his Maker with a lie in his mouth.”

Truth sits on the lips of dying man as said by Mathew Arnold:-

“The general principle on which this species of evidence is admitted is that they are declarations made in extremity, when the party is at the point of death, and when every hope of this world is gone, when every motive to falsehood is silenced and the mind induced by the most powerful consideration to speak the truth; situation so solemn and so awful is considered by the law as creating an obligation equal to that which is imposed by a positive oath administered in a Court of Justice (See Eyre C.V. in R.V.Woodcock (1789) 1-Leach 500).”

The Apex Court in **Paniben v. State of Gujarat**^[1] at para 17 observed as under:

“17. Though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination. Such a power is essential for eliciting the truth as an obligation of oath could be. This is the reason the Court also insists that the dying declaration should be of such a nature as to inspire full confidence of the Court in its correctness. The Court has to be on guard that the statement of deceased was not as a result of either tutoring, prompting or a product of imagination. The Court must be further satisfied that the deceased was in a fit state of mind after a clear opportunity to observe and identify the assailants. Once the Court is satisfied that the declaration was true and voluntary, undoubtedly, it can base its conviction without any further corroboration.

It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring-corroboration is merely a rule of prudence.”

Holding so, the Apex Court summed up the principles governing the dying declarations, as laid down by it in various decisions, and they are as under:

- “(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Mannu Raja v. State of U.P. (1976) 2 SCR 764) (AIR 1976 SC 2199).
- (ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration (State of U.P. v. Ram Sagar Yadav, AIR 1985 SC 416; Ramavati Devi v. State of Bihar, AIR 1983 SC 164).
- (iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (Rama Chandra Reddy v. Public Prosecutor, AIR 1976 SC 1994).
- (iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of

Madhya Pradesh, (1974) 4 SCC 264 : (AIR 1974 SC 332).

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P., AIR 1982 SC 1021).

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P., 1981 SCC (CrI) 581).

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurthi Laxmipati Naidu, AIR 1981 SC 617).

(viii) Equally, merely because it is a brief statement it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar, AIR 1979 SC 1505).

(ix) Normally the Court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State, AIR 1988 SC 912).

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan, AIR 1989 SC 1519).”

16. Keeping in view of the above principles, we have to scrutinize the two dying declarations under Exs.P2 and P13, as to whether they inspire the confidence of the Court to convict the accused.

17. In Ex.P2-dying declaration recorded by P.W.1, the deceased stated that he was working as an auto driver and discarded his first wife and later married P.W.7-Sanivarapu Venkata Lakshmi and blessed with two female children. Since two months, themselves and his mother was altercated. His younger sister Vijaya Lakshmi kept one

taxi driver and living with him. There is no cordial terms with his mother and father and they are living separately. His younger sister supported the version of his mother, whereas he was supporting the version of his father. That day, the above said Taxi driver, his younger sister and his mother were altercated and altercated previous night also. That day i.e., on 27.05.2003 night at about 12 p.m., their mother Venkayamma, his younger sister Vijaya Lakshmi (A2), Nagu, Srinu, Dandu Bujji and Pindi Subrahmanyam altogether took him on the road near Petrol Bunk at Station Road and poured kerosene on him and lit fire and on that all his skin was burnt and peeled and by that time he stopped one auto which was coming on that side and went to the Government Hospital, Tadepalligudem for treatment. The said Ex.P2 was certified by the doctor that the patient was conscious at the time of recording the statement. Under Ex.P13 the dying declaration recorded by P.W.12, to the question what happened to you, the deceased deposed that while he was sleeping during the night at 11 p.m., six persons i.e., 1) Sanivarapu Venkayamma (A1), W/o.Venkanna, 2) Sanivarapu Srinivas, (A4), S/o.Venkanna, 3) Nepula Vijayalakshmi, W/o.Vijaya Srinu, 4) Dande Bujji (A5), 5) Taxi Driver Nagu (A3), 6) Pindi Subrahmanya (A6) came to him and informed that constable called him and took him on the road and poured kerosene on him and lit fire. All the above persons are doing business with females. I told them to inform the said matter to the police. All the above said persons, took women from Kovvur and neighbouring places and doing business with them. Once they broke his head as he might have informed to the police. Then, he took treatment in the private hospital at Chebrole. Later he came to his house at Tadepalligudem. But all

the above said persons altercating with him and disputed with him to vacate the house and they disputed in the mid day of that day also. During night at about 10 p.m. five persons came in a drunken state and beat him, in those one Someswara Rao – Taxi driver was also present. He went to the police station with that injuries, but the police neglected him and Sub-Inspector asked him to come again. Even though he expressed his fear that they may kill him, the police people never mind him, on that he came to his house and slept. Night at about 11 p.m., the above said six persons came and informed that constable called him and took him to the road and poured kerosene on him and lit fire to him. Later after some time, after extinguishing the flames, one auto driver took him to the police station in his auto and later took him to the hospital. By the time he was taken outside, his wife and his father were slept in the house. He do not know the name of the auto driver who took him but he belongs to Ramarao peta. These are the facts took place.

19. There is a material contradiction with regard to the manner in which the incident had been occurred in both the Dying Declarations. In Ex.P2, it is stated by him that in the midnight on 27.05.2003 at about 12 p.m., all the accused took him on the road near petrol bunk at Station road and poured kerosene. But in the second dying declaration under Ex.P13, it is stated that during the night at 10 p.m., five persons came in a drunken state and beat him, in those one Someswara Rao-Taxi driver was also present. He went to the police station with that injuries, but the police neglected him and Sub-Inspector asked him to come again. Even though he expressed his fear that they may kill him, the police never mind him. On that he went

to the house and slept. Night at about 11 p.m., the above said six persons came and informed that constable called him and took him to the road and poured kerosene and lit fire to him. That is one hour prior to the incident narrated under Ex.P2. The facts about the five persons coming to his house, receiving injuries and going to the police station have not been stated under Ex.P2. Further, the statement recorded by the Magistrate also discloses that the accused nursed a grouse against the deceased, as they have broken his head earlier and he took treatment in a private hospital at Chebrole. Further, in Ex.P13, the name of the husband of Nepula Vijaya Lakshmi was described as Vijaya Srinu, whereas accused No.2 in the present case was M.Vijaya Lakshmi, W/o.Nageswara Rao @ Nagu and her name (Nepula Vijaya Lakshmi) has not been stated in the dying declaration under Ex.P13, but under Ex.P2, accused No.2 name has been mentioned as Vijaya Lakshmi.

20. The Hon'ble Supreme Court in ***Pompiah v. State of Mysore***^[2] held that a truth and reliable dying declaration may form the sole basis of conviction, even though it is not corroborated. But the Court must be satisfied that the declaration is truthful. The reliability of the declaration should be subjected to a close scrutiny, considering that it was made in the absence of the accused who had no opportunity to test its veracity by cross-examination. If the Court finds that the declaration is not wholly reliable and a material and integral portion of the deceased's version of the entire occurrence is untrue, the Court may, in all the circumstances of the case, consider it unsafe to convict the accused on the basis of the declaration alone without further corroboration. Referring to its earlier judgment in *Khusal Rao v.*

State of Bombay (AIR 1958 SC 22) the Hon'ble Supreme Court after considering the dying declaration held that the truthfulness of the dying declaration as a whole is not free from doubt. The prosecution case as a whole does not inspire confidence. The prosecution produced eyewitnesses, who have been found to be unreliable, and when the dying declaration suffers from infirmity, it is unsafe to convict the accused on the basis of the dying declaration, so recorded.

21. For the conclusions reached by us in the above two dying declarations, which contradicts with each other, the same do not inspire confidence of the Court that the deceased was speaking truth. When the prosecution failed to corroborate the circumstances, by other evidence, it is unsafe to convict the accused solely basing upon the above two dying declarations recorded by the Magistrate. Therefore, we are of the view that the trial court has committed an error in convicting the accused solely basing upon the dying declarations so recorded.

22. In the result, all the three appeals are allowed and the conviction and sentence recorded against the appellants/accused 1 to 6 by V Additional Sessions Judge, West Godavari Divisiion at Eluru, dated 25.01.2007 in Sessions Case No.302 of 2004 for the offence punishable under Section 302 r/w 34 of IPC is set aside and they are acquitted of the said charge. Appellants/accused 1 to 6 are set at liberty forthwith, if they are not required in any other case. The fine amount, if any, paid by the accused 1 to 6 shall be refunded to them.

A.GOPAL REDDY, J

K.C.BHANU, J

18TH June 2009
Imv

[\[1\]](#) AIR 1992 SC 1817

[\[2\]](#) AIR 1965 Supreme Court 939