

HON' BLE SRI JUSTICE S. V. BHATT
AND
HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL APPEAL No. 579 OF 2012

JUDGMENT (per Hon' ble Dr. Justice B. Siva Sankara Rao)

The Criminal Appeal is filed by the sole accused (Devarapalli China Venkata Swamy @ Samuel John) against the conviction judgment, dt.22.11.2011 in S.C.No.70 of 2011 passed by the learned 3rd Addl. Sessions Judge, Guntur, where he was charged for the offences punishable u/ secs.498-A and 302 IPC, pursuant to Cr.No.124 of 2010 of Ponnur Rural P.S. and from the investigation filed final report by the police and the learned committal Magistrate therefrom has taken cognizance for the offences supra in PRC No.22 of 2010 and on committal, the Sessions Division allotted the Sessions Case Number by taken on file and made over to the learned 3rd Addl. Sessions Judge Guntur, who after hearing and from prima facie material framed the charges on facts covering of the offences supra and after hearing from plea of innocence conducted full-fledged trial and from the evidence of P.Ws.1 to 18 with reference to Exs.P.1 to P.16 and MOs.1 to 4 viz.,-(P.W.1-Meka Punna Rao-brother of deceased, on whose Ex.P.1-report,dt.13.10.2010, besides Ex.P.6-death intimation, Ex.P.4-Medical intimation and Ex.P.5-statement of Devarapalli Vajramma(deceased) recorded by P.W.8-N.Venkateshwarlu-Head Constable of Nagarampalem P.S., Guntur, the SHO-Ponnur Rural-P.W.17-T.Venkateshwarlu, registered the Cr.No.124 of 2010, dt.13.10.2010 and issued Ex.P.15-express FIR and taken up

investigation; P.W.2-M.Pajaratnam is another brother of deceased; P.Ws.3 and 5-D.Nageswara Rao, D.Daisala@Yerrabbai, P.Ws.9 and 10 Sreeramaramulu and D.Vasantharao, whose statements were marked as Exs.P.2,3,7,8 in the cross-examination by the learned Public Prosecutor; P.W.4-K.Subbarao and P.W.6-M.Israyael-(the circumstantial witnesses); P.W.7-Duty Doctor-M.Sravani, admitted said Vajramma with injuries at about 2.30a.m. of 13.10.2010, and intimated under Ex.P.4 to the police outpost at GGH, Guntur and stated therefrom of P.W.8-N.Venkateswarlu-HC, outpost at GGH recorded Ex.P.5 statement of said injured Vajramma at about 8.10a.m. in the presence of P.W.7-Doctor Sravani and forwarded to Ponnur Rural PS, they also stated about Ex.P.6 death intimation of said Vajramma died while undergoing treatment at 10.15 a.m. of 13.10.2010 and same also by P.W.8 forwarded to Ponnur Rural PS; P.Ws.11 and 12-Ch.Bhaskara Rao and K.Pitchaiah witnesses to seizure of M.Os.1 to 4 under Exs.P.9 and 10-Mahazars from scene of offence; P.Ws.13 and 14-J.Koteswara Rao and A.Ankarao-witnesses to Ex.P.11-inquest; P.W.15-Dr.P.Chandra Sekhara Rao who conducted autopsy on the body of the deceased Vajramma covered by Ex.P.12-postmortem report of death is due to ante mortem 90% burn injuries, P.W.16-Smt. Dani Ruth-learned JFCM who went on Ex.P.13 requisition to the GGH, Guntur and identified the patient Vajramma with aid of Doctor and found she breathed last and declared as such as referred in Ex.P.14 proceedings; P.W.18-T.V.Patna swamy-Inspector of Police who based on Ex.P.15 FIR registered by P.W.17 supra took up investigation and filed final

report with reference to Exs.P.1 to P.16 of which Ex.P.10-is the arrest mediatorsnama and Exs.P.14 and 16 are the rough sketch of scene of offence and scene observation and from said incriminating material examined the accused under Section 313 CrPC and recorded his answers and from closure of prosecution evidence with the above, from no independent defence evidence let in by the accused and after hearing the arguments and from consideration by appreciation of the entire material on record; having found not guilty on Charge No.1 of the offence u/ sec.498-A IPC and acquitted u/ sec.235(1) CrPC and found guilty on Charge No.2 of the offence u/ sec.302 IPC and after hearing the accused on quantum of sentence, sentenced him as per Section 235(2) CrPC, with Rigorous Imprisonment for life and to pay fine of Rs.500/- with default sentence of six(6) months Rigorous Imprisonment and by giving set off of the period of remand.

2. It is the said conviction judgment impugned in the appeal with contentions in the grounds of appeal vis-à-vis the oral submissions of the counsel for the appellant/ accused that the trial Court's conviction judgment is contrary to law, weight of evidence and probabilities of the case, that the trial Court erred in convicting the accused only relying upon Ex.P.5-Dying declaration recorded by P.W.12-Head Constable, and the medical certificate shows the injured is not in fit state of mind. According to the post mortem report, there are no injuries in the palms but P.W.13 given an explanation that he took the right toe mark of the deceased as hands are completely burnt and that shows the Ex.P.2 was brought

into existence with due deliberations at a belated stage, that the explanation given by prosecution for not getting dying declaration recorded by the Magistrate as she reached after death of the deceased is unbelievable, that the learned Magistrate failed to see that the deceased was admitted in the hospital by 2.30A.M., P.W.7-duty doctor sent information to Magistrate immediately but there is no explanation as to why such long delay occurred in Magistrate reaching the hospital. There is no consistency between the versions of P.W.7 that the deceased was unconscious and P.W.6 that when he reached the hospital, the deceased was already dead. The learned Judge should have thrown out the entire case when he disbelieved the evidence of P.W.3-eye witness and thus sought for setting aside the conviction judgment by acquitting the accused/ appellant.

3. Whereas, submission of the learned Public Prosecutor on behalf of the State and the prosecution agency is that the trial Court's judgment is a reasoned one to its every conclusion by well-appreciation of the facts with reference to law having fresh in mind by recording the evidence in proving guilt of the accused beyond reasonable doubt and as such for this Court while sitting in appeal, there is nothing to interfere and hence to dismiss the appeal.

4. Heard both sides and perused the material on record.

5. Before going further into the factual matrix, in appreciation of evidence, it is the settled law that, minor contradictions or inconsistencies cannot be used to jettison the

evidence in its entity. The rule is that, corroboration cannot be expected with mathematical niceties in criminal cases. It is also the settled law that, discrepancies due to normal errors of perception and observation should not be given importance. It is also the settled law that mere lapses in investigation cannot be of any help to the accused unless prejudice shown caused to him. Further, evidence of a witness can be partly rejected and partly accepted for the doctrine of *falsus in uno falsus in omnibus* does not apply in India and it is the duty of the Court to separate the grain from the chaff in arriving truth from the reliability of the version of a witness by ignoring any minor discrepancies, omissions, exaggerations and embellishments and even evidence of a hostile witness cannot be discarded as a whole but for to consider where it corroborates the other evidence by appreciation of credibility of the witness to that extent in arriving at truth by calling him into aid the experience of the Court in men and matters in different cases in evaluating by excluding exaggerated versions rather disbelieving evidence of the witnesses altogether for the reason even major portion of evidence of a witness found to be deficient where in case residue is sufficient to the relevancy and admissibility, it is the duty of the Court to separate the grain from the chaff, otherwise administration of criminal justice would come to a dead stop and it cannot be overlooked that witnesses just cannot help in giving embroidery to a story, however, truth is the main, as held in Sukhdev Yadav Vs. State of Bihar¹, State of

¹ (2002) 1 ALD CrI.36 SC

Maharashtra Vs. Tulshiram Bhanudas Kamble² and Paulmeli Vs. State of Tamilnadu³. The law in appreciation of evidence from the fundamental principle is that no one can incriminate himself but for truth. It is also the principle to draw the ordinary presumption as laid down in *State of Punjab Vs., Harisingh*⁴ that, *a witness is speaking under an oath is truthful unless and until it is shown from test of cross-examination and with other attending circumstances brought on record to be unbelievable or untruthful and it should not be assumed that the witnesses are untruthful generally; unless, it is proved that they are telling the truth.*

6. From the above, coming to the further factual matrix of the case on hand from the entire material including with reference to the respective submissions as gleaned and perused in nutshell is as under:-

a). The marriage of the deceased Devarapalli Vajramma was performed with the accused about 25years back and they were blessed with two sons. Since seven or eight years prior to the death of the deceased, the accused addicted to liquor and started demanding money for liquor and the deceased unable to bear his torture used to visit her parental home. While so, on 12.10.2010 the deceased got money from Spandana firm and when the accused asked the money for purchasing liquor, she refused to give. On that the accused kept quite thinking his son P.W.3-Nageshwara Rao, would get frightened and after he slept, the accused quarreled with the deceased again saying that he would take money even by

² (2007) AILD 169 (SC) (DB)

³ (2014) 13 SCC 90

⁴ (AIR 1974-SC-1168)

stabbing and setting fire to her by pouring kerosene and on 13.10.2010 at about 1.30 a.m., the accused poured kerosene on the deceased and while she was running anticipating danger, he threw match stick on her and set ablaze, as a result flames spread all over her body and on hearing her cries, her son-P.W.3-Nageshwara Rao got up and saw his mother caught in flames and raised cries. The neighbours rushed there and tried to put out the flames by covering gunny sheets and later shifted to GGH, Guntur in 108 ambulance. On information given by P.W.3 to P.W.1-defacto-complainant-brother of the deceased to come to hospital and therefrom, he along with his mother, brother-P.W.2 and sister-in-law rushed to hospital, and found the deceased was present in casualty ward with severe burn injuries over her body and when they asked the deceased she informed them about the occurrence. While undergoing treatment she died at 10.50 a.m. and P.W.1 went to Ponnur Rural P.S. and presented report to P.W.17 on 13.10.2010 at 5.00 P.M., and by that time, P.W.17 received the statement of deceased simultaneously which was recorded by P.W.8 on 13.10.2010 at 8.10 a.m. along with death intimation of deceased and P.W.17 registered a case in Cr.No.124 of 2010 for the offences supra and P.W.18 took up investigation by examined L.Ws.1 to 9 and recorded their statements, visited scene of offence in the presence of L.Ws.14 and 15 and seized 5 liters kerosene tin, blue colored burnt small blouse pieces, used match sticks, and burnt hair of deceased under cover of Mahajar attested by L.Ws. 14 and 15, visited to hospital and held inquest over the

deadbody of the deceased on 14.10.2010 in the presence of L.Ws.16 and 18, P.W.15 conducted autopsy over the deadbody of the deceased and issued postmortem certificate Ex.P.12 opining that the death was due to burns. P.W.18 arrested the accused on 20.10.2010 and sent him for remand and after completion of investigation filed the chargesheet.

b). The trial Court, from the evidence on record supra by its appreciation, made the following findings:-

i). The trial Court observed that PW.1-Meka Punna Rao—brother of the deceased stated all the above facts and deposed that police examined him and stated that his sister used to inform them that the accused used to quarrel with her for her not providing money for drinking alcohol and also the allegation of his sister was having illicit intimacy with some others. In the cross examination of PW-1, it is elicited that the elder son of Vajramma is now aged about 20 years and the accused and deceased were not having any properties other than residential house. He denied the suggestion that the deceased was having short temper and frequently used to quarrel with the accused and come to his house frequently. He also stated that he does not know whether son of deceased developed illicit intimacy with the daughter of one Adam and Jyothi who are neighbours of deceased and in that connection he was caught red handed by them and tied by those persons and the accused convinced the neighbours and got his son released and proposed the marriage of his son with the daughter of Adam for which the deceased did not accept and on that deceased

challenged to commit suicide in the event of said marriage takes place. He denied the suggestion that his sister committed suicide due to short temper. He also stated that when enquired PW-3 Nageshwar Rao, he informed him that deceased was suffering pain in her heart and cannot talk over phone with him. Thus, the trial Court held that the evidence of PW-1 is quite natural and does not suffer from any infirmity.

ii). The evidence of PW-2 Meka Raja Ratnam-another brother of the deceased shows that he deposed the same facts that of PW-1. In his cross examination nothing is elicited.

iii). PW-3-D.Nageshwara Rao aged about 11 years, son of the accused and deceased did not support the case of the prosecution. On the other hand, he stated that Nanne was caught red handed and tied by the neighbours and in that connection his father-the accused settled the matter with neighbours and on that only his mother proclaimed to commit suicide and in that night his father went in search of Nanne and during that time his mother and himself were in the house and all of a sudden he heard some sounds and found his mother in flames and the neighbours put off the fire. He informed the same over phone to PW-1 and after his mother was shifted to Government hospital, she died. The PW-3 is a tender aged boy and son of the accused, his evidence cannot be relied as he is being tutored witness but only his earlier statement-Ex.P.2 to the Police is having some importance.

iv). The evidence of PW-4-Kancherla Subba Rao-neighbor stated that there are some minor disputes between the accused

and the deceased and on 12-10-2010 at about 1:30 midnight on hearing cries, he came out of the house and found the deceased in flames and came to know about her death. He further stated that he did not see the accused at that place and when enquired PW-3 stated that the accused went away from that place just before the time of the incident and they shifted injured to hospital in ambulance. In his cross examination nothing is elicited. His evidence is not of much importance except speaking about the habit of alcoholism and PW-3 stating to him that his father went away just before the incident.

v). PW-5-Yerrabbai turned hostile and not supported prosecution case.

vi). PW-6-Mukiri Israel depose that there were some petty disputes between accused and the deceased since 7 years and the deceased used to visit her parental home frequently.

vii). The evidence of PW-7-Doctor M.Sarvani-Casualty Duty Doctor, GGH, Guntur stated that on 13-10-2008 at 2:30 AM, the deceased was admitted in their hospital with burns and at 8:10 AM the Head Constable came and recorded Ex.P-5 statement of deceased and the fingers of deceased were completely burnt. The right toe impression was taken on Ex.P-5 by Police after read over the contents and after admitting the same to be correct. On the same day at 10:15 AM., she died in the hospital and she sent Ex.P.6-death intimation to the police. In her cross examination, she admitted that she sent intimation to the Magistrate about the admission of the deceased with burn injuries and the Magistrate

visited the hospital by which time the deceased Vajramma was unconscious. She also sent intimation to the police under Ex.P-4. She also admitted that she knows that in medico legal case, she has to intimate to the police as well as to the Magistrate immediately and that there is an outpost Police Station attached to their hospital and that the Magistrate who is a lady came to the hospital at 8:30 or 9:00 AM., and do not record the statement of Vajramma as the patient was unconscious and that their hospital is having person and conveyance to communicate the intimation round the clock and that in the endorsement of Ex.P-5 she did not put the time under her signature. She denied the suggestion that Magistrate came to the hospital at 2:30 AM., after the intimation and could not record the statement of deceased as she was unconscious and also denied the suggestion that the deceased did not give any statement under Ex.P-5 and police did not record Ex.P-5 and she is accommodating the police. But absolutely there is no motive suggested to PW-7. The evidence of PW-7 cannot be suspected mere on a ground that the Magistrate did not come till patient is unconscious that is later to the recording of Ex.P-5 by the Head constable.

viii). It is the evidence of PW-8-N.Venkateswarlu, Head Constable that he was in charge of O.P., Police Station, GGH., Guntur from 17-4-2010 to 5-5-2011. He recorded the Ex.P-5 statement of Devarapalli Vajramma in the GGH., Guntur, The duty Doctor P.W.7 endorsed on Ex.P-5 the mental condition of the deceased. As the fingers of Vajramma were burnt, he took on

Ex.P.5 a right toe impression. He intimated about admission of Vajramma to Ponnur Rural P.S., through VHF set. In his cross-examination, he sent the Constable along with Exs.P.4 to P.6 specifically to dispatch the same to Ponnur P.S., at about 2-00 P.M., on that day and he also stated that at present he is not having any diary, which contain the details of his work during that period of 8-00 A.M., to 2-00 P.M., that about 20 intimations from the hospital in between 8-00 A.M., every day generally comes to him and that he has not mentioned the time of dispatch of Exs.P.4 to P.6 on his endorsement on the back of Ex.P.4. He also stated that he does now know whether any Magistrate visited GGH., to record the statement of Vajramma or not. He also admitted that Out Post P.S., is at a distance of 50 yards from casualty in the hospital and the hospital is full fledged independent police station with all facilities. He denied the suggestion that after deliberations and consultations with Ponnur C.I. till 5-00 P.M., they fabricated all the documents including Exs.P.4 to P.6 and he is deposing falsely. As per the evidence of P.W.8, he received the intimation at 8-00 A.M., from duty casualty. Though P.W.7 deposed that at 2-30 A.M., Vajramma is admitted in their hospital and she intimated the same to the police. Even if the police intimation is given a bit late or even if P.W.8 recorded the statement of Vajramma at about 8-00 A.M., that alone is not a ground to suspect the veracity of either PW.7 or P.W.8 evidence. This being a case of burns and in GGH., as stated by P.W.8 nearly about 20 intimations are received from 8-00 A.M. to 2-00 P.M., to

the Out Post, Police may not be much diligent enough to immediately record the statement of the victims in MLC, which can not be excusable but on this ground alone the case of prosecution cannot be thrown out. Absolutely there is no motive for PW.8 to falsely record Ex.P-5 and fabricate the same if he has not recorded the statement of Vajramma in the hospital as stated by him. In the absence of any motive the evidence of PW.8 is accepted. It is also well settled law that the evidence of police officer is also to be appreciated equivalently as of any other witness.

ix). PWs-9 and 10 turned hostile and did not support the case of prosecution.

x). PW-11 deposed that Ex.P-9 and 10 (Scene observation report and arrest mediatorsnama) contain his signatures and its contents are not taken before him and Mo's.1 to 4 are not seized by police in his presence from the house of the accused but the said evidence of PW.11 is not of much importance.

xi). The PW-12 stated that he signed on Exs.P.9 and P.10 but he disowned the contents.

xii). The evidence of PW-13-T.Koteswar Rao, shows that police held inquest over the dead body of the deceased and he attested the Ex.P-11 inquest report and PW-14-A. Anka Rao, deposed that he was also present when police held inquest along with PW-13.

xiii). The evidence of PW-15-Doctor P.Chandra Shekar Rao—Assistant Professor of forensic medicine GMC., Guntur that on 14.10.2010, he conducted autopsy on the deadbody of Vajramma

and found burnt injuries. About 90% of ante-mortem, dermo epidermal burns present over the body except part of both the legs, foot, scies, palms and vulva and opined that Vajramma died due to burns and issued Ex.P.12-Post mortem report. In his cross-examination, he stated that the palm of both hands of Vajramma are without any burns. When questioned by the Court, he also stated that the burns of Vajramma are due to self-pouring of kerosene and the nature of burns are extensive burns on the front side as well as on the back side, face, neck, scalp and also the absence of burns on palms and on the part of the legs of Vajramma.

xiv). It is the evidence of P.W.16-Smt.R.Danie Ruth, learned Magistrate that on 13.10.2010 at 10.35A.M., she received Ex.P.13-requisitio from Duty Doctor, GGH, Guntur and reached hospital at 10.45A.M. and found Vajramma died by then.

xv). The evidence of P.W.17-T.Venkatshwarlu, the Sub Inspector of Police, that on 13.10.2010, he received Ex.P.1 from P.W.1 and registered it as a case in Cr.No.124 of 2010 of Ponnur rural P.S u/ sec.302 and 498-A IPC and issued FIR to all concerned.

xvi). It is the evidence of P.W.18 T.V.Ratna Swamy, C.I. of Police, about his continuation of investigation and filing of the chargesheet against the accused.

xvii). It is the contention of the learned counsel for the accused that Vajramma committed suicide and the evidence of P.W.3 her own son reveals that the accused is not present at the time of incident and there is some delay in intimation of admission

of Vajramma to the Police at GGH, outpost and the intimation as well as the statement of Vajramma recorded by P.W.8 under Ex.P.5 reached to Ponnur police belatedly and the learned Magistrate was intimated by the Doctors to record the Dying Declaration at 10.35A.M., would go to show that Vajramma died even by 2.30A.M. and all the police personnel foisted this case after deliberations but the learned Sessions Judge has not accepted the contention of the learned counsel for the accused because there is no motive for the police or the Doctors to falsely implicate the accused and accommodate the false preparations of Ex.P.5 by P.W.8 and falsely implicating the accused. A perusal of Ex.P.5 reveals that the accused poured kerosene and set fire to Vajramma which statement of Vajramma is admissible u/ sec.32(1) of Indian Evidence Act, as it relates to the cause of her death. P.W.8 categorically deposed that statement of Vajramma is recorded by him in the presence of P.W.7-the Duty Doctor. The evidence of P.Ws.1 and 2 also corroborated the statement of deceased Vajramma given to P.W.8 under Ex.P.5.

xviii). A perusal of Ex.P.5 reveals that it is a statement of Vajramma recorded by P.W.8 and according to it, Vajramma stated to him that on 12.10.2010 at night 1.00 A.M., her husband poured kerosene and set fire and when she raised cries, the neighbours with the help of ambulance shifted her to the hospital and when the police came to her, she stated to the police that due to suspecting her, the accused is harassing her since some period and poured kerosene and set fire to her and as fingers of her hands are

burnt, the right toe impression is taken on the statement. Ex.P.5 also contains the endorsement of P.W.7 to the effect that the patient is conscious and coherent while recording the statement. Thus, the statement covered under Ex.P.5 clearly shows suspecting the fidelity of Vajramma, accused set fire after pouring kerosene on her.

xix). The learned counsel for the accused seriously contended that Vajramma was not in fit condition to give any statement as she was suffering with 90% of the burns and Ex.P.5 is foisted by the police. But I am unable to accept this contention. It is settled principle that a person who is on the death bed reaching God, may not reach the God with a lie in her mouth. This is the principle on which sanctity is given to the dying declaration for its truth. Absolutely there is no motive for Vajramma to give a false statement against her husband, if really the accused has not caused this incident. If really Vajramma did not give any statement, there is no need for P.Ws.7 and 8 to falsely speak that Vajramma gave that statement. The police has no motive to falsely implicate innocent accused person in this murder case. The evidence of P.Ws. 1 and 2 clearly corroborated the statement of Vajramma on material aspects. It is settled law that if the court do not doubt the truth or suspect the surrounding circumstances, even the statement of a deceased person as to the cause of her death is sufficient enough to convict the person. Here in this case, the statement of Vajramma is corroborated by the evidence of P.Ws.1

and 2 and there is no necessity for P.Ws.1 and 2 to falsely implicate the accused.

xx). As such, in view of the above findings, the learned Sessions Judge, opined that the prosecution proved that the accused poured kerosene and set fire to Vajramma.

xxi). Further held that the oral evidence is to the effect that the accused poured kerosene and set fire to Vajramma. The medical evidence, which is the opinion of the doctor, suggests that the injuries on Vajramma reveal the possibility of self-pouring kerosene and setting fire. As such, the medical evidence is not ruling out the possibility of the accused pouring kerosene and setting fire to Vajramma and as such, it cannot be said that the oral evidence is contradicted by the medical evidence and in this regard referred the expression of the Apex Court in AIR 2011 SC 2552 in Bhajan Singh @ Harbhajan Singh Vs. State of Haryana, and held that it cannot be concluded that the Medical evidence is contrary to the ocular evidence given by the P.Ws.1 and 2 and the statement of the deceased Vajramma to P.W.8 covered under Ex.P.5 and thereby the accused is liable for the offence u/ sec.302 IPC including from the medical evidence.

7). From the above, in deciding the appeal by sitting against the legality and correctness of the Trial Court's conviction judgment and the sentence awarded and referred supra, the following points arise for consideration:

- i). whether the prosecution case of the deceased-Vajramma was killed by her husband-the accused by pouring kerosene and setting ablaze is not proved beyond reasonable doubt?

iii). If so, whether the trial courts conviction judgment finding the accused appellant guilty for the offence u/ sec. 302 IPC charged as proved is unsustainable and requires interference by this court sitting in appeal by re-appreciation of the facts and law to set aside the findings of conviction and sentence respectively?

iii). To what result?

8). Point Nos.1&2: The fact that said Devarapalli Vajramma (deceased), wife of the accused-Devarapalli Samuel John @Chinna Venkataswamy of Brahmanakodur village of Guntur district, while they were residing together at the matrimonial home, sustained kerosene burn injuries on 13.10.2010 early hours at 1.00 a.m., and was shifted in 108 ambulance and admitted at 2.30 a.m. or so on that date at the Government hospital, Guntur as inpatient and while undergoing treatment she was succumbed to the burn injuries at about 10.15 a.m. or so is not in dispute. Evidence of PW7-Dr.M.Sravani, the duty doctor of the hospital, Guntur; who issued the Ex.P4-MLC intimation to the outpost police of said Devarapalli Vajramma (deceased), wife of Devarapalli Samuel John @Chinna Venkataswamy (accused) of Brahmanakodur village of Guntur district admitted at 2.30 a.m. with burn injuries, brought by T.Samrajyam and the alleged cause is burns by pouring kerosene on her person is deposed by P.W.7. She further deposed that pursuant to said Ex.P.4-intimation the outpost HC came to the casualty ward at about 8.10 a.m. and in presence of P.W.7 recorded the Ex.P.5 statement of said Vajramma who is conscious and in fit state of mind and she being the doctor present there endorsed the same and as Vajramma's fingers were burnt the right toe impression of her was taken on the Ex.P.5 statement of

Vajramma, after said Vajramma from the contents read over admitted as correct. P.W.7 further deposed that said Vajramma while undergoing treatment died at the hospital at 10.15 a.m. and she sent Ex.P.6 death intimation to the police. P.W.1 brother of said Vajramma by name Punna Rao deposed that after midnight of 12.10.2010 which is at about 1.30 a.m. of 13.10.2010 he received phone call from son of accused and Vajramma by name Nageshwara Rao stating Vajramma was taken to Guntur Government hospital and thereby he along with his brother P.W.2 Pajaratnam etc., went to the hospital by 7.00 a.m. or so and found Vajramma with burn injuries and on enquiry Vajramma informed that there was a quarrel between her and the accused and the accused therefrom poured kerosene available in a tin in her house on her and while she was coming out of the house the accused set her ablaze and for her hue and cry her son Nageshwar Rao P.W.3 woke up and neighbours also gathered and put out the fire and she was shifted in 108 ambulance to Government hospital and Vajramma before 11.00 a.m. died in the hospital and he presented police report-Ex.p.1 and stated the facts to police. P.W.2 Pajaratnam deposed in corroboration to P.W.1 stating injured Vajramma from their enquiry when reached hospital on found with burn injuries about the cause, stated by her of accused poured kerosene on her and set fire. The said statement of Vajramma as to cause of her death orally made to P.Ws.1 and 2 is within the meaning of dying declaration u/ sec.32 of the Indian Evidence Act. Apart from it, what P.W.7 deposed of Vajramma while under

treatment in the presence of P.W.7 as duty doctor, from the statement of her recorded by the outpost HC P.W.8- Venkateshwarlu stated as in Ex.p.5 of accused poured kerosene and set her ablaze and the same also a written dying declaration of Vajramma recorded by P.W.8, though from the Ex.P.4 intimation to the police and from the Ex.P.13 requisition from hospital received by P.W.16 the learned Magistrate by 10.35 a.m. and reached the hospital by 10.45 a.m. and identified Vajramma with the aid of the duty doctor she found Vajramma died as declared by the doctor as referred in Ex.P.14 and in the cross-examination of the learned Magistrate by accused she stated that Ex.P.13 reveals that the same was prepared by doctor at 8.35 a.m. There is nothing to disbelieve the said evidence of the Magistrate or P.Ws.7 and 8 besides 1 and 2 in this regard. In the cross-examination of P.W.7 in this regard, she deposed that he sent the intimation to the Magistrate (Ex.P.13) and the Magistrate visited the hospital therefrom and by then Vajramma was unconscious and she sent intimation of admission of Vajramma to the police under Ex.P.4 and therefrom the police came and recorded her Ex.P.5 statement and the Magistrate from the intimation visited hospital by 9.00 a.m. however did not record statement of Vajramma as in unconscious stage. P.W.7 denied the suggestion of even by 2.30 a.m. after admission Magistrate was intimated and visited and left as Vajramma was unconscious and Vajramma was not in a condition to give statement to P.W.8 under Ex.P.5. She categorically deposed of the patient was conscious and in good state of mind by

the time ex.P.5 recorded by P.W.8 and denied the suggestion of obliged P.W.8 so to endorse on Ex.P.5 and P.W.8 also deposed the same and in his cross-examination stated that after death intimation of Vajramma under Ex.P.6 he forwarded it along with Ex.P.4 hospital intimation, Ex.P.5 statement recorded by him of Vajramma through constable by dispatch at 2.00 p.m. or so though earlier intimated over VHF set or not he cannot say and he denied the suggestion of Ex.P.5 is a fabricated one after death of Vajramma by influencing the P.W.7 doctor. He deposed of distance between Ponnur to Guntur is about 30 k.ms. with transport though he cannot say the frequency of the transport. P.W.2 denied the suggestion of Vajramma did not state to him and his brother P.W.1 in the hospital for their enquiry on 13th morning of accused poured kerosene and set her ablaze and he is deposing falsely. Coming to P.W.1's cross-examination by accused, he deposed that 20days prior to the incident their sister Vajramma came to their house last time and earlier she was talking over phone now and then and they did not raise any panchayat about the accused addicted to vices and harassing her for money to meet his vices and denied the suggestion of Vajramma was a short tempered woman or she was quarrelling with accused unnecessarily frequently or their son Nanne developed illegal intimacy with daughter of Adam the neighbours to accused and they caught hold of him and bet said Nanne and Vajramma or accused convinced them and cause him released and accused postponed to perform marriage of Nanne with daughter of Adam

since Vajramma was not accepting by challenged to commit suicide for that proposal and she committed suicide therefrom being short tempered. He further deposed that by the time they reached the hospital on 13th morning some police was present. He deposed that Ex.P.1 was prepared by somebody at police station and he signed and presented to the police therefrom on that day. He denied the suggestion of Vajramma did not give any statement to P.W.1 much less against accused and accused is falsely implicated by them out of suspicion including in Ex.P.1 report. The statement of Vajramma recorded by P.W.8 at about 8.10 a.m. on that day and certified by P.W.7 the duty doctor covered by Ex.P.5 which is a dying declaration clearly speaks that after midnight of the previous day i.e. at about 1.00 a.m. of that day her husband-the accused poured kerosene on her and set fire and she raised cries and the neighbours gathered and she was shifted in ambulance to the hospital and as P.W.8 asked she stating the fact. She also deposed that her husband was harassing with suspicion since sometime and he poured kerosene and set ablaze and the facts stated by her are correct since read over and put her left toe impression saying the fingers after right hand burnt. The said dying declaration given by said Vajramma (deceased) against the accused under Ex.P.5 first in point of time after Ex.P.4 intimation showing the burns caused by pouring kerosene on her since not naming the accused, are corroborating also from the evidence of P.Ws.8 and 7 and further from what said Vajramma stated to P.Ws.1 and 2 of the accused poured kerosene and set her ablaze are corroborating in one line to

place reliance thereon, leave about by the time the Magistrate from her evidence came to the hospital after received Ex.P.13 intimation Vajramma breathed last and could not record her dying declaration, leave about earlier even she came at about 9.00 a.m. or so from what P.W.7's evidence indicating if any pointed out by accused to consider therefrom, that does not mean few minutes earlier to it even she was unconscious much less by the time of 8 to 8.30 a.m. her dying declaration given under Ex.P.5 to P.W.8 and her say orally as to the cause of her death to her brothers P.Ws. 1 and 2. Even taken for arguments sake from what P.W.15-doctor P.C.S.Rao who conducted autopsy on the body of Vajramma on 14.10.2010 at about 12.45 p.m. onwards and issued Ex.P.12 postmortem report from what he examined and found of 90% ante mortem dermo and epidermo burns present over the body of the deceased except part of both the legs, feet, soles, palms and vulva and scalp of hair here and there and her death was due to the burn injuries, even taken from cross-examination by accused of palms of both hands of Vajramma are without burn injuries, he did not speak of fingers are with no burn injuries and he did not say either in the chief-examination or in the said cross-examination of entire palm and fingers of forehand are with burn injuries for what he stated of palm is not with burn injuries in cross-examination does not mean fingers are not with burn injuries that too, when in the chief-examination categorically stated of except palm etc., the entire other body portion is with burn injuries to say including the fingers. Thus, the contention of impossible to believe the evidence

of P.Ws.7 and 8 taking toe impression on Ex.P.5 of Vajramma from the say of her of fingers are with burn injuries of the right hand thereby could not put the thumb impression to belie, is untenable and baseless and therefrom nothing to belie truth of Ex.P.5 and version of the deceased as to cause of her death covered by Ex.P.5 to P.W.8 before P.W.7 that what she stated even to P.Ws.1 and 2 supra of it is in the hands of the accused who poured kerosene and set her ablaze she sustained the burn injuries. There is nothing to show that the accused made any attempts to put out the fire immediately as had it been, she could not sustain such a huge burn injuries over the body and it is not shown of he admitted her in the hospital much less by any suggestion to the above witnesses to that extent.

9). From this now coming to the evidence of son of the deceased and accused by name Nageshwara Rao- miner of 11 years-P.W.3 that the accused never as if consumed alcohol and never as if quarreled with the deceased and as if his brother Nanne loved neighboring girl and was caught hold of and there was a dispute from neighbours beat him and the deceased and accused asked about her interference and settled with neighbours from which as if for no reason the deceased wanted to commit suicide and as if in that night of 12.10.2010 the accused went in search of the elder son Nanne and out of the house and in his absence when P.W.3 and deceased were in the house the deceased was found in flames all of a sudden and he heard sounds and neighbours put out the fire and he telephoned to P.W.1 about she was shifted to

hospital. The version of P.W.3 is quite unbelievable of as if never there was any quarrel between the wife and husband as if never accused consumed alcohol and as if the deceased all of a sudden set ablaze herself by self-immolation which he woke up on hearing sounds and noticed and as if accused was out of house. This clearly shows he was tutored and introduced as an afterthought explanation without any suggestion to P.Ws.1 and 2 of accused was out of the house, as rightly concluded by the trial Court of said evidence with no credence. What further introduced from P.W.4 of on hearing cries being a neighbour he came out of the house and noticed Vajramma in flames by raising cries and when enquired P.W.3 about accused he stated of went away from that place just at the time of the incident. This P.W.4 evidence belies what P.W.3 stated even from said inconsistency to not to rely both of them in this regard for no credibility to their versions in this regard. P.W.6 deposed about Vajramma is his niece and there were petty disputes between accused and Vajramma and she was coming therefrom to her parents house and they were convincing and sending for marital life with accused and he denied the suggestion in the cross-examination by accused of deposing falsehood or there are no talking terms between the two families and does not know anything.

10). Even P.W.11 did not support about the seizure of M.Os. 1 to 4 under Ex.P.9 and P.10 panchanamas. It is only a seizure and no search involved and the same is incriminating material in relation to the crime and once the accused not even disputing of

said Vajramma his wife was suffered burn injuries at their house with version of she herself poured kerosene and set ablaze at their house. The seizure no way to be disbelieved even he did not support the version so also P.W.12 once deposed by the Investigating Officer-P.W.18. So also regarding the Ex.P.11 inquest deposed by P.W.18 and supported by P.W.13 and 14.

11. Thus from the above evidence, once it clearly establishes that the accused set ablaze his wife Vajramma by pouring kerosene on her at his house after midnight of 12/ 13.10.2010 and from her cries he fled and neighbours gathered and admitted in hospital and she stated before the duty doctor covered by Ex.P.4 of not self-immolation but poured kerosene on her and set ablaze though not named the accused therein and from that intimation, under Ex.P.5 at 8.10 a.m. P.W.8 outpost HC in the presence of duty doctor P.W.7 recorded the dying declaration and same is corroborating with reference to Ex.P.4 supra version of the victim to the duty doctor and also stated by the victim to her brothers P.Ws.1 and 2 who deposed the same and it is the accused in abscondance having set her ablaze this cumulatively establish beyond reasonable doubt with reference to the dying declaration of accused set her ablaze by poured kerosene on her in order to kill her and thereby the trial court was right in its conclusion in finding the accused guilty as he killed by pouring kerosene and set her ablaze.

12). Once such is the case, abscondance of the accused having poured kerosene and set ablaze of his wife while they were in the house by not making attempts to save her and no

explanation from him of the facts with in his exclusive knowledge for burden lies on him u/sec.106 of the Indian Evidence Act at least to draw adverse inference against him and of his conduct in this regard also with reference to Section 114 of the Evidence Act, the trial Court is right in its conclusion and for this Court while sitting in appeal there is nothing to interfere with the findings of the trial Court of the charge is proved against the accused as guilty and on the sentence passed against him.

Point No.3:

13). Accordingly and in the result, the appeal filed by the accused-convict-appellant is dismissed by confirming his conviction and sentence passed by the trial court having been found guilty for the offences punishable under Section 302 I.P.C., on the charge under Section 235(2) Cr.P.C. as proved is nothing to interfere.

Consequently, miscellaneous petitions pending in this Criminal Appeal, if any, shall stand closed.

S.V. BHATT, J

Dr. B.SIVA SANKARA RAO J,

Date:25.11.2017

VVI