

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

CRIMINAL APPEAL No.643 of 2010

Between:

Banavath Ravi

..Appellant/accused

and

The State of Andhra Pradesh,
represented by its Public Prosecutor, Hyderabad.

..Respondent/complainant

JUDGMENT PRONOUNCED ON: 23rd February, 2016

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

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| 1. Whether Reporters of local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment
may be marked to Law Reporters/Journals? | Yes/No |
| 3. Whether their Ladyship/Lordship
wish to see the fair copy of the Judgment? | Yes/No |

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

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AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

+ **CRIMINAL APPEAL No.643 of 2010**

% 23.02.2016

Banavath Ravi

..Appellant/accused

Vs.

\$ The State of Andhra Pradesh,
represented by its Public Prosecutor, Hyderabad.

..Respondent/complainant

! Counsel for the appellant: Mrs.A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (AP)

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>Head Note:

? Cases referred:

1. (2014) 7 SCC 405 = AIR 2014 SC 2943
2. (2002) 7 SCC 56 = AIR 2002 SC 2996
3. (2010)8 SCC 514

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**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
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Between:

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..Respondent/complainant

Counsel for the appellant: Mrs.A.Gayathri Reddy

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

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JUDGMENT: (per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

The sole accused in Sessions Case No.42 of 2009 on the file of the learned VII Additional District and Sessions Judge's Court, (Fast Track Court) Vijayawada, Krishna District, filed this Criminal Appeal feeling aggrieved by the judgment, dated 09.02.2010, in the aforesaid sessions case, whereby he was convicted for the offence under Section 302 I.P.C. and was sentenced to suffer Rigorous Imprisonment (R.I.) for life and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment (S.I.) for one month.

2. The case of the prosecution, in brief, is that the appellant is a resident of Kileswarapuram. He is the son of the deceased. P.W.1 is the wife of the deceased and mother of the appellant. P.Ws.2 and 4 are the younger brothers of the deceased. P.W.5 is the sister of the deceased. P.W.3 is the elder son of the deceased and the brother of the accused.

On 31.07.2008, at mid night, the deceased abused his wife - P.W.1 and went to bed on a tape cot in front of his house, whereafter, the accused has put some cycle tyres and tube pieces under the cot, poured kerosene on the same and also on the deceased and set them on fire. The deceased sustained burns and raised cries. P.Ws.1 and 2 tried to put off the flames by covering the deceased with a blanket and thereafter, they have shifted the deceased to the Government General Hospital (GGH), Vijayawada, in an ambulance.

On 01.08.2008, at 12.00 a.m., P.W.11, the Head Constable of the Police, received a requisition from the Chief Medical Officer (CMO), GGH, Vijayawada, about the admission of the deceased. He visited the casualty ward and recorded the statement of the deceased between 1.00 and 1.20 a.m. Ex.P-10 is the said statement. On the

same day, at 1.30 a.m., P.W.10, I Additional Chief Metropolitan Magistrate, Vijayawada, received a requisition from the duty Doctor, GGH, Vijayawada, to record the statement of the deceased. Immediately, he proceeded to the hospital and recorded the statement of the deceased between 1.45 a.m. and 2.20 a.m. in the presence of the duty Doctor. Ex.P-9 is the said statement. On that day, at 5.15 p.m., P.W.12, Sub Inspector (S.I.) of Police, Ibrahimpatnam, received hospital intimation along with Ex.P-10 statement of the deceased. Based on the said statement, he registered crime No.238 of 2008 under Section 307 I.P.C. and submitted F.I.R. – Ex.P-11 to the Magistrate concerned. He visited the hospital and recorded Section 161 Cr.P.C. statement of the deceased. Ex.P-12 is the said statement. He also examined P.Ws.1 to 3 and recorded their Section 161 Cr.P.C. statements. He visited the scene of offence in the presence of P.Ws.6 and 8 and prepared the scene of observation report. On 03.08.2008, at about 8.00 a.m., P.W.1 went to the Police Station and gave a report about the death of the deceased. Based on the said report, the provision of law was altered and Ex.P-15, altered F.I.R., was issued. On that day at 8.30 a.m., P.W.14, Circle Inspector (C.I.) of Police, Ibrahimpatnam, received the altered F.I.R. and he took up the investigation. He proceeded to the scene of offence and secured the presence of P.Ws.1 to 7 and 9 and in their presence, conducted inquest over the dead body of the deceased. Ex.P-8 is the inquest report. During the investigation, he examined and recorded the statements of P.Ws.1 to 5. On 04.08.2008 at 9.00 a.m., he arrested the accused at Nimra College bus stop in the presence of the mediators and recorded the confession of the accused. He sent the dead body for post mortem examination. P.W.13, an Associate Professor, conducted autopsy over the dead body of the deceased and opined that the death was caused due to the burns and its complications. He issued Ex.P-16 post mortem report. After completion of the investigation, P.W.14 filed the charge sheet.

3. As the accused denied commission of the offence and pleaded not guilty, trial was conducted. The prosecution examined P.Ws.1 to 14 and marked Exs.P-1 to P-16 and produced M.Os.1 to 10. P.Ws.1 to 5 and 7 to 9 did not support the prosecution case and hence, they are treated as hostile witnesses. On appreciation of the oral and documentary evidence, the Court below has convicted the accused and sentenced him as noted supra.

4. At the hearing, Mrs.A.Gayathri Reddy, learned counsel for the appellant - accused, strenuously submitted that the whole case of the prosecution and the conviction of the appellant are based on the dying declarations of the deceased and that as all the material witnesses turned hostile, the Court below has committed a serious error in basing the conviction only on the dying declarations. She further submitted that even taking the prosecution case on its face value, the motive for the appellant to kill his father is non-existent, for the reason that the deceased allegedly abused his wife and that there was no altercation between him and the appellant and hence, if at all, it is the mother of the appellant, who would have grudge against her husband (deceased) and that there was no reason for the appellant to kill his own father. The learned counsel also submitted that if the deceased was sleeping at the time of occurrence as pleaded by the prosecution, it was not possible for him to identify the person, who is responsible for burning him, and therefore, the prosecution case is based on mere surmises and conjectures, which was erroneously accepted by the Court below.

5. Mr.Posani Venkateswarlu, learned Public Prosecutor (AP) appearing for the respondent-State, tried to support the reasoning of the Court below for convicting and sentencing the appellant/accused.

6. We have carefully considered the respective submissions of the

learned counsel for the parties and perused the record.

7. We shall first consider the submission of the learned counsel for the appellant pertaining to motive. The appellant is a very young man who has hardly completed nineteen years at the time of the occurrence. From the two dying declarations, it appears that on the night of the occurrence there was an altercation between the deceased and his wife and a few hours thereafter, the deceased has suffered burn injuries. It is clear from the statements of the deceased in his dying declarations that the appellant was obviously peeved by the conduct of his father in quarrelling with his mother and that would have led to the appellant resorting to the act of setting fire to his father. Though there does not appear to be a deep-rooted motive, it is safe to infer from the facts forming the background to the occurrence that being a young man the appellant was hurt by his father's conduct in entering into an altercation with his mother. Therefore, the circumstances in which the occurrence has taken place clearly suggest that the appellant developed momentary motive to retaliate for the intemperate behaviour of his father.

8. Coming to the evidence, this is a case, where P.Ws.1 to 5 and 7 to 9 have turned hostile. In the absence of material witnesses testifying to the commission of the offence by the appellant, the only evidence, which remains to be considered, is the dying declarations of the deceased. In fact, the earliest dying declaration of the deceased was recorded by P.W.11, the head constable. This statement of the deceased was marked as Ex.P-10 between 1.00 and 1.20 a.m. on 01.08.2008. Sometime later, P.W.10, the Magistrate, has recorded the dying declaration of the deceased, marked as Ex.P-9. From the contents of both these documents, it is quite evident that the version of the deceased is consistent and we do not find any contradiction worth mentioning. In both these statements, the deceased has categorically stated that his son has set him on fire by pouring kerosene. The

deceased being the father of the accused and in the absence of any strong motive for him to implicate his own son, we do not find any reason to believe that he would have made a false statement against his own son holding him responsible for setting him on fire.

9. As regards the submissions of the learned counsel for the appellant that if the deceased was sleeping during night, there was no possibility for him to identify the assailant, that besides the appellant, his mother was also at home and that since she had a quarrel with her husband (deceased) sometime before the alleged occurrence has taken place, it was quite probable that the wife of the deceased would have committed the offence. In our opinion, these submissions are without any merit. This is a case, where the deceased died three days after he received the burn injuries. The preliminary opinion of the Doctor on superficial examination of the deceased was that he suffered 40 to 50% burns. Hence, the moment the deceased realized that kerosene was poured on him and he was set on fire, even if he was in deep sleep, he would have woken up and identified the assailant. On these facts, it cannot be said that the deceased would not have been able to identify the assailant. Moreover, as observed hereinbefore, there is nothing on record to show that the deceased had any animosity against his own son for falsely implicating him in place of any one else including his wife.

10. With regard to the submission of the learned counsel for the appellant that as the material prosecution witnesses have not supported its own case, it is not proper to convict the appellant. As noticed hereinbefore, all the material witnesses were the close family members of the appellant and the deceased and it is natural for them to somehow save the appellant, who was a young boy of 19 years of age, having already lost the head of their family. Therefore, in a case of this nature, the witnesses turning hostile cannot be considered as a ground to acquit the appellant.

11. Even in the absence of reliable oral evidence, we have on record, two dying declarations of the deceased. It is apt to note in this context that the maxim *nemo moriturus praesumitur mentire*, which means “no one at the time of death is presumed to lie and he will not meet his Maker with a lie in his mouth”, is the basis for the Courts to lend highest degree of credibility to dying declarations. (See **Umakant vs. State of Chattisgarh**^[1]) A dying declaration is, therefore, treated as an exception to hearsay evidence which is inadmissible. Even in the absence of corroboration by oral evidence, conviction could be based solely on the basis of dying declaration, if it is free from doubt, inspires confidence and has been recorded as per law. (See **Ramilaben Hasmukhbhai Khristi vs. State of Gujarat**^[2]).

12. While dealing with the credibility of the dying declarations, the Supreme Court in **Lakhan vs. State of Madhya Pradesh**^[3], held that if the Court is satisfied that the dying declaration is true and made voluntarily by the deceased, conviction can be based solely on it, without any further corroboration and that it is neither a rule of law nor of prudence that a dying declaration cannot be relied upon without corroboration. Therefore, in the instant case, even in the absence of any corroborative evidence, we do not find any reason to suspect the statement of the deceased in both the dying declarations viz., Exs.P-9 and P-10 and the veracity thereof.

In the light of the above facts, we are of the opinion that the appellant is guilty of causing the death of the deceased.

13. We are now left with the aspect relating to the punishment to be imposed on the appellant. The facts as reflected from the case of the prosecution would clearly reveal that there was a serious altercation between the deceased and his wife in the presence of the appellant, during which, the deceased appeared to have abused his wife. The

statements of the deceased made both in Exs.P-9 and P-10 reveal that he suspected that his altercation with his wife has caused anger to the appellant. Therefore, it appears that the appellant appeared to have got provoked by the conduct of his own father in quarrelling with his mother and in a fit of anger, he resorted to the act of setting fire. That he has created fire under the cot instead of directly setting fire to the deceased shows that he had no intention of causing his father's death but, he had the knowledge that the bodily injuries are likely to cause death. In view of the above, we feel that the appellant is guilty of committing an offence punishable under Section 304 Part II I.P.C. Accordingly, the conviction of the appellant made by the Court below is altered to one under Section 304 Part II I.P.C. and he is sentenced to suffer Rigorous Imprisonment for seven years.

14. In the result, the Criminal Appeal is partly allowed. The conviction recorded against the appellant/accused in judgment, dated 09.02.2010, in Sessions Case No.42 of 2009, on the file of the learned VII Additional District and Sessions Judge's Court, (Fast Track Court), Vijayawada, for the offence punishable under Section 302 I.P.C. is modified to that for the offence under Section 304 Part-II. The appellant/accused is, accordingly, convicted and sentenced to suffer R.I. for a period of seven years and to pay a fine of Rs.500/- (Rupees five hundred only), in default of payment of fine, to suffer S.I. for two months. Consequently, as the accused has been in imprisonment since 04.08.2008, he shall be set at liberty forthwith, if he is not required in any other case or crime.

C.V.NAGARJUNA REDDY, J

M.S.K.JAISWAL, J

23rd February, 2016

Note: L.R. copies to be marked.

(B/o)

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[\[1\]](#) (2014) 7 SCC 405 = AIR 2014 SC 2943

[\[2\]](#) (2002) 7 SCC 56 = AIR 2002 SC 2996

[\[3\]](#) (2010) 8 SCC 514