

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

CRIMINAL APPEAL No.1157 of 2010

Between:

Golla Katuvappagari Krishna Murthy @ Murthy

.....Appellant/
Accused

And

The State of Andhra Pradesh,
represented by its Public Prosecutor (AP), Hyderabad

....Respondent

JUDGMENT PRONOUNCED ON: 22nd June, 2016

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD**

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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

G.SHYAM PRASAD, J

*** THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND
THE HON'BLE SRI JUSTICE G.SHYAM PRASAD

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% 22.06.2016

Between:

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.....Appellant/
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Vs.

\$ The State of Andhra Pradesh,
represented by its Public Prosecutor (AP), Hyderabad

....Respondent

! Counsel for the appellant: Mr.K.Maheshwar Rao

Counsel for the respondent: Public Prosecutor (AP)

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>Head Note:

? Cases referred:

1. (2002) 6 SCC 710=2002 SCC (Cri) 1491
2. (2016) 4 SCC 583
3. (2015) 8 SCC 299

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....Respondent

Counsel for the appellant: Mr.K.Maheshwar Rao

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

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

The sole accused in Sessions Case No.751 of 2008 filed this appeal against the judgment, dated 21.09.2010, in the said sessions case on the file of learned I Additional Sessions Judge, Anantapur.

2. The prosecution case, as reflected from the charge sheet, is that one Golla Kamakshi (hereinafter referred to as 'the deceased') was the daughter of P.W.1 and the wife of the accused. In the year 1997, the marriage between the accused and the deceased took place and they were living at Eradikera Village. They had two daughters, aged six and three years respectively at the time of occurrence. All the prosecution witnesses are the residents of Eradikera Village and they live in the same locality as that of the

accused and his family. The accused was addicted to gambling and consuming liquor, not caring for his family, neglected agriculture and did not engage himself in any gainful avocation. Very often, he used to demand the deceased to give him money to meet the expenses for his vices and whenever she failed to meet his demand, he used to abuse and assault her.

The deceased used to narrate her owes to P.Ws.2 and 3 and other neighbours in the Village, who then used to chastise the accused for his ill-behaviour and advise him to mend his ways and all those efforts went in vain.

3. On 17.06.2007 at about 8.00 a.m., the accused demanded the deceased to give Rs.200/-, that when the deceased pleaded that she had no money and to give up drinking and gambling, he raised quarrel with her and meanly abused and assaulted her. The accused picked up a bag of groundnut seeds kept aside for sowing purpose, with a view to sell them away and utilize the money for his vices. The deceased thwarted his attempt by physically blocking his way. He grew wild at that and abused her in vulgar language. When the deceased still obstructed the accused, he threw groundnut seeds bag on ground and went away abusing her and muttering that he would see her end.

At about 12.00 noon on the same day, the accused returned home and again picked up altercation with the deceased, when she was attending to some domestic chores in front of their house. On hearing the heated arguments between the accused and the deceased, P.Ws.2 to 5, L.W.6 – Golla Kote Lingappa, P.Ws.10 to 12 and some others gathered and were thinking as to how to stop the accused from misbehaving and conducting himself aggressively. Meanwhile, the accused started behaving in aggressive manner, held the hands of the deceased and ignoring her pleas, dragged her into the house, felled her down on the floor and as she was trying to get up, the accused picked up a can of kerosene available in the house, poured the same on her, lighted a match stick and put the same on her, as a result of which, she was engulfed in fire. Then, the accused rushed out of the house, cursing the deceased, from the front open space and others who gathered there, managed to put out the flames. P.Ws.2, 3, 12 and some others took the deceased, who had suffered burn injuries, to the Government

Hospital, Kalyanadurg, by bus, where P.W.17 admitted her as inpatient and advised her to be shifted to the Government General Hospital, Anantapur, for better treatment. P.W.17 sent information to Kalyanadurg Police Station at 7.00 p.m. On coming to know about the incident, P.W.1 rushed to the Government Hospital, Kalyanadurg, and was with the deceased. When P.W.1 enquired, the deceased narrated her, the entire episode. The deceased was taken by P.Ws.1 to 3 to the Government General Hospital, Anantapur, where she was admitted for treatment. P.W.19, who received medical intimation sent from Kalyanadurg at 7.00 a.m. on 18.06.2007 at Brahmasamudram Police Station (P.S.), made an entry in the Station Diary, went to Kalyanadurg and on learning that the deceased was sent to the Government General Hospital, Anantapur, rushed there, contacted the deceased, who was under treatment, recorded her statement and obtained her L.T.I. after the statement was read over, admitted by her to be according to her narration, and the said statement was attested by P.Ws.1, 2 and 20. P.W.20 also certified that the deceased was conscious, while making the statement. P.W.19 returned to Brahmasamudram P.S., registered F.I.R. in Crime No.18 of 2007 for the offence punishable under Section 307 I.P.C., took up investigation, visited the Government General Hospital, Anantapur, and recorded the detailed statement of the deceased and others.

On 19.06.2007, P.W.19 inspected the house of the deceased and the surroundings in the presence of P.Ws.9 and 16 and seized the burnt pieces of clothes, kerosene can etc., under the cover of mahazar. He found the accused absconding. P.W.21 took up the investigation and verified the investigation made by P.W.19. The deceased, who was under treatment, died in the Government General Hospital, Anantapur, on 27.06.2007 at 3.30 p.m. and on receipt of the death intimation, P.W.21 altered the Section of law to that of the offence punishable under Section 302 I.P.C. from Section 307 I.P.C. and issued express F.I.R. P.W.22 took up the further investigation and held inquest over the dead body of the deceased in the presence of P.Ws.8, 15 and 16 on 28.06.2007. He examined P.Ws.2 to 5, L.W.6 – Golla Kote Lingappa, and P.Ws.

10 to 12 and recorded their statements. P.W.22 sent the dead body of the deceased to P.W.18, who conducted autopsy over it and issued post mortem certificate. On 31.08.2007 at about 8.00 a.m., P.W.22 and his staff acting on

the information received by them proceeded to Brahmamgari Temple on Kalyanadurg-Kundurpi road at the outskirts of Kalyanadurg, along with P.Ws.14 and 15, and arrested the accused, who was found sitting on a pial of the temple. P.W.22 interrogated the accused and informed him that he was being arrested for causing the death of the deceased. After completing the investigation, P.W.22 filed the charge sheet.

4. The trial Court framed a charge against the accused for the offence punishable under Section 302 I.P.C. When the accused was questioned by the trial Court, he denied the commission of the offence and preferred to be tried.

5. In order to prove its case, the prosecution examined P.Ws.1 to 22 and marked Exs.P-1 to P-23 besides producing M.Os.1 to 4. On behalf of the accused, no evidence was adduced.

6. On appreciation of the oral and documentary evidence, the trial Court convicted the accused for the offence punishable under Section 302 I.P.C. and sentenced him to suffer life imprisonment and also to pay a fine of Rs.200/-, in default to suffer rigorous imprisonment (R.I.) for a period of one month.

7. We have heard Mr.K.Maheshwar Rao, learned counsel for the appellant/accused and the learned Public Prosecutor (AP).

8. At the outset it needs to be mentioned that P.Ws.2 to 5 and 8 to 15 turned hostile. P.W.1 – the mother of the deceased, spoke about the accused being addicted to vices, such as gambling and drinking liquor and his beating his wife – the deceased, whenever she did not meet his demand for money. She further deposed that one day about two years back, she received information that the accused poured kerosene on her daughter and set her on fire. That after receiving the said information, she went to the Government Hospital, Kalyandurg, where the deceased was brought by P.W.2. She further deposed that in the hospital, she spoke to the deceased as to how she sustained burns and the deceased informed her that the accused poured kerosene on her and set her on fire for not meeting his

demand for money. P.W.1 also stated that she was examined by the Police during inquest and also investigation. She denied the suggestion that the accused was not addicted to vices and that she gave false evidence. She also denied the suggestion that the deceased never informed her that the accused was harassing her for money and beating her. She admitted that the accused was looking after the family affairs and that her daughter was not having separate source of income except the income derived through cultivation of the lands of the accused. She denied the suggestion that she was having disputes with regard to money transactions with the accused. She also denied the suggestion that the deceased was not in a position to speak at the hospital and that she never told her that the accused poured kerosene on her and set fire on her. She further denied the suggestion that the deceased has caught fire accidentally, while cooking the food and that herself and her son created a false story against the accused that the latter set the deceased on fire. She denied the suggestion that the deceased was living happily with the accused and that she sustained burns accidentally.

P.W.2, who is a crucial witness along with P.W.3 having allegedly given statements before the Police under Section 161 Cr.P.C., that they witnessed the offence, was declared hostile. However, he made certain significant admissions corroborating the evidence of P.W.1 to the extent of the accused harassing the deceased, besides his taking the deceased to the Government Hospital, Kalyandurg, on the day of occurrence. While denying the suggestion that he admitted before the Police in Ex.P-1 that the accused is his close relation, he deposed that the deceased used to come to him by weeping and informed him that the accused got addicted to vices, such as gambling and drinking liquor and demanding money from her and harassing her and that he used to console her. He further deposed that the deceased used to tell him that her parents were not giving money to her, so as to pay the same to the accused and that she expressed unhappiness over her family life. That the deceased met him five or six times prior to the occurrence and informed him about the harassment, that after her parents came to their Village, he took her to the Government Hospital, Kalyandurg and that on the same day, again she was shifted to the Government General Hospital, Anantapur, where she died ten days after her admission. He,

however, stated that he did not enquire with the deceased as to how she sustained burns and that the deceased did not inform him on the cause of the burns she suffered. He denied the suggestion that the deceased informed him that the accused poured kerosene on her and set her on fire. In the cross examination by the counsel for the accused, he denied the suggestion that the deceased never met and informed him about the accused harassing her. He also denied the suggestion that due to the political rivalry, he was giving false evidence against the accused.

P.W.3 is the wife of P.W.2 and she was also declared hostile and her evidence is not helpful to the prosecution. P.Ws.4 and 5 – the alleged eyewitnesses, have also turned hostile and their evidence is also not of much relevance.

P.W.6 is the sister of the deceased. She deposed that the accused and the deceased lived happily for about one year after their marriage and thereafter, they used to quarrel with each other as the accused was addicted to alcohol and playing matka, that the accused used to beat the deceased and used to extract money from her, that whenever she visited their house, the deceased used to complain about the conduct of the accused and she used to advise both the accused and the deceased to live peacefully without any quarrel. She further deposed that about two years back, when she was in her village, her mother informed her by phone that the deceased died in the Government General Hospital, Anantapur, that on the next day, she visited the said hospital and found the dead body and that she was informed by her mother that the accused poured kerosene on the deceased and set her on fire. In the cross examination, she deposed that she stated before the Police that the accused was addicted to vices and was extracting money from the deceased. She denied the suggestion that at the instance of her brother and mother, she was deposing falsely. She also denied the suggestion that the deceased was suffering from hysterical disorder.

P.W.7, who is the resident of Poolakunta Village, spoke about the harassment meted out to the deceased at the hands of the accused and the latter's addiction to alcohol and gambling. It is not suggested to this witness that he was deposing falsely on account of any ill will against the accused.

P.W.14 – one of the witnesses to Ex.P-10 – arrest mahazar, did not support the case of the prosecution. Similarly, P.W.15, who is one of the witnesses to Ex.P-11 – arrest mahazar, also did not support the case of the prosecution. P.W.16, who is cited as witness to the inquest report, also turned hostile.

P.W.17 - the Civil Assistant Surgeon, deposed that on 17.06.2007 at about 7.00 p.m., he sent medical intimation to the S.H.O., Kalyandurg informing that the deceased was admitted in Community Health Centre, Kalyandurg, with burnt injuries and that subsequently, he referred the patient to the Government General Hospital, Anantapur, for expert treatment. In his cross examination, he deposed that he started giving treatment to the deceased from the time she joined in the hospital, that the percentage of the burns on the injured is the criterion to know her health condition, that he noted the percentage of the burns on the deceased in the accident register, that because of the high percentage of burns on the deceased, she must be restless and experiencing severe pains, she was crying loudly, that such patients would be given sedative to reduce the pain and to keep them in semi consciousness stage and that they also gave painkilling tablets and injections to the deceased.

P.W.18 – the Professor of Forensic Medicine, Government Medical College, Anantapur, deposed that he held autopsy over the dead body of the deceased, which commenced at 12.45 p.m. and concluded at 2.15 p.m. on 28.06.2007 and that the deceased died due to septicemia, as a result of burnt injuries of about 95%.

P.W.19 - the Head Constable, deposed that on 18.06.2007, on the intimation through Ex.P-14, he reached the Government Hospital, Kalyandurg, and on coming to know that the deceased was shifted to the Government General Hospital, Anantapur, he reached there, went to the female ward, found the deceased and recorded her statement – Ex.P-16 and that at the time of recording her statement, P.W.20 – the Doctor was present and he also endorsed on Ex.P-16 that the patient was conscious. He further deposed that he returned to the Police Station and registered a case in Crime No.18 of 2007 for the offence punishable under Section 307 I.P.C.

and also sent the copies of F.I.R. to the concerned. He also deposed that he subsequently visited the Government General Hospital, Anantapur, once again, where he examined the deceased under Section 161(3) Cr.P.C. and that he also examined P.Ws.1 and 2. In his cross examination, he deposed that he secured the Doctor at the hospital when he was on rounds and that by the time he went to the hospital, the deceased was given medical treatment. He denied the suggestion that the Doctor was not present in the hospital and the deceased never gave statement and that he obtained the signature of the Doctor on Ex.P-16 prepared by him at his office. He also denied the suggestion that the people in Eeridikera Village cannot speak Telugu fluently and that they speak Kannada language as it is a boarder Village. He further denied the suggestion that the deceased was unable to give statement and that she did not state as in Ex.P-16. He further deposed that the F.I.R. was sent to the Court on the same day and that as per the endorsement in the F.I.R, the Magistrate received it on 19.06.2007 at 6.30 p.m.

P.W.20 - the Surgeon, Government General Hospital, Anantapur, deposed that on 18.06.2007 at about 11.00 a.m., the Police recorded the statement of the deceased, at which time he was present and he also endorsed thereon that the deceased was conscious. He further deposed that he observed that the patient was coherent and was able to give statement and that he endorsed the same on Ex.P-16, which is marked as Ex.P-21. In the cross examination, the witness, however, stated that he did not note in the endorsement that the patient was coherent and was able to speak and that he noted that the patient was conscious. He further deposed that he did not note the time on the endorsement, that the endorsement that the patient was conscious was made on the left side margin of the statement and that he made the endorsement after completion of the statement of the deceased and not at the beginning of the statement. He admitted that there was difference between the words "consciousness" and "coherent" and that when the patient is conscious generally, he will be coherent. He denied the suggestion that consciousness means physical response of the patient and coherent means patient giving rational answers. He also denied the suggestion that he gave endorsement in his office at the instance of the

Police when it was brought before him.

9. From the evidence discussed above, it is clear that due to the material witnesses turning hostile, the act alleged against the accused that he poured kerosene and set the deceased on fire was not spoken to by any of the witnesses. However, through the evidence of P.Ws.1, 2, 6 and 7, the prosecution was able to prove that the accused was addicted to vices, such as drinking liquor and gambling and used to demand money from the deceased and beat her whenever she did not meet his demand. On this aspect, the evidence of P.W.2 is very material. Evidently, due to his relationship with the accused, he was obviously made to turn hostile, but still he supported the case of the prosecution and corroborated the testimony of P.W.1 to the extent of the accused's aggressive behaviour over the deceased.

10. In a case based on circumstantial evidence, the conduct of the accused both prior to and after commission of the offence is highly relevant under Section 8 of the India Evidence Act, 1872. Thus, the prosecution case succeeded in proving that the accused was addicted to vices and harassing the deceased. While this was the conduct of the accused prior to the incident, it is relevant to know his conduct subsequent to the incident. There is no dispute about the fact that the incident had taken place in the house of the accused. There was no attempt on the part of the defence to show that the accused was not present at the time of the incident. Had it been the case of the deceased catching the fire accidentally during the course of cooking, it would have been natural for the accused to make all the efforts to douse the fire. Not only that the accused has not made any such effort, but he has disappeared from the scene from the time of the deceased suffering burns till 31.08.2007 i.e., for a period of 44 days between the date of the incident and his arrest. This conduct of the accused speaks eloquently and supports the case of the prosecution that it was not a case of accidental burns, but the same were caused by the accused himself. In his statement under Section 313 Cr.P.C., except the bald denial of all the questions including those which pertain to the autopsy of the body and similar other admitted aspects of the case, he did not explain his case at all. In these facts and

circumstances of the case, we have no reason to doubt that it is only the accused, who caused the burns to the deceased, as a result of which, she succumbed to burn injuries.

11. Coming to Ex.P-16 – dying declaration, the same was recorded by P.W.19. His evidence was discussed hereinbefore. He categorically stated that immediately on receiving Ex.P-14 intimation from P.W.17, he initially rushed to the Government Hospital, Kalyandurg, and then on coming to know about the shifting of the deceased to the Government General Hospital, Anantapur, he went there and recorded the statement of the deceased in the presence of P.W.20 – the Surgeon, Government General Hospital, Anantapur. He categorically stated that the deceased was conscious and the Doctor, who was present all through his recording the statement, accordingly certified the same in Ex.P-21.

12. The learned counsel for the appellant/accused has vehemently argued that though the deceased survived for about 10 days, no effort was made to get the dying declaration recorded by the Magistrate concerned. He has further argued that no proper certification was made by the Doctor with regard to the fitness of the deceased to give statement. In **Laxman vs. State**

of Maharashtra^[1], the Apex Court held as under:

“.....There is no requirement of law that a dying declaration must necessarily be made to a Magistrate and when such statement is recorded by a Magistrate there is no specified statutory form for such recording. Consequently, what evidential value or weight has to be attached to such statement necessarily depends on the facts and circumstances of each particular case. 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 and therefore the voluntary and truthful nature of the declaration can be established otherwise.”

This legal position was reiterated by the Apex Court in **Gulzari Lal vs. State of Haryana**^[2].

13. We have carefully read Ex.P-16 – the dying declaration and we do not find anything artificial therein. As held by the Apex Court non-recording of dying declaration by the Magistrate cannot be a ground to disbelieve the declaration recorded by any other functionary. Though the Doctor – P.W.20 has not certified that the patient was coherent, he clearly stated in his evidence that the patient was not only conscious but also coherent. In our opinion, there was no need either for P.W.19 - the Head Constable who recorded Ex.P-16 – dying declaration or for P.W.20 - the Doctor, to falsely implicate the accused. No reasons were elicited from these two witnesses in their cross examination on the necessity for such implication. The Apex Court in **Ramakant Mishra vs. State of U.P.**^[3] held that once the statement of the victim is found to be genuine, voluntary, consistent, credible and untutored, it assumes great probative value and can form sole basis of conviction without requiring any corroboration. In the instant case, we find Ex.P-16 - dying declaration of the deceased possessing all the above mentioned qualities and leaving us without any manner of doubt that the said statement was genuinely made by the deceased.

14. As regards the submission of the learned counsel for the appellant/accused that there was delay of nearly one day in the F.I.R. reaching the Magistrate, in our view, on the facts of the case, this delay is not fatal to the case of the prosecution. Indeed, P.W.19 stated that after recording Ex.P-16 – dying declaration, he returned to the Police Station, registered Crime No.18 of 2007, sent copies of F.I.Rs. to all the officials concerned and he also sent Ex.P-17 - F.I.R. to the Court. Nothing was suggested to this witness to create any doubt on the genuineness or otherwise of Ex.P-17, to suspect false implication of the accused because of the so-called delay in the F.I.R. reaching the Magistrate.

15. For the aforementioned reasons, we do not find any merit in this Criminal Appeal and the same is, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

G.SHYAM PRASAD, J

22nd June, 2016

Note: L.R. copies to be marked.

(B/o)

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[\[1\]](#) (2002) 6 SCC 710=2002 SCC (Cri) 1491

[\[2\]](#) (2016) 4 SCC 583

[\[3\]](#) (2015) 8 SCC 299