

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**  
**AND**  
**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

**CRIMINAL APPEAL No.477 of 2011**

**Date : 23.09.2017**

Between :

Chokka Joseph @ Peddodu .... Appellant-accused

and

The State of A.P.

... Respondent



**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**  
**AND**  
**THE HON'BLE SRI JUSTICE A.V.SESHA SAI**  
**CRIMINAL APPEAL No.477 of 2011**

**JUDGMENT:** (per The Hon'ble Sri Justice C.Praveen Kumar)

This Criminal Appeal under Section 374 (2) of the Code of Criminal Procedure (for short 'Cr.P.C.') came to be filed by the appellant-sole accused questioning the conviction and sentence passed in Sessions Case No.184 of 2010 by the III Additional Sessions Judge, Guntur, vide judgment dated 11.08.2010, whereby and whereunder the appellant was convicted under Section 235 (2) Cr.P.C. and sentenced to undergo imprisonment for Life for the offence punishable under Section 302 of Indian Penal Code (for short 'IPC') and also to pay a fine of Rs.500/- in default to suffer simple imprisonment for one month.

2) The case of the Prosecution, in brief, is as follows:

PW-1 is the mother of the deceased, PW-2 is the sister of the deceased, PWs 3 and 4 are the sons and PW-5 is the neighbour of the deceased. The marriage of the accused and deceased took place about 20 years ago. Out of their wedlock, they were blessed with three sons. Accused and deceased were eking out their livelihood by doing agriculture coolie work. The accused having got addicted to bad vices, developed suspicion against the fidelity of the deceased. On 21.09.2009, the accused is said to have quarreled with the deceased, in connection with money. At that time P.W.3 intervened and prevented the accused from beating the deceased. On the next day i.e. on 22.09.2006 at about 5.00 a.m., the accused forcibly took the deceased to

kitchen room, asked her to fulfill his desire and also forced her to give money. When the deceased refused to do so, accused is said to have tied the hands of the deceased with a cloth by folding them to her back, gagged her mouth with a cloth, took Rs.5000/- from the almyrah, poured kerosene over her and set fire to her. The deceased having got herself released, took out the cloth from her mouth and raised a big alarm. On hearing the same, LWs 1 to 9 rushed the spot and put off the flames. They noticed the accused standing nearby the deceased and abusing her in filthy language. Immediately thereafter, the injured was admitted in the Government General Hospital for treatment.

3) On receipt of information from the Police Out-Post, ASI visited the hospital, recorded the statement of the deceased on 22.09.2009 between 0800 hours to 0845 hours and forwarded the same to SHO, Tadepalli PS, on the point of jurisdiction. At about 9.00 a.m., the Chief Metropolitan Magistrate, Vijayawada, visited the hospital and recorded the dying declaration of the deceased. The SI of Police, Tadepally PS, registered a case in crime No.288 of 2009 for an offence punishable under Section 307 IPC and recorded the statements of the witnesses. On 23.09.2009, he visited the scene of offence and seized the material objects under the cover of mediatorsnama. While undergoing treatment, the deceased succumbed to burn injuries on 25.09.2009. On that, the section of law was altered from Section 307 IPC to 302 IPC. Subsequently, the Inspector of Police took up further investigation. He conducted inquest over the dead body of the deceased in the presence of PW.11 and others. Ex.P.9 is the inquest report.

During inquest, he examined LWs 1 to 15 and recorded their statements. Later he sent the dead body for post mortem examination. P.W.10 conducted autopsy over the dead body of the deceased and issued the Post Mortem certificate Ex.P.8, opining the cause of death as due to burns and its complications. On 02.10.2009, the Inspector of Police arrested the accused, interrogated him before the mediators and recovered Rs.4,000/- under the cover of mediatorsnama. After receiving PME report, a charge sheet came to be filed for the offence punishable under Section 302 of IPC.

4) The case was taken on file as P.R.C. No.7 of 2010 by the Additional Junior Civil Judge, Mangalagiri. On committal, the same came to be numbered as S.C.No.184 of 2010. On appearance, copies of the documents were furnished to the accused as contemplated under Section 207 Cr.P.C. Thereafter, charge under Section 302 IPC came to be framed against the accused, to which he denied and claimed to be tried.

5) In order to prove the guilt of the accused, the Prosecution examined PWs 1 to 13 and got marked Exs.P.1 to P.17 apart from marking MOs 1 to 7. After the closure of Prosecution evidence, the accused was examined under Section 313 Cr.P.C., in which he denied the incriminating evidence appearing against him. Accused did not choose to adduce any oral evidence on his behalf, however, got marked Exs.D.1 to D.3 on his behalf. After hearing the arguments of both sides and considering the entire evidence, more particularly the oral dying declaration made by the accused before PWs 2, 3 and 5 and also the two written dying declarations made

by the deceased before the Chief Metropolitan Magistrate and ASI, the learned Sessions Judge convicted the accused. Challenging the same, the present appeal came to be filed.

6) Heard the learned counsel for the appellant and the learned Public Prosecutor for the State.

7) The learned counsel for the appellant mainly submits that there is any amount of doubt as to the manner in which the dying declarations were recorded. According to him, the procedure contemplated under Rule 33 of Criminal Rules of Practice was not followed while recording the dying declaration. Insofar as the oral declarations made by the deceased are concerned, he would contend that all the witnesses, who spoke about the oral dying declaration, are interested witnesses and as such the same cannot be accepted.

8) The same is opposed by the learned Public Prosecutor.

9) A perusal of the evidence on record would show that in the oral dying declarations made before PWs 2, 3 and 5, the deceased has categorically stated the manner in which the incident took place. The dying declarations, both oral and written, are consistent with regard to the manner in which the incident took place. Even if the dying declaration recorded by the ASI, which is marked as Ex.P.5, is excluded from consideration as it is not in compliance with Rule 33 of the Criminal Rules of Practice, still the dying declaration recorded by the Chief Judicial Magistrate remains on record, which is in compliance with Rule 33 of the

Criminal Rules of Practice. It would be appropriate to extract the dying declaration recorded by the Chief Judicial Magistrate, the English translation of which is as follows:

“ Dying Declaration of CHOKKA AVVAMMA w/o.Ch.Joseph resident of : Pathuru Ward Tadepalli Mandal, Guntur District. Recorded by me in the presence of the Duty Doctor Dr.Arogyanath in ward No. Casualty Bed No.—of Government General Hospital, Vijayawada.

Received a requisition to record a dying declaration from the Medical Officer Dr.S.P.Naik of Government Hospital, Vijayawada at 8-30 A.M. and I at once proceeded to the Hospital and reached the same at 8-40 A.M.

I started recording the statement of patient-deponent in the presence of Duty Doctor Dr.Arogyanath designation : CMO and in the presence of my duty Attender. The doctors certified that the patient is conscious and coherent to speak. No other persons except myself, declarant, the duty doctor and my Attender is present.

I put the following simple questions to the declarant to elicit answers from her with a view to know her state of mind.

Q.1) What is your name?

Ans: Chokka Avvamma

Q.2) What is your Husband's name?

Ans: Joseph

Q.3) Where are you now?

Ans: In the Government Hospital, Vijayawada.

Q.4) Do you know that I am Magistrate?

Ans: I came to know by your saying.

Q.5) Are you in a state to say as to what happened?

Ans: I can say.

Patient is conscious, coherent and in fit state of mind through out my presence. (Sd) xx 22-9-09 CIVIL ASSISTANT SURGEON, GOVT. GENERAL HOSPITAL, VIJAYAWADA.

Q.6) What happened?

Ans: Today i.e. on 22-09-2009 in the early hours at 5 O' clock my husband was in fully drunken condition. For the purpose of taking liquor he always used to torture me for money.

Q.7) Then?

Ans: Today also in the same manner for money sake he tortured and beat me severely. Without stopping with that, he poured kerosene in the tin upon me and set fire to me. My entire body is burnt. Then he went out uttering as "if you die, there is no necessity to pay debt which is due". "Die you bitch". Later my son Abraham, my elder sister Yasoda brought me to this hospital in 108 Ambulance.

Heard when read over. It is proper.

LTI of Chokka Avvamma  
(affixed)

Patient is conscious and coherent and in fit state of mind through out my presence.

(sd/-) Dr.Arghanath  
22-9-2009

CIVIL ASSISTANT SURGEON  
GOVT. GENERAL HOSPITAL, VIJAYAWADA

The above statement is recorded by me and the same is read over to her and she admitted the same as true and correct. At the time of recording it except duty doctor and my attender none else present.

(sd/-) xxxx 9 A.M.  
22-09-2009 "

10) Thus, even if the statement recorded by the ASI is excluded, the dying declaration recorded by the Magistrate inspires the confidence in the mind of the Court. In the absence of any

reasons being pointed out by the appellant, as to why Ex.P.1, the D.D., should be disbelieved, the same can be safely relied upon to render conviction on the appellant. As seen from the above, in the said dying declaration, the deceased categorically stated the manner in which she sustained burn injuries. The said D.D. contains the endorsement of the doctor to show that the deceased was in a fit state of mind to make the declaration. That apart, the oral declarations made by the deceased before PWs 2, 3 and 5 are consistent with each other and there is no reason to disbelieve them. In fact, they are the natural witnesses, whose presence at the scene cannot be doubted. The suggestions given, do not deny their presence at the scene. Further, through the cross-examination of son of the deceased and accused i.e. P.W-3, it has been elicited that on the date of incident at about 2.00 A.M., when he was sleeping outside the house, he heard the cries of deceased and when he entered the house, he noticed the deceased in fire and accused was standing by her side. If really, the incident happened accidentally, as contended, the appellant would have tried to extinguish the flames. But the evidence of all the eye witnesses is to the effect that the accused made no effort to extinguish the flames. On the otherhand, the persons who gathered there made efforts to put off the flames. Therefore, not only the oral and written dying declarations made by the deceased, but also the evidence of P.W.3 coupled with the conduct of the accused, at the time of incident, establish his guilt beyond reasonable doubt. Hence, we see no ground to interfere with the findings arrived at by the trial Court, in convicting the accused.

11) Therefore, the Criminal Appeal is dismissed confirming the conviction and sentence rendered in Sessions Case No.184 of 2010 by the III Additional Sessions Judge, Guntur, vide judgment dated 11.08.2010 for the offence punishable under Section 302 of Indian Penal Code.

12) Miscellaneous petitions pending in this appeal, if any, shall stand closed.

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**C.PRAVEEN KUMAR, J**

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**A.V. SESA SAI, J**

23<sup>rd</sup> September, 2017  
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