

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

Criminal Appeal No.664 of 2008

Between:

The State of A.P,

Rep. by the Public Prosecutor,

High Court of A.P, Hyderabad.

Appellant

....

And

Shaik @ Mohammed Karimulla.

Respondent

....

DATE OF JUDGMENT PRONOUNCED: **19.01.2016.**

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE G. CHANDRAIAH

AND

HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment?

Yes /

No

2. Whether the copies of judgment may be
marked to Law Reporters / Journals?

Yes /

No

3. Whether Their Lordship wish to

see the fair copy of the Judgment?
Yes / No

*** HON'BLE SRI JUSTICE G. CHANDRAIAH**
AND

*** HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**
+ Criminal Appeal No.664 of 2008

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! Counsel for Appellant : Public
Prosecutor (A.P)

^ Counsel for Respondent : Ms. Naseeb Afshan
Legal Aid Counsel

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 2002 SC 2973
- 2) AIR 1999 SC 3455
- 3) AIR 1999 SC 3695

**THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO
CRIMINAL APPEAL No.664 of 2008**

JUDGMENT: (*per Hon'ble Sri Justice U.Durga Prasad Rao*)

This Criminal Appeal is preferred by the State against the judgment dt:10.01.2007 in S.C.No.122 of 2006 passed by the Principal Sessions Judge, West Godavari, Eluru, whereby and whereunder the learned Judge acquitted the accused for the charge levelled against him under Section 302 of Indian Penal Code (for short "I.P.C").

2) The case of prosecution briefly is thus:

a) On 15.08.2005, the deceased—Roshan Baig and his friends demanded the accused for money to consume liquor at Gun Bazar Center, Eluru, as they came to know that accused disposed off his cell phone for Rs.1500/- and when accused refused to pay amount to them, they manhandled the accused on that night. On 19.08.2005, a wordy duel had taken place between the accused and deceased at the house of deceased i.e, at Pension Mahal, Eluru and though the parents of the deceased pacified the matter but the accused had not satisfied with the settlement

and bore grudge against the deceased.

b) The further case of the prosecution is that on the night of 21.08.2005, at about 11:00pm, when the deceased and Shaik Sikindhar (PW.2) were sleeping on the pial of the house of Abdul Khurdhush at Pension Mahal, Eluru, the accused who predetermined to kill the deceased in view of their disputes, went there, woke up the deceased by proclaiming that he was searching for the deceased since last 2 days and if he kills him, who would rescue him and poured petrol on the deceased and set him ablaze. The deceased raised cries for help. In the meanwhile, father of the deceased and neighbours came there and on seeing them, the accused fled away. Shaik Sikindhar also fled away for fear of accused. They took the deceased to Government Headquarters Hospital, Eluru and admitted, where he succumbed to death on 25.08.2005. Initially, the police registered the case in Crime No.271 of 2005 for the offence under Sec.307 IPC and on receipt of death intimation of deceased, Section of law was altered for the offence punishable under Section 302 IPC and the police after due investigation filed charge sheet against the accused for the offence under Sec.302 IPC.

c) On appearance of accused, the trial Court framed the charge under Sec.302 of I.P.C and conducted trial.

d) On behalf of the prosecution, PWs.1 to 18 were

examined and Exs.P1 to P19 were marked and M.Os.1 to 5 were exhibited. On behalf of accused, Exs.D.1 to D.3 were marked.

e) After closure of prosecution side evidence, the accused was examined under Sec.313 Cr.P.C, for which he denied and reported no defence witnesses.

f) The judgment would show that the trial Court on appreciation of evidence did not believe the eye witness account of PWs.1 to 4 in view of contradictions in their evidence with reference to their earlier 161 and 164 Cr.P.C statements. The trial Court also discarded Ex.P.1—dying declaration recorded by PW.12—the Head Constable, wherein the deceased allegedly revealed that the accused set him ablaze on the ground that the deceased suffered 95% of extensive burns and there was no certification of his mental fitness by the duty doctor of the Government Hospital on Ex.P.1 and further, in the earlier dying declaration recorded by PW.14 under Ex.P.14, the deceased made a contradictory declaration as if he does not know who set him fire. The trial Court also expressed doubt over the arrest of accused, seizure of material objects and the process of investigation and ultimately acquitted the accused.

3) Heard arguments of learned Public Prosecutor for the State and Ms. Naseeb Afshan, legal aid counsel for

respondent/accused.

4) Fulminating the judgment, learned Public Prosecutor argued that the trial Court erred in discarding Ex.P.1—dying declaration on the ground that there was no fitness certificate issued by the duty doctor about the mental fitness of the deceased. He argued that the dying declaration was recorded by PW.12—the Head Constable, who was the incharge of outpost Government Hospital, Eluru within short-time after the incident on receiving the hospital intimation and therefore, despite the deceased suffered injuries, he was in a conscious and coherent state of mind to give the statement at that time and therefore, PW.12 recorded the statement. Since in Ex.P.1 the deceased clearly revealed that the accused set him fire and as there was no reason for the deceased to speak falsehood against the accused as both of them are close relations, the trial Court should have accepted Ex.P.1 to convict the accused. He argued that mere lack of fitness certification on Ex.P.1 is not a ground to discard it.

a) He alternatively argued that even assuming that Ex.P.1 is discarded for the reason that there was no certification about the mental fitness of the deceased to give statement, still prosecution case need not be discarded for the reason that it has produced independent eye witnesses in the form of PWs.1 to 4. Learned Public Prosecutor would submit that of them, PW.1 is the father of the deceased and

PWs.3 and 4 are the locality people residing near the scene of offence and they all rushed to the scene of offence on hearing the cries of the deceased and noticed the accused, who fled away after they reached the scene and they clearly spoke this fact. Further, most importantly PW.2 was the direct eye witness to the incident as he slept beside deceased on the pial and saw the accused pouring petrol and setting fire to the deceased and there is no reason to discard the evidence of PWs.1 to 4. Their evidence is mutually corroborative and contradictions if any in their evidence are only minor and negligible ones. He thus prayed to allow the appeal and convict the accused.

5) Per contra, learned defence counsel while severely criticising the correctness of Ex.P.1—dying declaration argued that same was not supported by the fitness certificate of the Doctor and hence liable to be discarded. She argued that Ex.P.1 had another inherent improbability inasmuch as just within short-time prior to Ex.P.1, PW.14—the learned II Additional Judicial First Class Magistrate, Eluru, on hospital intimation happened to record the dying declaration of the deceased under Ex.P.14 wherein the deceased categorically stated that he does not know who set fire on him. The duty doctor certified the mental fitness of the deceased on Ex.P.14. As such it is false to contend by the prosecution that within short time thereafter, the deceased could reveal in Ex.P.1 before the Head Constable

that he was set fire by the accused. She vehemently argued that later statement under Ex.P.1 was purely a concocted statement to somehow implicate the accused in the case because there were some disputes between the deceased and accused. She argued that the trial Court rightly rejected Ex.P.1.

a) Then commenting on the evidence of PWs.1 to 4, learned defence counsel argued that the contradictions in the evidence of PWs.1, 3 and 4 were not minor contradictions but they were material contradictions inasmuch as in their earlier statements they have not stated about the presence of the accused at the scene but in their evidence they improved their version and stated as if they saw the accused at the scene. Hence their evidence would not infuse confidence. Regarding PW.2, learned counsel argued that he cannot be believed to be an eye witness because his evidence that he fled away from the scene of offence after incident for fear of accused is quite unconvincing. Learned counsel thus argued that the trial Court after proper and careful appreciation of evidence only held that the prosecution failed to prove its case and acquitted the accused and the said finding need not be interfered in the appeal. She thus prayed to dismiss the appeal.

6) In the light of above rival arguments, the point for determination in this appeal is:

“Whether the judgment of the trial Court is factually and legally sustainable”

7) **POINT**: That the deceased met with a homicidal death is not in dispute and it is amply established by the prosecution by cogent evidence. PW.9—Doctor, C.A.S, Government Hospital, at Eluru, who conducted post-mortem on the dead body of the deceased and issued Ex.P.6—post-mortem report, deposed that the deceased appeared to have died of septic shock due to 80% burns and the time of death was 24 hours prior to the post-mortem examination in the hospital. The burn injuries were not suicidal or accidental as is evident from the statement of the deceased under Ex.P.14 before PW.14. He clearly stated that petrol was poured on him and he was set ablaze. The defence side in fact not disputed about the homicidal death of the deceased though ofcourse, challenged the role of the accused as alleged by the prosecution. Therefore, it has now to be seen whether the accused was responsible for the homicidal death of the deceased and whether the prosecution could establish the charge brought against him by placing proof beyond reasonable doubt and whether the appreciation of facts and evidence made by the trial Court in this regard was correct.

8) Before discussing the evidence on record, it should be noted that it is an appeal against acquittal. The Hon’ble Apex Court in a number of judgments held that though

appellate Court has every power to reappreciate and reconsider the evidence at large, both on facts and law, but however it must be kept in mind that its interference will be justifiable only when the judgment of the trial Court suffers the vice of perverse appreciation of facts, evidence and law but not when there is a mere possibility of Appellate Court's coming to a different conclusion basing on the evidence. It held that the Appellate Court should not ordinarily set aside the judgment of acquittal merely because two views are possible, though the view of the Appellate Court may be more probable one. Thus, keeping the aforesaid guidelines in mind, the evidence has to be scrutinised.

9) On perusal of both oral and documentary evidence, it must be said that prosecution case hinges mainly on the oral evidence of PWs.1 to 5 and ofcourse on Exs.P.1 and P.14—dying declarations. Hence, the said evidence needs to be scrutinised.

10) As narrated earlier, the prosecution case is that on the night of 21.08.2005, at about 11:00pm, when the deceased and PW.2 were sleeping on the pial of the house of Abdul Khurdhush at Pension Mahal, Eluru, the accused who predetermined to kill the deceased in view of their disputes, went there, woke up the deceased by proclaiming that he was searching for the deceased since last 2 days and if he kills him, who would rescue him and poured petrol on the deceased and set him ablaze. The deceased raised cries

for help. In the meanwhile, PWs.1 and 3 to 5 came there and on seeing them, the accused fled away. PW.2 also fled away for fear of accused. They took the deceased to Government Headquarters Hospital, Eluru and admitted, where he succumbed to death on 25.08.2005.

11) In this case, as stated supra, the prosecution has come up with two dying declarations i.e, Exs.P.14 and Ex.P.1. The first dying declaration was recorded by PW.14 and the second one was recorded by PW.12. Immediately after the deceased was admitted in the Government Hospital, the Hospital authorities sent Ex.P.13—intimation to PW.14—the learned II Additional Judicial First Class Magistrate, Eluru for recording dying declaration. He received the intimation at 00:40am on 22.08.2005 and proceeded to the hospital and recorded the dying declaration of deceased, after satisfying himself with the mental fitness of the deceased by putting some questions and also obtaining a fitness certificate from the duty doctor endorsed on Ex.P.14. He completed recording of Ex.P.14 by 01:20am on 22.08.2005. In his statement, the deceased revealed that on the previous day evening at about 6:00pm, his friend (PW.2) came to his house and they consumed alcohol extensively. He stated as if someone poured petrol and lit fire to him and Sikindhar (PW.2) knows who lit fire and litting of fire to him was done just one hour before and he was in a drunken and unconscious state and he does not

know who lit fire to him. He further stated that there were no enemies to him. Thus in his first dying declaration, the deceased declared that he did not know who set fire to him as he was in a drunken state but PW.2 knows who set him ablaze. Be that it may, the second dying declaration under Ex.P.1 was recorded by PW.12—the Head Constable of Eluru II Town P.S, who was incharge of Outpost Government Hospital. According to him, after receiving Ex.P.10—hospital intimation he proceeded to the Burns Ward and recorded the statement of the deceased under Ex.P.1. Ex.P.1 shows that PW.12 completed recording the statement at 02:00am on 22.08.2005. A perusal of Ex.P.1 would show as if the deceased made an elaborate statement about his family and the accused quarrelling with him about 2 days before. The statement would further read as if he stated that on the night of 21.08.2005, himself and PW.2 consumed liquor at Gun Bazar and returned home at about 10:30pm and slept on the pial of the house of Jabbar and at about 11:00pm, the accused came there and woke him up and abused him and set fire on him by pouring petrol and his body was burnt from neck to toes and he raised cries and on hearing the same the neighbours came and seeing it, the accused fled away and his people brought him to the Government Hospital and admitted him etc, facts. He further stated that since his body including his hands were burnt, he could not sign and hence affixing his thumb impression on the statement. Thus Ex.P.1 would show as if

the deceased gave a clear account of the incident and his assailant. Needless to say that this statement is diametrically opposite to Ex.P.14. The trial Court did not believe Ex.P.1 for the main reason that the same was not attested by the duty doctor stating that at the time of recording the statement, the victim was coherent and conscious, whereas the evidence on record showed the victim sustained 95% burn injuries from neck to feet and in such circumstances, it was highly impossible for him to give such a lengthy dying declaration before the Head Constable. The trial Court ofcourse accepted Ex.P.14. So we perused both the dying declarations. As already stated supra, Ex.P.14 was recorded by the Magistrate prior in point of time i.e, at 1:20am, on 22.08.2005, whereas Ex.P.1 was recorded by the Head Constable subsequently at 2:00am. As rightly observed by the trial Court, Ex.P.1 statement does not contain the certification of the duty doctor that the deceased was conscious, coherent and in a fit state of mind to give the statement.

a) The argument of learned Public Prosecutor before us is that since Ex.P.1 contains a vivid account of the offence and the offender made by the deceased on the deathbed within short time after the incident same need not be discarded on the sole ground that the fitness was not certified by the duty doctor. Hence, the point is whether the “fitness of the victim” or the ‘fitness certificate’ is must to

accept his dying declaration? This question was considered by a constitutional bench of Five Judges of Hon'ble Apex Court in the case of ***Laxman vs. State of Maharashtra***^[1]. In that case, the constitutional bench was deciding the correctness of the two conflicting judgments i.e, 1) ***Paparambaka Rosamma and others vs. State of Andhra Pradesh***^[2] and 2) ***Koli Chunilal Savji and another vs. State of Gujarat***^[3].

i) In ***Paparambaka Rosamma***'s case (2 supra), a Three Judges Bench of the Supreme Court refused to accept the dying declaration of the injured recorded by the Magistrate for the reason that the concerned duty doctor only certified the patient as conscious while recording the statement without further mentioning that she was in a fit state of mind though the Magistrate on the basis of answers elicited from the declarant deposed that he was satisfied that the injured was in a fit state of mind to make the declaration. The Bench observed, in the absence of medical certification about the fit state of mind of the injured, it would be very much risky to accept the subjective satisfaction of the Magistrate.

ii) Whereas in ***Koli Chunilal Savji***'s case (3 supra), the dying declaration was recorded by the Magistrate but there was no endorsement by the Doctor indicating the mental condition of the deceased to the effect that she was in a fit condition to make the statement. However, the Magistrate

who was examined as a witness deposed that after she reached Hospital and met the Doctor and informed that she was required to take the statement of the injured, the Doctor introduced the injured and she (Magistrate) enquired the Doctor about the condition of the injured and the Doctor categorically stated that she was in a conscious condition. In view of the said evidence of the Magistrate and the endorsement of the Doctor on Police yadi regarding the condition of the patient, the Apex Court accepted the dying declaration despite lacking of such endorsement on the dying declaration.

iii) In ***Laxman***'s case (1 supra), the Apex Court held that the view in ***Paparambaka Rosamma***'s case (2 supra) was a hyper-technical and affirmed the law laid down in ***Koli Chunilal Savji***'s case (3 supra). In that context, the Apex Court observed as follows:

"Para 3: xx xx

.... The court, however has to always be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the

fitness of the mind of the declarant, the dying declaration is not acceptable.

xx xx ...

*.... What is essentially required is that the person who records a dying declaration must be satisfied that the deceased was in a fit state of mind. Where it is proved by the testimony of the magistrate that the declarant was fit to make the statement even without examination by the doctor the declaration can be acted upon, provided the court ultimately holds the same to be voluntary and truthful. **A certification by the doctor is essentially a rule of caution** (emphasis supplied) and therefore the voluntary and truthful nature of the declaration can be established otherwise.*

So the ratio in **Laxman's** case (1 supra) is that though a certificate by the Doctor about the fitness of the victim is essentially a rule of caution, still a dying declaration can be accepted in the absence of such certification by the Doctor on the dying declaration, provided if it is established by other reliable evidence about the fitness of the declarant.

b) Coming to the instant case, it is true that in Ex.P.1 there is no certification about the fitness of the deceased. However, about 40 minutes prior to Ex.P.1 while PW.14 was recording the statement of deceased, the duty doctor certified about the fitness of the deceased in Ex.P.14. Since the time lag between the two statements is only 40 minutes and as the Doctors were already providing treatment to the deceased, it can be accepted that the deceased was in a fit state of mind also during the time of recording the Ex.P.1. However, we must hasten that on that ground alone the

authenticity of the contents of Ex.P.1 cannot be accepted. The reason being, when the deceased in his earlier statement categorically stated that he does not know about his assailant before the Magistrate, it would be hard to believe that within short time thereafter, he could reveal the name of the accused in his later statement. The reason is not far to seek, as in-between, the deceased might have been tutored or the statement was not that of his. Therefore, no reliance can be placed on the subsequent dying declaration i.e, Ex.P.1.

Thus when Exs.P.1 and P.14 are omitted to fix the liability of accused i.e, Ex.P.1 not mentioning the name of assailant and Ex.P.14 being doubtful, the prosecution obviously left with the oral evidence of PWs.1 to 5.

12) Of the PWs.1 to 5, PW.2 is stated to be the direct eye witness, whereas others came to the scene immediately after incident. In Ex.P.1, the deceased stated as if PW.2 knows about the assailant. So the evidence of PW.2 has to be scrutinised first.

a) PW.2 deposed that himself and deceased worked as cooks under one Chota Baba and on 15.08.2005 when himself and deceased was at Jenda Circle, the accused came there at about 8:00pm and demanded money for his liquor and the deceased did not pay any amount and thereby accused pushed the deceased and ran away and

at that time he proclaimed that he would see the end of the deceased. He further deposed that on 21.08.2005, himself and deceased attended the cooking work in the house of mechanic and returned at 8:00pm and slept on the pial of Jabbar, which was adjacent to the house of PW.1 and at about 11:00pm, the accused came there and questioned the deceased and poured petrol over his body and set him ablaze with a matchstick. When PW.2 questioned the conduct of the accused, he threatened him with dire consequences and stated that he would see his end also. Then PW.2 ran away from that place and two days thereafter he came to Government Hospital and saw the deceased with burn injuries. Thus PW.2 claims as an eye witness to the incident. The trial Court basing on the conduct of PW.2 in not raising any cries and rescuing the victim but absconding from the scene, doubted about the presence of PW.2 at the scene of offence. Further even as per the victim, both himself and PW.2 were in a drunken state and as such the trial Court observed that it was very difficult for PW.2 in such a drunken state to identify the accused. Further, the trial Court found Exs.D.1 and D.2—contradictions in his evidence with reference to his earlier 161 Cr.P.C statement. In view of all these, the trial Court rejected the evidence of PW.2.

b) On a careful scrutiny of the evidence of PW.2 and other facts, the doubt expressed by the trial Court regarding

the presence of PW.2 appears to be correct. In Ex.P.1, the deceased only stated that PW.2 knows about his assailant but he did not further state as to how PW.2 knows this fact i.e, whether as an eye witness or as a hearsay witness. So from the Ex.P.1—dying declaration it cannot be concluded that PW.2 was an eye witness to the incident. No doubt in Ex.P.1 it was vividly stated as if PW.2 and deceased slept on the pial of Jabbar house and PW.2 thus was an eye witness to the incident. However, the authenticity of contents of Ex.P.1 was rejected for the reason stated earlier. The evidence of PW.2 shows that his house is situated at a distance of 2 kms from the scene of offence. In that view, it is not known as to why he happened to sleep along with the deceased on that night. Further, as rightly observed by the trial Court, the conduct of PW.2 in absconding due to the alleged threat of accused by leaving the deceased without coming to his rescue or without even raising cries appears to be unnatural and casts a doubt about his presence at the scene. Admittedly his sister was proposed to be given in marriage to the deceased and in that view, his interestedness towards deceased cannot be ruled out. Further, there were two contradictions in his evidence. Regarding the occurrence of incident on 15.08.2005, he deposed as if the accused approached him and deceased at Jenda Circle and demanded money for liquor and when the deceased did not pay amount, the accused pushed the deceased and ran away proclaiming that he would see his

end. However, in his 161 Cr.P.C statement covered by Ex.D.1, his version was that himself and deceased demanded accused money for consuming liquor and he refused, abused them and thereby they raised dispute with him and they both beat the accused. So in his evidence, PW.2 twisted the events dated 15.08.2005 contrary to Ex.D.1. As per Ex.D.2, on the night of 21.08.2005, PW.2 and deceased went to Gun Bazar Center and consumed liquor and returned at 10:30pm and slept on the pial of Abdul Khurdhush. However, in the evidence of PW.2 he did not say about their consuming liquor. So from the above, at first the presence of PW.2 is doubtful and even if he was present, due to intoxication his witnessing the incident and identifying the accused is also doubtful. Therefore, it is not safe to rely on the evidence of PW.2.

c) Coming to the evidence of PW.1, he is the father of deceased. Regarding the incident, he deposed that on the night of 21.08.2005, the deceased and PW.2 came and slept on the pial and at about 11:00pm, he heard the cries of his son for help and then he immediately came out of the house and saw his son with flames all over his body and accused was standing beside him with petrol in his hand and when this witness questioned the accused, he ran away and then himself and other neighbours doused the flames and took him to the hospital. Thus he claims to have seen the accused at the spot. However, in the cross-

examination he admitted that he omitted to mention in his 161 Cr.P.C statement that when he came out of the house, he saw Karimulla (accused) and when he asked him, the accused ran away from the scene. Similarly, he further admitted that he omitted to state in his 161 Cr.P.C statement that on 21.08.2005, the accused came twice at 12:00 noon and at 5:00pm and demanded money from his son to purchase liquor. It should be noted that these two omissions are material omissions, as one of them relates to the omission of presence of accused at the scene of offence. Hence, the same can be treated as contradiction with reference to his evidence. This witness being the father of the deceased, appears to have improvised his version in the evidence and stated as if he saw the accused at the scene and when he questioned, the accused ran away. Therefore, that part of his evidence cannot be believed. This witness further deposed in his evidence that after dousing the flames, when they asked how the incident happened, the deceased informed them as if the accused poured petrol over his body and set him ablaze. However, in Ex.P.14—statement made before Magistrate, the deceased categorically stated that he does not know who poured petrol and set him ablaze. In that view, the evidence of PW.1 about his son disclosing the name of assailant cannot be believed. Therefore, it is not safe to accept the evidence of PW.1 to fix responsibility on accused.

d) Then PW.3 deposed that his house is situated two houses away from the house of deceased and on the night of 21.08.2005 at about 11:00pm, while he was watching T.V in his house, he heard some cries of the deceased and then he came out and saw the deceased was full of flames and he also saw at a distance the accused standing with an empty bottle of petrol and then accused ran away. Then himself, PW.4, PW.1 and Nayeem put off the fire. Thus he also claimed to have seen the accused at the spot immediately after the incident. Admittedly, this witness is the brother-in-law of deceased's elder brother and he is thus an interested witness. In his chief-examination he deposed as if on 15.08.2005 at about 8:00pm, when he was proceeding near Gun Bazar Center, he saw the deceased and PW.2 there and at that time the accused came there and demanded them money for purchasing liquor and when they stated that they have no money, a quarrel occurred between them and people gathered there dispersed them. However in Ex.D.3—161 Cr.P.C. statement he stated as if the deceased and PW.2 demanded accused money for purchasing liquor and when he refused and abused them, they beat him. Thus in his evidence, he contradicted his earlier version and deposed in favour of the deceased. In view of his relationship with the deceased's family and Ex.D.3—contradiction showing his inclination to depose in favour of deceased, he is not a trustworthy witness.

e) Then PW.4 deposed in similar lines of PW.3 and stated that on the night of 21.08.2005 at about 11:00pm, when he was watching the T.V in his house, he heard some cries of the deceased and then came out and observed flames covering the body of the deceased and he also observed the accused at a distance of 5 yards standing under the streetlight with a bottle and thereafter he ran away. The people gathered there put off the flames by pouring water and then they took the deceased to Government Hospital, Eluru and admitted him and he died on 25.08.2005. Thus he too claims to have seen the accused at the scene of offence. However, in the cross-examination he admitted that he did not mention in his 161 Cr.P.C statement before the police that he saw the accused standing at a distance of 5 yards under electric light and having M.O.1—bottle. Due to this and in Ex.P.12—sketch, there is no mentioning about the presence of streetlight near the scene of offence, the trial Court disbelieved the version of this witness that he saw the accused standing at a distance of 5 yards under the street light. The said observation of the trial Court being well found, it is not safe to accept the evidence of PW.4.

f) Then PW.5 is concerned, she is a tenant in the house of Jabbar. She only stated that on hearing the cries, she came out and saw the deceased sustained burn injuries and some people gathered there and took him in an auto.

Except that she did not state anything about the occurrence of the incident or the presence of the accused.

g) So when the evidence of PWs.1 to 5 is intensely scrutinised, none of their evidence is believable to fix the offence on the accused. The other witnesses are inquest panchayatdars, witnesses relating to the arrest of the accused, Police Constables who took the dead body to the hospital for post-mortem examination and the material to the F.S.L and the investigation officers. Their evidence *per se* will not help prosecution to prove the accusation against the accused.

13) So on a conspectus of the entire evidence on record, we are of the view that the trial Court has rightly held that the prosecution failed to prove the charge against the accused and acquitted him and said finding does not suffer the vice of perverse appreciation of facts, evidence and law.

14) In the result, this Criminal Appeal is dismissed. Bail bonds of accused if any, shall stand cancelled, after appeal time is over.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

G. CHANDRAIAH, J

U. DURGA PRASAD RAO, J

Date: 19.01.2016

SCS

[\[1\]](#) AIR 2002 SC 2973

[\[2\]](#) AIR 1999 SC 3455

[\[3\]](#) AIR 1999 SC 3695