

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

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**CRIMINAL APPEAL NO.642 OF 2010**

Between:

S.K.Dawood

.. Appellant

and

The State of A.P. rep. by its  
Public Prosecutor

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 17.09.2016

**SUBMITTED FOR APPROVAL:**

**THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

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 Lordships wish to  
see the fair copy of the judgment? Yes/No

**SANJAY KUMAR, J**

**M.SEETHARAMA MURTI, J**

**\* THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**+ CRIMINAL APPEAL NO.642 OF 2010**

**% DATED 17<sup>th</sup> SEPTEMBER, 2016**

# S.K.Dawood .. Appellant

Vs.

\$ The State of A.P. rep. by its  
Public Prosecutor .. Respondent

<Gist:

>Head Note:

! Counsel for the Appellant : Smt. B.Vaijyanthi

^Counsel for the respondent : Public Prosecutor

? CASES REFERRED:

1. AIR 1958 SC 22
2. (2014) 14 SCC 646
3. (2015) 8 SCC 299
4. AIR (32) 1945 Privy Council 18
5. AIR 1973 SC 1
6. 1988 Supp (1) SCC 704



**THE HON'BLE SRI JUSTICE SANJAY KUMAR  
AND  
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**CRIMINAL APPEAL No.642 OF 2010**

**J U D G E M E N T**  
***(Per Hon'ble Sri Justice Sanjay Kumar)***

The appellant, the sole accused in Sessions Case No.509 of 2003 on the file of the learned II Additional Metropolitan Sessions Judge, Hyderabad, was held guilty, *vide* judgment dated 03.03.2006, of committing the murder of P. Lingamma on 15.11.2001 at about 12.45 AM at Champapet, Kondareddypally Village, Konguru Mandal, Kalwakurthy Taluk, Mahabubnagar District, by pouring kerosene on her and setting her on fire. He was accordingly sentenced under Section 302 IPC to life imprisonment and to pay a fine of Rs.500/- or to suffer simple imprisonment for six months, in default thereof.

The case of the prosecution was that the accused, in an inebriated state, demanded money from the deceased during the late hours of the intervening night of 14/15.11.2001 and upon her refusal, he poured kerosene on her and set her on fire, thereby committing an offence punishable under Section 302 IPC.

The appellant/accused however denied the charge and claimed to be tried. During the trial, the prosecution examined twelve witnesses and marked eleven exhibits. A plastic bottle containing 1/4<sup>th</sup> litre of kerosene was marked as M.O.1. The defence did not choose to adduce oral evidence but marked in evidence Ex.D1, a portion of the statement of P.W.1., recorded under Section 161 CrPC.

The accused, a married man with a wife and children at Kalwakurthy, had illicit intimacy with P.Lingamma, the deceased, and was residing with her in a hut at Champapet. This was

confirmed by the neighbours of the deceased, B.Mallaiah (P.W.1), Sreenu (P.W.2), and Ramulamma (P.W.4). P.Yellaiah (P.W.3), the brother of the deceased, also asserted to this effect.

The prosecution's charge that the accused had murdered the deceased was proved by the evidence of P.Ws.1 and 2. In fact, P.W.1 stated that he saw the accused running away from the hut of the deceased. Though his evidence was sought to be assailed on the ground that he was inimical to the accused, nothing was proved in support thereof. The deceased was stated to have informed both P.Ws.1 and 2 of the accused demanding money from her and upon her refusal, pouring kerosene and setting her on fire. The evidence of both these witnesses remained unshaken and is exceedingly credible and believable as they were the neighbours of the deceased and the first to arrive upon the scene.

Further confirmation of the prosecution's case took the shape of the dying declaration of the deceased (Ex.P9) recorded by the learned VIII Metropolitan Magistrate, Hyderabad (P.W.10). Therein, the deceased stated in no uncertain terms that the accused asked her for money and as she refused, he poured 'gas oil' upon her and set her on fire. She identified the accused by the name, Babu, and confirmed that he was a Muslim but stated that he was not her husband.

Well settled is the legal position that a truthful and reliable dying declaration can be the sole basis for a conviction (***KHUSHAL RAO V/s. STATE OF BOMBAY***<sup>1</sup>, ***RAJU DEVADE V/s. STATE OF MAHARASHTRA***<sup>2</sup> and ***DEEPAK VERMA V/s. STATE OF U.P.***<sup>3</sup>). The

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<sup>1</sup> AIR 1958 SC 22

<sup>2</sup> (2014) 14 SCC 646

<sup>3</sup> (2015) 8 SCC 299

Supreme Court affirmed that such a dying declaration can form the basis for conviction even without corroboration.

P.W.10's evidence reflects that he meticulously followed the procedure prescribed under Rule 33 of the Criminal Rules of Practice and Circular Orders, 1990, while recording Ex.P9 dying declaration. P.W.10 obtained certification from the doctor present as to the mental status and fitness of the deceased to give her statement before commencing the recording of the statement and again, after its conclusion. P.W.10 put questions to the deceased to ascertain her capacity to give a statement and also informed her of his identity and the purpose of his visit. Thereafter, he recorded the dying declaration of the deceased in Telugu, verbatim as stated by her, and obtained her right thumb impression thereon.

The clarity of the statement made by the deceased, recorded verbatim in Ex.P9 dying declaration, manifests her mental alertness and clear awareness of what she was stating. At the doors of death, the simple words of the deceased pointing to the accused as her attacker inspire belief. This dying declaration is therefore utmost trustworthy. Though corroboration is not even required in the light of this truthful and reliable dying declaration, sufficient evidence is adduced to confirm and support the same in the form of the neighbours' testimony.

The post-mortem examination report (Ex.P11) and the evidence of Dr.P.Srinivasa Rao (P.W.12), Assistant Professor, Osmania Medical College, Hyderabad, who conducted the autopsy on the body of the deceased, speak to the effect that she died due to burns and clearly demonstrate that the death of the deceased was homicidal in nature. The dying declaration (Ex.P9) and the neighbours' testimony put it

beyond doubt that it was the accused that poured kerosene over the deceased and set her on fire, whereby she sustained the fatal burns.

Faced with this seemingly water-tight case, Ms.B.Vaijyanthi, learned counsel for the appellant/accused, would contend that there is a fatal flaw in the investigation process which renders the conviction of the accused and the consequent sentence imposed upon him unsustainable in law. Learned counsel would point out that P.W.10 received a requisition from Kanchanbagh Police Station on 15.11.2001 at 1.00 PM, whereupon he claimed that he went to Osmania General Hospital to record the dying declaration of the deceased at 1.10 PM but found that the patient was semi-conscious and the doctor informed that she was not in a fit condition to give a statement. Learned counsel would point out that Ex.P8 FIR would indicate that the case in Crime No.142 of 2001 was registered on the file of Kanchanbagh Police Station on 15.11.2001 only at 8.00 PM. She would therefore assert that there is a discrepancy as to when the police received information of the offence and as to when the investigation commenced. Learned counsel would contend that the entire investigation would have to be viewed in the context of these discrepancies and benefit of doubt should be given to the accused.

Perusal of the material on record reflects that the incident took place on the intervening night of 14/15.11.2001 after midnight. P.Ws.1, 2 and 4 confirmed this aspect and stated that it was after midnight that they heard the commotion at the hut of the deceased and rushed there to find her in flames. There is no indication that any of these witnesses informed the police.

According to P.W.1, he and P.W.4 shifted the deceased to the hospital for treatment. Dr. A.V.Reddy (P.W.11), the doctor who

treated the deceased at Osmania General Hospital, confirmed that she was admitted on 15.11.2001 at 12.45 PM in the afternoon. He stated that he gave a requisition to the police for recording her dying declaration. The time at which this requisition was given by him is unclear, because the time mentioned in the deposition was struck off several times and was ultimately shown as 1.50 PM.

According to the Inspector of Police, Kanchanbagh Police Station (P.W.9), he received a telephonic message from Osmania General Hospital on 15.11.2001 in the evening about the admission of the deceased. Thereupon, he deputed the Assistant Sub-Inspector of Police, Kanchanbagh Police Station (P.W.7), to make enquiries and to record the statement of the victim. P.W.7 stated that he went to Osmania General Hospital Burns Ward, identified the deceased with the assistance of the attending medical staff and recorded her statement (Ex.P5). P.W.7 stated that he reached the hospital by 7.00 PM. P.W.9 confirmed that P.W.7 returned to the police station at 8.00 PM and handed over Ex.P5. He then registered Crime No.141 of 2001 under Section 307 IPC. Ex.P8 is the FIR. He stated that he thereupon handed over the investigation to the Sub-Inspector of Police, Kanchanbagh Police Station (P.W.8).

No doubt, P.W.10 stated that in the first instance he received a requisition from Kanchanbagh Police Station at 1.00 PM to record the dying declaration of the deceased. However, a copy of the said requisition is not marked. In the prescribed format filled in by P.W.10 upon receipt of the requisition at 1.00 PM, he recorded that the said requisition was received from Kanchanbagh Police Station. There is however no material to support this independently. In any event, it was not on the basis of this requisition that P.W.10 recorded the

dying declaration. P.W.8 confirmed that after receiving the CD file in Crime No.141 of 2001 from P.W.9, obviously after 8.00 PM on 15.11.2001, he sent a requisition to P.W.10 to record the dying declaration of the deceased. It was this requisition which was received by P.W.10 at 9.15 PM on 15.11.2001, consequent to which he visited the hospital again and recorded Ex.P9 dying declaration.

The question before us presently is whether on the basis of this so-called requisition said to have been given to P.W.10 at 1.00 PM by Kanchanbagh Police Station, it can be inferred that investigation in the present case commenced even before registration of the FIR.

However, we find that it is not established beyond doubt that the police did have information of the incident before registration of Ex.P8 FIR. It may be noticed that P.W.11 stated that, upon admission of the deceased in the hospital at 12.45 PM, he gave a requisition for recording of her dying declaration. Though the time at which he gave the requisition is not precisely known, it was after 1.00 PM. This would tally with the requisition said to have been received by P.W.10. It is not clear whether P.W.11's requisition was sent directly to the Magistrate. The said requisition also does not form part of the record. That being so, the mere mention of Kanchanbagh Police Station in the form filled up by P.W.10 on the afternoon of 15.11.2001 is not sufficient to infer that the said requisition was given by Kanchanbagh Police Station. There is no corroboration to support this.

On the other hand, the sequence of events would indicate that there was delay in the admission of the deceased to the hospital, be it for whatever reason, and upon such admission information was given to the police over the telephone only in the evening of 15.11.2001. Thereupon, the process of criminal law swung into motion and this

Court finds no irregularity in the time factor or the steps taken thereafter.

It may be noted that when no fatal weakness or defect is found in the investigation process or the findings emanating therefrom, it would be wholly improper and unconscionable for the appellate Court, on the strength of mere technicalities which have no real consequence, to let the guilty walk free, unsullied by the heinousness of his offence which is otherwise proved beyond doubt. This Court must therefore balance the right of the accused to be subjected to a fair and unbiased investigation so as to ascertain his guilt or innocence, as the case may be, and the weighty duty that is visited upon it to bring wrongdoers to justice.

In the present case, the mere mention by P.W.10 of Kanchanbagh Police Station in the prescribed form filled by him is sought to be pressed into service to claim that the police had information of the offence on the afternoon of 15.11.2001 though registration of the case took place at 8.00 PM on 15.11.2001. This, *per* the learned counsel for the appellant/accused, undermined the sanctity of the investigation and the consequential case of the prosecution.

No doubt, investigation being commenced by the police even before registration of the FIR may, in a given case, give rise to an adverse inference of planning and manipulation of the criminal law process to the prejudice of the accused, thereby vitiating the whole case of the prosecution. While this may be so, there is no edict or rule that this unorthodox procedure, if adopted, would invariably taint the investigation and consequently, the case of the prosecution, in every such case.

On the other hand, it may be noticed that as long back as in the year 1944, in **EMPEROR V/s. KHWAJA NAZIR AHMAD<sup>4</sup>**, the Privy Council pointed out that receipt and recording of an information report is not a condition precedent to the setting in motion of a criminal investigation. While observing that in a great majority of cases, criminal prosecutions are undertaken as a result of information received and recorded in this way, the Privy Council stated that there is no reason as to why the police, if in possession through their own knowledge or by means of credible though informal intelligence, should not of their own motion undertake an investigation into the truth of the matter alleged. The Privy Council concluded by stating that the provisions as to the information report (commonly called a first information report) were enacted for obtaining early information of alleged criminal activity, to record the circumstances before there is time for them to be forgotten or embellished, and to put in evidence such report when the informant is examined, if it is desired to do so.

In **APREN JOSEPH ALIAS CURRENT KUNJUKUNJU V/s. THE STATE OF KERALA<sup>5</sup>**, a three Judge Bench of the Supreme Court quoted with approval the observations of the Privy Council in **KHWAJA NAZIR AHMAD<sup>4</sup>** that receipt and recording of the information report by the police is not a condition precedent to the setting in motion of a criminal investigation.

Before we conclude, useful reference may also be made to **STATE OF PUNJAB V/s. AMARJIT SINGH<sup>6</sup>**, wherein the Supreme Court, while dealing with a case where the dying declaration was

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<sup>4</sup> AIR (32) 1945 Privy Council 18

<sup>5</sup> AIR 1973 SC 1

<sup>6</sup> 1988 Supp (1) SCC 704

made to the police even before filing of the FIR, opined that conviction by the trial Court based on such a dying declaration was unassailable. By the same standard, the lapse, if any, *vis-à-vis* the alleged requisition given to P.W.10 at 1.00 PM on 15.11.2001 to record the dying declaration of the deceased, would be wholly insufficient to infer that the investigation against the accused was not fair or was biased. The facts indicate to the contrary and abundant evidence was let in to independently incriminate the accused of the offence. The contention urged by Ms. B.Vaijyanthi, learned counsel, in this regard is accordingly rejected.

On the above analysis, this Court finds that the prosecution proved beyond doubt that the death of the deceased was homicidal, having been caused by the burns sustained by her, and that it was the accused that poured kerosene on her and set her on fire. The conviction and sentence imposed upon the appellant/sole accused therefore do not warrant interference on facts or in law.

The appeal is devoid of merit and is accordingly dismissed.

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**SANJAY KUMAR, J**

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**M.SEETHARAMA MURTI, J**

**17<sup>th</sup> SEPTEMBER, 2016**

**Note: L.R. copy to be marked  
B/o PGS**