

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE SHAMEEM AKTHER**

CRIMINAL APPEAL NO.279 OF 2011

J U D G M E N T

(Per Sri Justice Sanjay Kumar)

Kanagala Venkata Rama Lakshmi Kalyani @ Kalyani, a young woman aged 30 years, died at the Government General Hospital, Vijayawada, at 00.20 hours on 24.12.2007 due to burns. Shaik Khan was charged with causing her death, by pouring petrol on her and setting her ablaze on 23.12.2007 in the afternoon, in Sessions Case No.310 of 2008 on the file of the learned I Additional Sessions Judge, Krishna at Machilipatnam. He was also charged with house-trespass in order to commit an offence punishable with death. By judgment dated 01.03.2011 passed therein, the Sessions Court held him guilty on both charges and convicted him under Sections 302 and 449 IPC. He was sentenced to imprisonment for life and payment of a fine of Rs.500/-, in default of which he was to suffer simple imprisonment for one year, for his conviction under Section 302 IPC and to rigorous imprisonment for ten years apart from paying a fine of Rs.500/-, in default of which he was to suffer simple imprisonment for one year, for his conviction under Section 449 IPC. Aggrieved thereby, he is in appeal before this Court under Section 374(2) CrPC.

The charges framed by the Sessions Court against the appellant/accused read as under:

Firstly:- That you Shaik Khan, on the 23rd day of December 2007 at about 3-30 p.m., in the house of the deceased situated at Nehru Nagar, Nandigama, where the deceased and her husband are residing, committed house trespass by entering into the said house used as a human dwelling with the intent to commit an offence punishable with imprisonment for death or life to wit. To commit murder of the deceased Kanagala Venkata Rama Lakshmi Kalyani @ Kalyani, and that you thereby committed an offence punishable U/s 449 of the Indian Penal Code and within my cognizance.

Secondly & lastly:- That you, Shaik Khan, on the aforesaid date, time and place as mentioned in Charge No.1, did commit murder by intentionally (or knowingly) causing the death of Kanagala Venkata Rama Lakshmi Kalyani @ Kalyani, by pouring petrol on her and set her ablaze since she refused to have fulfil the ill desire of you, and that you thereby committed an offence punishable Under Section 302 of Indian Penal Code and within the cognizance of Court of Session.'

The appellant/accused however denied the charges and claimed to be tried. During the trial, the prosecution examined 15 witnesses and marked 26 exhibits in evidence. The defence did not adduce any oral evidence but marked Exs.D1 and D2, portions of the statements of P.Ws.3 and 7 respectively, recorded under Section 161 CrPC. Case properties were shown as M.Os.1 to 6.

Salient points emerging from the evidence may now be noted:

P.W.1, the husband of the deceased, stated that he was a resident of Nandigama; that he worked as a teacher and that the accused was his friend. He married the deceased in the year 1999 and they had a daughter, Dwarakamai (P.W.3). The deceased was his second wife and he had divorced his first wife through Court. He worked at Konayapalem School and Konayapalem was at a distance of ten kilometres from the school at Nandigama. He used to leave his house at 8.00 AM and return home at about 4.00 or 4.30 PM after attending the school. On 23.12.2007, he left his house at about 1.00 PM after his meal and returned at about 4.00 PM. At that time, he found a 108 ambulance and the public in front of his house. His wife was with burn injuries and was being shifted into the ambulance. She had burn injuries all over her body and while she was being boarded in the ambulance, he questioned her as to what had happened. She recognized his voice and intimated to him that the accused came to their house, pulled her gold chain from her neck, poured petrol and set fire to her. She also told him that the accused

committed the said acts as she had asked him not to come to their house. P.W.1 said that the accused was a motorcycle mechanic and as he owned a motorcycle, he used to approach the accused for his motorcycle repairs and thereby, they became acquainted. As they were friendly with each other, the accused used to visit their house frequently during his presence and absence also. P.W.1 said that in the year 2005, he met with an accident and was admitted in the hospital. He stated that he borrowed money from the accused to meet the medical expenses and while he was in the hospital, the accused used to bring the deceased and their child to the hospital by his vehicle. P.W.1 admitted that he used to borrow money from the accused and, at times, he used to lend money to him also, when he was in need. He admitted that at the time of the accident, he had to pay a sum of Rs.5,000/- to the accused. P.W.1 stated that his brothers, P.Ws.4 and 5, his neighbours, P.W.6 and his wife, Devineni Manohari (L.W.8), P.W.7 and P.W.9 informed him of the visits of the accused to his house during his absence, which was causing ill-repute and that rumours were spreading in the town as to the illicit intimacy between the accused and his wife. P.W.1 said that he then asked the accused not to come to his house during his absence and also intimated to his wife about the consequences of the visits of the accused during his absence. He said that his wife also asked the accused not to visit the house during his absence. He said that just about one week or ten days prior to the incident, she asked the accused not to visit the house during his absence. He said that his injured wife was shifted to Nandigama Government Hospital by the ambulance. He said that at the time of the incident, his daughter was also present. After commencement of treatment at about 5.30 PM, the Sub-Inspector of Police, Nandigama, visited the hospital. His wife

was suffering from pain and was screaming in view of the burn injuries. Therefore, only his statement was recorded. P.W.1 confirmed that Ex.P1 was his report and carried his signature. He affirmed that by the time of the arrival of the Sub-Inspector of Police, his wife had been administered a sedative. At about 6.15 PM, the Sub-Inspector of Police again came there and examined him again and also recorded the statement of the ambulance people at 6.47 PM. P.W.1 said that he also put one or two questions to his wife and she made a statement. He further stated that as her condition was serious, his wife was shifted to Vijayawada Government Hospital from Nandigama Government Hospital at about 7.00 or 7.15 PM. He confirmed that his wife died at about 00.20 hours in the Vijayawada Government Hospital during the same night. On 24.12.2007, the police conducted an inquest over the body of his wife and they examined him, along with his daughter (P.W.3), his brothers (P.Ws.4 and 5), the maternal uncle of the deceased, Botla Madhusudhana Rao (L.W.4), and the father of the deceased (P.W.2). P.W.1 stated that the accused bore a grudge as they had asked him not to come to their house and had committed the act. In his cross-examination, P.W.1 stated that he married his first wife in the year 1991 and divorced her in 1993. He confirmed that he had no issues through his first wife and they led marital life only for four months. He denied the suggestion that in view of his harassment for dowry, his first wife sought mediation and as elders advised them to take a divorce; they applied for a divorce together. He admitted that an extent of Ac.2.00 cents was presented to the deceased by her parents and that this land was situated in Gundaboinapalem of Jaggaiahpet Mandal. He further stated that this land had not been sold. He said that for four months prior to her death, his wife used to work in a private school at Nandigama and

earned a monthly salary of Rs.700/-. He added that as she had no other avocation and as their daughter was also studying in the said school, his wife joined there and not on account of insufficiency of his salary. He admitted that C.C.No.53 of 2008 was filed against him in the Court of the learned II Additional Judicial Magistrate of First Class, Khammam, under Section 138 of the Negotiable Instruments Act, 1881. He also admitted that such N.I. Act cases under Section 138 were filed against him in the Courts at Bhimavaram and Guntur. He further admitted that previously, there used to be one such case against him in the Nandigama Court and that a case in Khammam was compromised. He denied the suggestion that he was addicted to drinking and gaming (cards). He denied the suggestion that his earnings were insufficient to meet expenses and therefore, his wife had to work for family maintenance. He denied the suggestion that he borrowed money in that district and also from neighbouring districts for his vices and that he used to harass the deceased to sell away her land and unable to bear his torture, she committed suicide. He admitted that he did not know as to who had telephoned to the 108 ambulance but stated that he accompanied his injured wife to Nandigama Hospital by the 108 ambulance. He said that he did not have a cell phone and did not make any attempt to inform the police, while his wife was being shifted to the hospital by the ambulance. He further stated that he asked his brothers to intimate to the police about the incident while he was following his wife. He admitted that one had to go to Nandigama Hospital from his house on the road near Nandigama Police Station but stated that he did not make any attempt to inform the police on his way to the hospital. He affirmed that the contents of Ex.P1 were correct and admitted that it did not disclose that the accused had committed the act as they had asked

him not to come to their house. He denied the suggestion that he did not state to the police that his wife intimated to him that the accused committed the acts as she had asked him not to come to their house. He admitted that her eyes were also burnt in the incident. He admitted that he did not inform the police that his wife recognised him by his voice. He added that he could not furnish such details for paucity of time. He admitted that he did not state to the police that his daughter (P.W.3) was also present at the time of the occurrence. He said that he had no doubt or suspicion as to illicit intimacy between his wife and the accused but he was told by his brothers and others about such rumours. He said that he also informed the same to his wife. He said that he did not question his wife with regard to any illicit intimacy between her and the accused and he only informed her of the rumours. He said that after telling her, he also informed his father-in-law (P.W.2) that there were rumours as to the illicit intimacy between his wife and the accused and that he had asked his wife to ask the accused not to come to their house. He said that he also asked P.W.2 to tell his daughter to tell the accused not to come to their house. He admitted that in Ex.P1, he did not state to the police that his brothers and others had intimated to him that on account of visits of the accused to his house during his absence, there were rumours of illicit intimacy between his wife and the accused. He admitted that twice or thrice, he borrowed amounts up to Rs.60,000/- from the accused and repaid the same. He said that the amount that remained due to the accused by the date of the incident was only Rs.5,000/-. In connection with the borrowal of Rs.60,000/-, he said that he delivered a promissory note and cheque and that the same were still lying with the accused. He said that as he had to pay Rs.5,000/- still, the cheque and the promissory note

were still with the accused. He admitted that he did not obtain any receipts for the payments made to the accused. He denied the suggestion that he pressed his wife to sell away her land as he had become indebted to the tune of Rs.1,20,000/- to the accused; that he was pressing for payment and that he was unable to go around the three districts in connection with the cases filed against him. He denied the suggestion that taking advantage of the suicide committed by his wife on account of his harassment, he was foisting this case upon the accused to silence him and avoid repayment of his dues. He denied the suggestion that his wife was not in a conscious state at any time before her death and that she never intimated to him that the accused pulled her chain, poured petrol and set fire to her. He denied the suggestion that his contention that the Sub-Inspector of Police put two questions to his wife and that she narrated the incident in Nandigama Hospital was false. He denied the suggestion that no sedative was administered to his wife in the hospital during the course of treatment. He denied the suggestion that his wife had committed suicide on account of his torture and that he foisted a case against the accused. He denied the suggestion that he reached the hospital at 5.15 PM on receipt of information that his wife had suffered burn injuries. He denied the suggestion that his claim that he went to his house and found a gathering and the ambulance and that he followed his wife to the hospital by the said ambulance, was false. He said that there were about 30 to 40 people present at the house by the time he reached there and they remained present till his wife was boarded in the ambulance and it departed to the hospital.

P.W.2, the father of the deceased, confirmed that his daughter and his son-in-law (P.W.1) resided at Nandigama and that P.W.1 was working as a teacher. He said that he knew the accused who was a

friend of P.W.1. He said that on 23.12.2007 after 4.00 PM, he received a landline call informing him that his daughter was in flames. He immediately rushed to Nandigama and he came to know there that his daughter had been shifted to Vijayawada Government Hospital. He said that he went there and when he questioned his daughter, she informed him that the accused poured petrol and set fire to her. He said that his grand-daughter (P.W.3) also informed him the same. He confirmed that during the same day after midnight, his daughter died in Vijayawada Government Hospital. At the time of the inquest, the Inspector of Police examined and recorded his statement. He came to know that there was a quarrel between his daughter and the accused in connection with repayment of money and the accused insisted on her giving her chain. He said that P.W.3 informed him of the same. He concluded by stating that he did not know if there was any other reason. In his cross-examination, P.W.2 said that they reached the Government Hospital, Vijayawada, before 9.00 PM on that day. Initially, he went to Nandigama on receipt of the information and his wife and others immediately followed behind him. He said that two nurses were present when his daughter informed him that the accused poured petrol and set fire to her. He said that his elder sister, B.Suseelamma, his second wife, Swarupa Rani, his first wife's brother, Madhusudhana Rao (L.W.4), and some others were also present when his daughter informed the same to him. He stated that the deceased was his first wife's daughter. He further stated that P.W.1 was also present in the hospital when his daughter informed them that the accused poured petrol and set fire to her. He denied the suggestion that his daughter was not in a conscious state when he visited her in Vijayawada General Hospital

and that his claim that she informed him that the accused poured petrol and set fire to her was false.

P.W.3, the daughter of the deceased and P.W.1, was aged about six years at the time of the incident. When she was examined in Court, she was about nine years of age. The learned I Additional Sessions Judge, Krishna at Machilipatnam, put questions to her to ascertain her cognitive skills and upon his satisfaction that she was able to understand questions and give rational answers, she was found competent to testify. She thereupon stated that her mother, Venkata Ramalaxmi Kalyani, was no more and that it was a Sunday and the date was 23.12.2007. She said that she knew the accused by name and he used to come to their house. She was then studying first standard in Nandigama and on that day, at about 3.00 PM, while she was playing in the playground, the accused came to their house by a vehicle. The playground was situated opposite P.W.7's house. The house of P.W.7 and their house were separated by one house in the same row. Later, she went into her house to drink some water and by then, her mother and the accused were quarrelling. It was about 3.30 PM. The accused asked her mother to give her chain and she refused to do so and slapped him; then the accused slapped her mother; and then, her mother once again beat him on the cheek. The accused then tied her mother in the house and pushed P.W.3 out of the room and bolted the door from inside. It was an iron door but it had holes. P.W.3 said that as it was a mesh door, she peeped through the holes and found the accused pouring petrol and setting fire to her mother. The petrol was brought in a plastic Sprite bottle and she was tied with a saree. P.W.3 stated that she called her neighbour, Manohari aunt (L.W.8). Her mother also raised cries and the neighbours came there. The accused came out of the house from the

back door and asked her as to what had happened and stated that he would call an ambulance. She then said to the accused that it was he who had killed her mother and the accused fled on his motorcycle. Later, the ambulance came there and meanwhile, her father also came there. It was at about 4.00 PM. By then, her mother was burnt. There was not even a saree on her body. She died in Vijayawada Government Hospital. P.W.3 said that she could identify the plastic Sprite bottle in which petrol was brought by the accused and confirmed that M.O.1 was the said bottle. In her cross-examination, P.W.3 said that the police examined her in the hospital on the next day morning. She said that she informed the police that her mother had quarrelled with the accused and beat him with her hand. She denied the suggestion that she had informed the police that after sending her out, the outer mesh door was locked by her mother and that while she was playing in the mesh room, she heard the cries of her mother from inside the house and rushed into the back room as stated by her in Ex.D1, a portion of her statement recorded under Section 161 CrPC. She denied the suggestion that she did not inform the police that the accused had pushed her out of the room and bolted the door from inside and that she peeped through the holes of the door and found the accused pouring petrol and setting fire. She said that there was a mesh veranda in their house and behind it, there was a kitchen. The incident took place in the kitchen. She denied the suggestion that the kitchen was not abutting the veranda and that the inside of the house was not visible to persons present outside the mesh. She said that her mother also raised cries and that she approached Manohari (L.W.8) and brought her and by that time, the accused came to the front of the house from the backdoor and asked her as to what happened. There were about 20 persons and in

their presence, she told him that it was he who had killed her mother. The persons who gathered there tried to catch him but he fled. She said that her mother and father went in an ambulance to Nandigama Hospital. Then, Kavita, the wife of her father's brother, and her paternal grandmother came and took her to Nandigama Hospital. She said that the police also came to Nandigama Hospital when she was present there. She said that from Nandigama, her mother was shifted to the Vijayawada Hospital. Two police persons also came to Vijayawada and the TV people also came there. She said that she saw the police at Vijayawada Hospital also. She said that the police came to Vijayawada Hospital while her mother was alive. She denied the suggestion that she was not present at the time of the occurrence and that she reached the house from the playground on hearing that her mother was in flames. She denied the suggestion that her father did not visit the house before her mother was shifted by an ambulance and that her father directly came to Nandigama Hospital. She denied the suggestion that she was speaking falsehoods as tutored by her father and that her claim that she was present at the time of the incident and witnessed the incident was all false. She denied the suggestion that she was speaking falsehoods at the instance of her father.

P.W.4, the brother of P.W.1, stated that he, P.W.1 and their younger brother, P.W.5, all resided at Nandigama. He said that on 23.12.2007, while he was on duty in Konayapalem, he received information that the accused had entered the house of P.W.1, quarrelled with his sister-in-law, poured petrol and set fire to her and that she was shifted to Nandigama Government Hospital. He then proceeded to the hospital and came to know that she had been shifted to the Government Hospital, Vijayawada. He proceeded to

Vijayawada Government Hospital and saw the injured Kalyani. She had burn injuries and died at about 12.20 midnight. He said that the accused used to visit the house of P.W.1 frequently since a year prior to the incident. He said that about 1 or 1½ months prior to the incident, he and his brother, P.W.5, informed P.W.1 that on account of frequent visits of the accused to his house, there were rumours of illicit intimacy between the accused and the deceased. As there was ill-repute to their family, he said that they asked P.W.1 not to allow the accused to visit his house. He said that P.W.1 appeared to have informed his wife also not to allow the accused. He said that he had seen the accused taking the deceased and her daughter, P.W.3, by his motorcycle in their town on some occasions. In his cross-examination, P.W.4 said that after discharge of P.W.1 from the hospital, he found the accused taking his sister-in-law and her daughter, P.W.3, by his vehicle in the town. He never questioned the accused or his sister-in-law about their travel. He denied the suggestion that there were no rumours about illicit intimacy between the deceased and the accused. He denied the suggestion that his claim that the deceased and P.W.3 used to travel on the vehicle of the accused and that he found it out, was all false. He denied the suggestion that he was speaking falsehoods at the instance of P.W.1.

P.W.5, the youngest brother of P.W.1, said that he resided at Nandigama and was doing real-estate business. He said that he knew the accused who was a mechanic and that the accused and P.W.1 were friends. He said that they used to move together and there were visiting terms between them and their families. The accused used to visit the house of P.W.1 during his presence and absence. He said that about 6 months prior to the incident, on one occasion, he found the accused taking his sister-in-law and her daughter by his

motorcycle near Gandhi Center. He said that he informed the said fact to P.W.4. About 1 or 1½ months prior to the incident, he and P.W.4 informed their elder brother, P.W.1, that they had found the deceased and P.W.3 travelling on the motorcycle of the accused in the village and that during his absence, the accused was visiting his house; that he found the vehicle of the accused at his house; and that there were rumours in the village that there was illicit intimacy between the deceased and the accused, which was causing disrepute to their family. He said that they asked P.W.1 not to allow the accused in his house. P.W.1 informed them that he would tell the same to Kalyani and he did so. He said that on 23.12.2007 after 3.30 PM, he was present at Nandigama and came to know that the accused went to the house of P.W.1 and poured petrol and set fire to Kalyani. He said that he went to the house of P.W.1 and the neighbours, Venkateswara Rao (L.W.9), P.W.8, P.W.6 and P.W.7, were present there. A 108 ambulance was also present there. Kalyani was being boarded in the said ambulance and she was with burn injuries. In the meanwhile, P.W.1 came there and questioned her as to what had happened; then she informed P.W.1 that the accused came to their house, poured petrol on her and set fire to her. She was trembling by then. She was shifted to the Government Hospital, Nandigama, and thereafter, to Vijayawada Government Hospital, for better treatment. At about 12.20 AM, she died in the hospital. The police examined him at 1.00 PM on 24.12.2007 at Vijayawada Government Hospital. In his cross-examination, P.W.5 stated that he did not question the accused or his sister-in-law about their travel on the motorcycle of the accused when he found them at Gandhi Center. He said that the distance between his house and the house of P.W.1 was about 100 feet. He said that when he was present at his house,

Venkata Rao, the Ward Member, telephoned and informed him of his sister-in-law being burnt. He said that by the time he reached the house of P.W.1, 10 to 15 minutes must have been over after the incident. About 20 to 25 neighbours were present at the scene by the time he reached there. He denied the suggestion that he did not state to the police that his brother, P.W.1, reached the scene while the victim was being boarded in the ambulance and on his query, the deceased intimated to him that the accused poured petrol and set fire to her. He said that just after he reached the scene, P.W.1 reached there. He admitted that he did not inform the police of the incident personally or over telephone. He said that he might not have told the police about the presence of P.W.8, Ratakonda Venkateswararao (L.W.9), P.W.6, his wife, Manohari (L.W.8), and P.W.7 by the time he reached the scene. He denied the suggestion that he did not reach the house of P.W.1 on the day of the incident and that he went to Vijayawada Government Hospital on the next day morning, after receiving the news of the death. He said that he did not know the motorcycle number of the accused. He confirmed that he never questioned the accused about visiting the house of P.W.1 during his absence. He denied the suggestion that there was no rumour in the village about illicit intimacy between the accused and the deceased. He denied the suggestion that he did not see the deceased with injuries after the incident and till her death. He denied that he was speaking falsehoods at the instance of P.W.1.

P.W.6, a resident of Nandigama, said that he knew P.W.1 and his wife, Kalyani. They resided by the side of his house. He also knew the accused. He said that the incident took place on 23.12.2007 at about 3.30 PM. He said that he heard weeping sounds from the house of P.W.1 and he and his wife, Manohari (L.W.8), went there. By

the time they approached, the wife of P.W.1 already became burnt. He said that on seeing her burnt face, he became afraid and returned to his house because he was suffering from blood pressure. He said that they were residing as tenants in the house of his sister since more than two years and P.W.1 and the deceased were residing in the house of one Sudhakar as tenants even prior to their coming to the house of his sister. P.W.1 used to work as a teacher, while the accused was a mechanic. The accused used to visit the house of P.W.1 during his presence. He said that he never observed visits of the accused to the house of P.W.1 during his absence. He said that he did not know how Kalyani suffered burn injuries. At this stage, he was declared hostile and cross-examined by the prosecution. Thereupon, he denied the suggestion that he did not state to the police that the accused used to visit the house of P.W.1 during his absence and that the accused used to take the deceased and her daughter (P.W.3) by his motorcycle. He also denied stating to the police that the accused and the deceased used to move closely and that they suspected illicit intimacy between them. He also denied stating to the police that on one occasion, his wife warned the accused not to enter into the street and subsequently also he informed P.W.1 about the intimacy between the accused and the deceased and asked him not to bring the accused to their street. He denied having informed the police that since one month, the frequency of the visits of the accused to the house of P.W.1 became high and that on 23.12.2007 at about 3.00 PM, while he was standing by the side of his house, he found that the accused was going to the house of P.W.1 by his motorcycle; that he left the house once again and went into the house of P.W.1 at about 3.30 PM, as stated in his Ex.P2 statement, recorded under Section 161 CrPC. He

denied the suggestion that he had informed the police that when he went out on hearing the cries of Kalyani, he found the accused going by his motorcycle, as in Ex.P3 portion of his 161 CrPC statement. He denied the suggestion that he stated to the police that they poured water and put off the fire and covered the victim with a blanket, as in Ex.P4 portion of his statement recorded under Section 161 CrPC. He denied the suggestion that he stated to the police that after some time, a 108 ambulance came there and that a nurse and driver shifted the victim by stretcher by breaking open the grill lock; and that while the deceased was being boarded into the ambulance, P.W.1 came there and questioned her and then she replied with screams that the accused had poured petrol on her and set fire to her; took away the chain from her neck, as in Ex.P5 portion of his statement under Section 161 CrPC. He said that the front grill of P.W.1's house was found under lock from inside and he and his wife went into the room of Kalyani through the doorway which was present in between bathroom and latrine of the house, which was kept open. He said that by the time they reached the house, Kalyani was covered with a blanket. He said that on the next day he came to know that she died in Vijayawada Hospital. He denied the suggestion that he was speaking falsely to help the accused as per a compromise. In his cross-examination by the learned counsel for the accused, he said that by the time he reached the victim, she was not in a conscious state.

P.W.7, a resident of Nandigama, stated that he retired as a LIC Development Officer in 2008. He said that one Sudhakar Rao was having one house on the west of his house and since two to three years prior to the death of the deceased, P.W.1 and his family were residing there. He said that he had never seen the accused but he

heard that the accused was a motorcycle mechanic and that his shop was situated in front of the TTD Kalyana Mandapam, Nandigama. He heard that the accused and P.W.1 were friends and that they used to move together and that the accused used to visit the house of P.W.1 and they were having financial transactions. He said that his wife used to tell him that the accused used to visit the house of P.W.1 even during his absence and he heard that there was illicit intimacy between the deceased and the accused. On 23.12.2007 at about 3.30 PM, while he was present in his house and was about to take a meal with his friends, his wife informed him that some cries were heard from the house of the deceased and that there was some hubbub. He said that he immediately washed his hands and went out. His house and the house of P.W.1 were separated by one house and by the time he reached there, there were about 7 or 8 people present at the house of P.W.1. There was a gate for the compound wall which was kept open and he crossed the compound wall. He wanted to open the front mesh. He found that it was locked from inside. While trying to open the mesh, he peeped through into the anteroom and found Kalyani was lying on the ground. She was screaming. While they were contemplating to break open the lock, a 108 ambulance came there. They brought a stretcher. They also tried to enter into the house. Then, they entered into the house through the door by the side of the bathroom. Till then, he had no idea of the said door by the side of the bathroom. Ambulance people tried to take out the victim through the said doorway by the side of the bathroom by the stretcher, but it was not possible. They opened the mesh room lock and took the victim to the ambulance. When the ambulance people were opening the ambulance door to put the stretcher along with the victim in the ambulance, P.W.1 came there and questioned her as to what had

happened. She intimated to him in their presence that the accused came and poured petrol and set fire to her. The victim was boarded into the ambulance and he came to know that she was taken to the Government Hospital, Nandigama. Later, he came to know that she was shifted to Vijayawada Government Hospital because of her serious condition. On the next day morning, he came to know that she died in Vijayawada Government Hospital. In his cross-examination, P.W.7 said that 7 or 8 persons were present at the house of P.W.1. He said that as he was thinking as to how they could enter into the house, he could not observe those people particularly. He said that the people present there belonged to different castes. He said that his wife also came there but on seeing the burnt Kalyani, she could not stay there and she returned. He said that he did not help the ambulance people in breaking the lock of the mesh door or in shifting the victim to the ambulance. He said that he did not make any attempt to talk to Kalyani so as to find out how she had suffered burn injuries. He said that about 10 to 15 minutes time was consumed from the time he reached the house of P.W.1 until the victim was boarded into the ambulance. He said that he did not make any phone call to the ambulance and did not make any attempt to inform the police of the incident. He said that he was examined by the police at about 11.30 or 12.00 noon on 24.12.2007 near the house of Kalyani. He however added that he did not remember the exact time of his examination. He denied the suggestion that he did not inform the police that when he was making an attempt to open the mesh door, he peeped through the mesh into the anteroom and found Kalyani lying on the ground. He denied the suggestion that he informed the police that as the front mesh door was found under lock when seen through the doorway situated by the side of the bathroom,

he found Kalyani screaming with a burnt face, as in Ex.D2 portion of his Section 161 CrPC statement. He said that the said anteroom abutting the said mesh room was the bedroom. He denied the suggestion that he did not know the situation of the bathroom in their house and hence, he could not say whether the room present by the side of the bathroom was the bedroom of P.W.1. He said that he did not go into the house on that day and that he did not step inside the house. He said that the ambulance people brought out the victim by a stretcher. He denied the suggestion that P.W.1 was his relative. He said that he knew him well, but was not related to him. He admitted that he belonged to his caste but denied that he was speaking falsehoods due to that reason. He said that his friends were taking their meal and they did not come out before the shifting of the victim by the ambulance. They came there after departure of the ambulance. He said that after departure of the ambulance, he went to the house and found his friends outside the house. They took their meal. He denied the suggestion that Kalyani was not conscious. He said that he did not make any attempt to go to the Government Hospital, Nandigama, or Vijayawada Government Hospital. He denied the suggestion that he was not present in Nandigama on that day and that his contention that his friends came there for dinner was invented. He denied the suggestion that his contention that when he was about to take a meal along with friends, his wife came there and informed them that there was some noise and hubbub at the house of P.W.1 and that he went there and saw the victim through the grill and that the victim intimated to her husband that the accused set fire to her, was all false. He denied the suggestion that he was speaking falsehoods as P.W.1 was his relative and caste man.

P.W.8, a resident of Nandigama, said that Sudhakar Rao was her son-in-law. The house to the east of her house belonged to her and she gave the eastern house to her son-in-law. P.W.1 and his wife resided in the said house as tenants. She said that she had seen the accused and he used to visit the house of P.W.1. When questioned, the deceased informed her that the name of the accused was Khan and he was a friend of her husband. She said that she had seen the accused going into the house of P.W.1 either by the vehicle of P.W.1 or by the vehicle of the accused. She said that she did not know whether or not the accused used to visit the house of P.W.1 during his absence and that she did not care for such matters. She said that on the date of the incident, she was in Vijayawada and returned home the next day. She said that she came to know from others that Kalyani gave a statement that she was killed by the accused. She said that she heard that she was burnt in her house and was shifted to the hospital by an ambulance and died in the hospital. She said that the police examined her and she informed them that she was not in town on that day. At this stage, she was declared hostile and cross-examined by the prosecution. P.W.8 then denied the suggestion that she informed the police that the accused used to visit the house of P.W.1 during his absence and spent some time there and that the accused used to take out the deceased and her daughter by his motorcycle. There was suspicion amongst the people that there was illicit intimacy between the accused and the deceased, as stated in Ex.P6 portion of her statement recorded under Section 161 CrPC. She denied the suggestion that she was speaking falsehoods to help the accused. In her cross-examination by the defence, she said that she did not remember if she informed the police that when she questioned her, the deceased informed her that the accused was a

friend of her husband. She said that she used to stay at her house for a short time. She denied the suggestion that she could not identify the accused. She said that he used to move with P.W.1 and denied the suggestion that she was speaking falsehoods.

P.W.9, a resident of Nandigama, said that he knew P.W.1 and the accused. He said that the accused and P.W.1 used to move as friends but he did not know about the visits of the accused to the house of P.W.1. He said that he had never seen the wife of P.W.1 with the accused and he did not know the relationship between them. He said that he came to know on 23.12.2007 at about 4.00 or 4.30 PM that the wife of P.W.1 had died. He said that he went to Nandigama Government Hospital. Later, the deceased was shifted to Vijayawada Government Hospital. He came to know later from P.W.1 that his wife died. He said that the police did not examine him. At this stage, P.W.9 was declared hostile and cross-examined by the prosecution. Thereupon, he denied the suggestion that he had informed the police that he came to know that the accused was frequently visiting the house of P.W.1 and that he did so even during his absence and spent time with his wife; that he found the accused now and then taking the deceased and her daughter by his motorcycle in the streets; that he heard that there was illicit intimacy between the accused and Kalyani; that he advised P.W.1 not to allow the accused to his house and that he came to know on 23.12.2007 in the evening time that the accused went to the house of P.W.1, poured petrol on her and set fire to her, as in Ex.P7 portion of his statement recorded under Section 161 CrPC. He said that the accused was not related to him but was known to him. He said that he had no intimacy with the accused and denied the suggestion that he was speaking falsehoods as the accused belonged to his religion and was his friend.

P.W.10, a photographer, spoke of taking photographs of the body of the deceased at Vijayawada Government Hospital on 24.12.2007 at the instance of Nandigama Police. He confirmed that Exs.P8 to P10 were the photographs and Ex.P11 comprised with three negatives. He said that he did not remember taking any photographs at the scene of the offence in Nandigama. In his cross-examination, P.W.10 admitted that at the instance of Sub-Inspector of Police he had stated to the Sub-Inspector of Police that he took photographs of the scene of the offence from different angles. He further stated that he did not remember whether or not he took photographs of the scene of the offence. He denied that he photographed the scene of the offence and delivered the negatives and developed photographs to the Sub-Inspector of Police and that he was deposing falsely that he did not remember having taken the photographs of the scene of the offence at the instance of the police.

P.W.11, the Village Revenue Officer, Nandigama, at the relevant point of time, stated that on 24.12.2007, Nandigama police asked him to come to the house of P.W.1. He went to Nandigama Police Station and the Sub-Inspector of Police took him, K.V.Ramana Rao (L.W.19) and Challa Venkata Satyanarayana Rao (L.W.17) to the house of P.W.1. The Sub-Inspector of Police conducted the scene examination there in their presence. At that time, the Sub-Inspector of Police seized a burnt towel (M.O.2), a burnt lungi (M.O.3), a burnt saree (M.O.4) and an ash burnt cloth (M.O.5). He said that he himself drafted the scene examination report (Ex.P12) and it bore signatures of himself, another mediator and the police. He said that M.O.6 was also a burnt saree piece and that the scene examination was conducted at 9.00 AM. Later, the police conducted an inquest over the body of the deceased at the Government Hospital, Vijayawada, in

the presence of himself, K.V.Ramana Rao (L.W.19) and Challa Venkata Satyanarayana Rao (L.W.17) and they observed the burn injuries on the body. They opined that the victim died due to burn injuries caused by pouring petrol and setting her on fire. At the time of the inquest, the police examined the relatives of the victim and other witnesses. He said that he scribed the report and identified Ex.P13 as the inquest report. He said that it bore the signatures of himself, K.V.Ramana Rao (L.W.19), Challa Venkata Satyanarayana Rao (L.W.17) and the police personnel. The inquest was conducted at 1.00 PM in Vijayawada. The police collected them at Nandigama Police Station at 10.00 AM and took them to Vijayawada Government Hospital for conducting the inquest on the body of the deceased. On 26.12.2007, while he was present in his office, a Police Constable came there and asked him to come to Nandigama Police Station. He went there at about 5.00 PM. Challa Venkata Satyanarayana Rao (L.W.17) and he together went to the police station on that day. Police took them to the house of the accused and on seeing the police, the accused attempted to flee. The police detained him and upon questioning, he confessed to having killed the deceased by pouring petrol and setting fire to her. He said that he hid the Sprite bottle in which he carried petrol to the scene in his motor mechanic shed situated opposite the TTD Kalyana Mandapam. P.W.11 said that he scribed the confession statement of the accused and that the admissible portion thereof is Ex.P14. He said that Challa Venkata Satyanarayana Rao (L.W.17), the Sub-Inspector of Police and he signed in it. The accused also signed it. Thereupon, the police, he and Challa Venkata Satyanarayana Rao (L.W.17), along with the accused, went to the shed of the accused situated opposite TTD Kalyana Mandapam, Nandigama. The accused then lifted the empty Sprite

plastic bottle stating that it was the bottle in which he carried petrol to the house of P.W1. The police seized the same. P.W11 identified M.O.1 as the said Sprite bottle and confirmed that it carried panch slips with their signatures. He said that he scribed the seizure report at the mechanic shed of the accused and he along with Challa Venkata Satyanarayana Rao (L.W.17), the Inspector of Police and the accused signed therein. He identified Ex.P15 as the seizure report. He said that it took place at about 6.45 PM on 26.12.2007 and that the police took away the seized M.O.1 bottle and the accused with them. In his cross-examination, P.W.11 said that bottles like M.O.1 were available in the open market in any cool drink shop. He said that he might have acted as a mediator in five or six cases as a Village Servant prior to this case. He said that the room with the measurements of 11 x 10 feet was situated to the west of the kitchen and the articles seized (M.Os.2 to 6) were present in the room situated to the west of the kitchen. He said that it was described in the last two lines of the first page and continued in the second page of Ex.P2, the scene observation report. He said that to the north of the said western side room, there was a bedroom. They examined the said room also and P.W.1 was present at the scene. He said that they decided that the said room situated to the west of the Kitchen was the scene of the offence. He admitted that it was mentioned in the fourth page of the inquest report (Ex.P13) in column No.15 that on 23.12.2007 at about 3.00 PM, the accused went to the house of the deceased in the absence of the husband of the deceased, quarrelled with her regarding the amount due and abused her and that the deceased slapped him and in retaliation, with an intent to kill her, the accused went by his motorcycle and brought a bottle containing petrol, entered into the house of the deceased and while the deceased

was present in the south-western room at about 3.30 PM, the accused poured the petrol brought by him on her and set fire to her. He denied the suggestion that the accused did not confess or disclose that he poured petrol and set fire to her or disclose that the said petrol bottle was hidden in his motor shed and that he led them to the said shed, where he produced M.O.1 bottle. He denied the suggestion that M.O.1 bottle was planted by the police. He denied the suggestion that the scene examination report and the inquest report were drafted in the police station. He said that he drafted the scene examination report at the house of the deceased and drafted the inquest report at Vijayawada Government Hospital. He however admitted that he drafted the confessional report and seizure report (Exs.P.14 and P.15) in Nandigama Police Station.

P.W.12, a technician in 108 ambulance services, stated that she had been working as such since 20.08.2007. She said that when their ambulance was present near the market yard in Nandigama on the fateful day, they received a message from their Central Office, Hyderabad, to go over to Nehrunagar and they went there. She said that they received the message at about 4.00 PM and when they went to the scene of the offence, there was a gathering in front of the house. The front side grill was locked but there was a backside doorway, which was open. They went through the said doorway and shifted the lady with burns from the said house by the ambulance to Nandigama Government Hospital. While shifting the victim by a stretcher, the public broke open the lock of the grill. They shifted the victim through the front doorway, after breaking open of the front door lock, as the stretcher was not accessible through the back doorway. She said that nobody came to the ambulance when they boarded the injured by a stretcher. She further stated that the victim

was screaming and she was not in a position to speak. She said that when the victim was being shifted by the ambulance, she did not speak to anybody and none accompanied her to the hospital in their ambulance. She said that they admitted the victim in Nandigama Government Hospital. At this stage, she was declared hostile. In her cross-examination by the prosecution, she stated that they maintained a register for their ambulance and noted the phone calls received therein. She said that she did not remember the name of the person from whom they received the phone call in the present case. She denied the suggestion that she informed the Inspector of Police that on 24.12.2007, while they were about to move to the Government Hospital after boarding the victim in their ambulance, the husband of the victim came there and the victim saw her husband and when he questioned her as to what had happened, she informed him that the accused poured petrol on her and took her chain from her neck, as in Ex.P16 portion of her Section 161 CrPC statement. She said that later she came to know that the victim was Kalyani and her husband was P.W.1 and that they were working as teachers. She denied the suggestion that she had informed the Inspector of Police that as per the office record, the Hyderabad EMRI people informed her that they received a phone call from the accused through his Cell No.9848825811, as in Ex.P17 portion of her Section 161 CrPC statement. She denied the suggestion that having stated so to the police, she was now deposing falsely in order to help the accused. In her cross-examination by the defence, P.W.12 admitted that the information received from their Hyderabad head office was that they had received a message that there was a self-involvement burns case in Nandigama Nehrunagar.

P.W.13, an Assistant Professor of Forensic Medicine at the Government Hospital, Vijayawada, at the relevant point of time, spoke of the autopsy conducted by him over the body of the deceased. He said that on 24.12.2007 at about 3.30 PM, the body of the deceased was brought by PC No.1217 of Nandigama Police Station for post-mortem examination. He found that her hair was singed, black soot was present over the burnt areas and the cuticles peeled off. He said that rigor mortis was present all over the body. He found dermo-epidermal burns present all over the body except on the back of both legs and thighs, covering 80% of the surface area. These burns were ante-mortem in nature. He opined that the victim had died due to burns and that she died in the Government General Hospital, Vijayawada, at 00-20 hours on 24.12.2007. He confirmed that Ex.P18 was the post-mortem certificate given by him.

The Sub-Inspector of Police, Nandigama, at the relevant point of time was examined as P.W.14. He said that on 23.12.2007 at about 4.45 PM, the Assistant Sub-Inspector of Police received intimation from the Community Health Centre, Nandigama, regarding admission of Kalyani in the said hospital. He was immediately informed by him about the same and he proceeded to the hospital. He attempted to record the statement of Kalyani, but she was in semi-conscious state. He therefore could not record her statement and recorded the statement of P.W.1, the husband of the victim, under Ex.P1. He obtained a certificate from the Medical Officer at 5.30 PM. Ex.P19 is the hospital intimation. He returned to the police station and registered a case in Crime No.339 of 2007 under Sections 307 and 379 IPC at 6.00 PM. Ex.P20 is the FIR submitted to the Court. He returned to the Government Hospital, Nandigama, and secured the presence of P.W.1 and recorded his statement.

Thereafter, he found that Kalyani was in a conscious state and examined and recorded her statement in brief under Ex.P21. Kalyani, while screaming, stated to him under Ex.P21 that the accused, who was a friend of her husband, used to come to their house frequently and since she asked him not to visit their house, he bore a grudge, brought petrol by a cool drink bottle, poured it on her and set fire to her. Thereafter, he examined and recorded the statement of P.W.12 and D.Prabhakar (L.W.15), the driver of the ambulance. The Medical Officer, Nandigama, sent a requisition to the Nandigama Judicial First Class Magistrate to record the dying declaration of Kalyani but as he was on leave, the dying declaration could not be recorded through a Magistrate. He left the Government Hospital and proceeded to the scene of the offence, which was the house of the deceased and P.W.1 situated in Nehrunagar, Nandigama. He secured the presence of P.W.6, Devineni Manohari (L.W.8), Ratakonda Venkateswararao (L.W.9), Ratakonda Udayamma (L.W.10) and P.W.7 and recorded their statements under Section 161 CrPC. He returned to the police station as it was late in the night, after posting a guard at the scene of the offence. On 24.12.2007, he visited the scene of the offence and examined it in the presence of Challa Venkata Satyanarayana Rao (L.W.17) and P.W.11, under Ex.P.12 scene observation report. He seized the case properties and prepared a rough sketch of the scene of the offence (Ex.P22). He received intimation of the death of the deceased on 24.12.2007 and altered the provision of law to Section 302 IPC. Ex.P23 is the intimation of death. Subsequent investigation was taken up by the Inspector of Police. The altered FIR-Ex.P24 was submitted to the Court. He identified the case properties seized by him at the scene of the offence. In his cross-examination, P.W.14 stated that P.W.1 did not specifically inform him of the presence of

his daughter by the time of his return to his house after the incident. He admitted that he did not file a copy of the requisition issued by the Medical Officer for recording a dying declaration. He said that he did not collect the same and he also did not file any document to show that any intimation was sent to the Magistrate which was returned as the Magistrate was on leave. He denied the suggestion that the Magistrate was present in the head quarters on 23.12.2007. He said that he recorded the statement of the injured under Ex.P21 at about 6.30 PM. He said that he must have recorded the said statement between 6.15 and 6.45 PM. He admitted that he did not obtain certification from the Medical Officer, Nandigama, regarding the fitness of the victim while he was recording her statement. He denied the suggestion that the victim continued to be in the same state of mind as she was at 5.30 PM on 23.12.2007 till her death. He denied the suggestion that the victim did not regain consciousness and that she did not make the statement under Ex.P.21, which was fabricated. He admitted that he had knowledge of the shifting of the victim to Vijayawada Hospital and stated that he did not make any attempt to get her statement recorded by a Magistrate at Vijayawada after she was shifted to the Government Hospital, Vijayawada. He added that it was the duty of the doctor to send intimation to the Magistrate. He denied the suggestion that the police had knowledge of the death of the deceased at 00.20 hours on 24.12.2007. He admitted that the endorsement of the Magistrate on Ex.P.20-FIR disclosed that it was submitted to him at 10.00 AM on 24.12.2007. He denied the suggestion that after receiving information regarding the death of the deceased, he secured a statement under Ex.P1 from P.W.1 and registered the crime under Ex.P21-FIR with ante-timing and transmitted the same to the Magistrate. He admitted that the

Nandigama Police Station and the residence of the Nandigama Magistrate were situated in the same panchayat limits. He said that the FIR was received by the learned In-charge Magistrate of Tiruvur who was in-charge of Nandigama Court as the concerned Magistrate was on leave and that the bus journey time between Nandigama and Tiruvur was about 4 hours. He said that the transmit time would depend upon the availability of a bus. He admitted that P.W.1 did not state to him that Kalyani informed him that the accused had committed the said offence as she had asked him not to come to her house. He denied the suggestion that his claim, that he recorded the statement of P.W.1 at 5.30 PM and Ex.P21 statement of the victim between 6.15 and 6.45 PM, was false.

P.W.15, the Circle Inspector of Police, Nandigama, at the relevant point of time, spoke of the steps taken by him during investigation. He said that on 24.12.2007, he took up the investigation and on the same day, he received express FIR. He then collected mediators and visited the Vijayawada Government Hospital along with them, viz., Challa Venkata Satyanarayana Rao (L.W.17), Konduru Venata Ramana (L.W.19) and P.W.11. He then commenced inquest proceedings over the body of deceased and examined P.Ws.1, 3, 2, 4 and 5 and recorded their statements. After completion of the inquest, the body was sent for post-mortem examination. He then returned to Nandigama and visited the scene of the offence. The rough sketch of the scene observation panchanama was prepared by the Sub-Inspector of Police. He examined P.W.6, Manohari (L.W.8), Ratakonda Venkateswararao (L.W.9), Ratakonda Udayamma (L.W.10), P.W.7, P.W.8, P.W.12, Doppalapudi Prabhakar (L.W.15), P.W.9 and P.W.10 and recorded their statements. On 26.12.2007, on reliable information, he secured the presence of mediators, viz.,

Challa Venkata Satyanarayana Rao (L.W.17), P.W.11, the Sub-Inspector of Police and he along with his staff and the other members proceeded to the house of the accused at Netajinagar, Nandigama. When the accused tried to run away on seeing them, they arrested the accused at 5.30 PM in the evening in the presence of the above said mediators and when questioned, the accused confessed to commission of the offence. The mediators' report was drafted. Then, he along with the mediators followed the accused to his mechanical shed near TTD Kalyana Mandapam, Nandigama, where he picked up one Sprite bottle and the same was seized in the presence of the mediators under the cover of a mediators' report. As there was no clear evidence with regard to the gold chain which was stolen property in the case, Section 379 IPC was deleted. The accused was sent for remand. The seized material was sent to the Forensic Science Laboratory. Ex.P.25 is the letter of advice. Ex.P.26 is the FSL report received upon such examination. He then laid the charge sheet against the accused. In his cross-examination, P.W.15 admitted that P.W.3 did not state before him that the accused had brought the petrol bottle, tied the deceased with her saree and then poured petrol on her. He said that P.W.3 informed him that after hearing the cries of her mother, she went into the backside room of their house, the accused set fire to her mother, her mother raised cries and on that neighbours gathered there and the accused ran away. He admitted that P.W.3 informed him that the deceased quarrelled with the accused and beat him with her hand and driven him out side and bolted the door to the mesh. He admitted that P.W.3 did not inform him that she saw the incident through the mesh holes. He also admitted that P.W.3 did not inform him that her father came there and shifted the deceased to the hospital. He stated that P.W.12

informed him that she received information through cell phone that self-involvement burning incident was there in Nehrunagar, Nandigama, and that this information pertained to this case. He admitted that P.W.1 did not inform him as to the presence of his daughter at the time of the incident. He admitted that it was not brought to his notice during the investigation that P.W.1 was indebted to several others. He denied the suggestion that the deceased committed suicide due to the harassment of P.W.1 to sell the land given to her by her parents. He denied the suggestion that the deceased had committed suicide and had not died due to the acts of the accused. He denied the suggestion that P.W.1 had given a false report against the accused in order to save himself in this case and to avoid payment to the accused.

Upon consideration of the aforestated evidence, the Sessions Court believed the evidence of the child-witness, P.W.3, coupled with the contents of Ex.P21 recorded by P.W.14, and opined that the accused committed the murder of the deceased as she did not fulfil his ill-desire. The circumstantial witnesses, P.Ws.1, 2 and 4 to 8, were found to have corroborated the prosecution's case sufficiently in this regard. Observing that there were no major contradictions or omissions in the evidence, the Sessions Court convicted the accused under Sections 449 and 302 IPC and sentenced him, leading to the filing of this appeal.

Heard Smt.C.Vasundhara Reddy, learned counsel for the appellant/accused, and the learned Public Prosecutor, State of A.P.

At the outset, it may be noted that Ex.P1 report given by P.W.1, being the first detailed intimation of the incident to the police, did not even mention the presence of P.W.3, the daughter of P.W.1 and the deceased, at the scene of the offence at that time, let alone her being

an eye-witness. The charge-sheet laid by the prosecution against the accused also did not cite P.W.3 as an eye-witness to the incident. P.W.1 also did not mention in his evidence before the Court that his daughter, P.W.3, had actually witnessed the occurrence or that she had informed him of the same. He also did not mention the presence of any of his neighbours and more particularly, P.W.6 and his wife Manohari (L.W.8). Though P.Ws.1, 2 and 3 were all examined before the Court on 18.01.2010 in succession, it appears that at the stage of examination of P.W.1, the prosecution did not come up with the idea of citing P.W.3 as an eye-witness. However, P.W.2, the father of the deceased, said that P.W.3 intimated to him about the quarrel on the fateful day between the deceased and the accused in connection with repayment of money and that the accused insisted upon her giving him a chain. He also stated that she informed him of actually witnessing the incident. Further, P.W.3 gave graphic details of having witnessed the actual occurrence. According to her, when she went into her house to drink water at about 3.30 PM, the deceased and the accused were quarrelling; the accused asked her mother to give her chain; her mother refused to do so and slapped the accused; the accused slapped her mother; then her mother once again beat him on the cheek; then the accused tied her mother in the house, pushed P.W.3 out of the room and bolted the door from inside. She stated that it was an iron door having holes and when she peeped through, she found the accused pouring petrol and setting fire to her mother. Significantly, she said that she called her neighbour, Manohari aunt (L.W.8), and the neighbours also came there when her mother raised cries. She further stated that the accused came out of the house from the back door and asked her what happened and she stated to the accused that it was he who had killed her mother, whereupon the

accused fled. She then stated that her father came there at about 4.00 PM. She however did not say that she informed her father of what she had witnessed. More importantly, had Manohari (L.W.8) been summoned by P.W.3 and informed of what had happened, she would have immediately informed P.W.1 had he come there thereafter. However, it is not P.W.1's case that he was informed either by P.W.3 or by Manohari (L.W.8) of the fact that P.W.3 had actually witnessed the commission of the crime. Further, according to P.W.3, the occurrence took place in the kitchen. However, as per the scene observation report (Ex.P.12), the occurrence did not take place in the kitchen. P.W.11 also stated to this effect. P.W.3 also stated that she was present at the Nandigama Hospital and thereafter, at the Vijayawada Hospital, and that the police were there at both hospitals. Had she actually witnessed the event, she would have at least told her father then, so that he could inform the police of what she had seen. The presence of this child eye-witness is therefore most suspect and her testimony does not inspire confidence.

In ***BHAGWAN SINGH V/s. STATE OF M.P.***¹, the Supreme Court observed that the law recognizes a child as a competent witness but a child, particularly of a tender age of six years, who is unable to form a proper opinion about the nature of the incident because of immaturity of understanding, is not considered by the Court to be a witness whose sole testimony can be relied upon without other corroborative evidence. It was further observed that the evidence of a child is required to be evaluated carefully because he is an easy prey to tutoring, and therefore, the Court always looks for

¹ 2003 CRL. L.J. 1262

adequate corroboration from other evidence of testimony. Reference in this regard was also made to **PANCHHI V/s. STATE OF U.P.**².

In this regard, reference may also be made to **ORSU VENKAT RAO V/s. STATE OF ANDHRA PRADESH**³, wherein the Supreme Court found that the veracity of the prosecution version based on the evidence of two child-witnesses was doubtful as the said witnesses were not even examined nor did they reveal anything to anyone including their maternal grandparents till the inquest. On the same lines, P.W.3 kept mum about what she claimed to have seen without even informing her father, P.W.1, which is highly unbelievable.

In **SHIVASHARANAPPA V/s. STATE OF KARNATAKA**⁴, the Supreme Court, relying upon **PANCHHI**², confirmed that a Court can rely upon testimony of a child-witness and it can form the basis of conviction if it is credible, truthful and is corroborated by other evidence. It was observed that corroboration is not a must to record a conviction, but as a rule of prudence, the Court thinks it desirable to seek corroboration from other reliable evidence on record. Principles that apply for placing reliance on the solitary statement of a witness, viz., that the statement is true and correct and is of quality and cannot be discarded solely for lack of corroboration, apply to a child-witness who is competent and whose version is reliable.

Applying this principle to the case on hand, the very presence of P.W.3 is rendered doubtful as she was not cited as an eye-witness at the first instance or even in the charge-sheet. P.W.1, the father of the child witness, did not speak of her presence at the scene when he arrived there or that she informed him of anything that she had seen. The attempt of the prosecution to build up the case thereafter by

² (1998) 7 SCC 177

³ 2004 CRL. L.J. 4656

⁴ (2013) 5 SCC 705

converting her into an eye-witness is clearly conspicuous. This judgment therefore does not help the prosecution.

Further, though P.Ws.1 and 2 claimed that the deceased spoke to them and informed them of the accused having perpetrated the crime which resulted in her burn injuries, their versions are also equally suspect. P.W.1 stated that by the time he returned on 23.12.2007 at about 4.00 PM, the ambulance was already there and the public had also gathered in front of his house. His wife was with burn injuries and was being shifted into the ambulance by then. He further stated that he questioned her as to what had happened and having recognized his voice, she informed him that the accused came into the house, pulled her gold chain from her neck, poured petrol and set fire to her. P.W.1 said that she told him that the accused had committed the said acts as she asked him not to come to their house. However, as already stated *supra*, he neither mentioned the presence of P.W.3 at the scene nor the presence of any of the neighbours. He baldly stated that his daughter was also present at the time of the incident, but did not elaborate on her having told him anything about what she had seen. This is most unnatural as his daughter, had she really witnessed the actual occurrence, would have immediately shared that information with her father. Had he been informed of the same, he would not have failed to mention this fact in Ex.P1 report. His further statement that he went with the deceased by the ambulance to Nandigama Hospital is also not borne out by the evidence. Though P.W.3 stated that P.W.1 did go with the ambulance, P.W.1 said that he was following his wife. This statement leads to an inference that his motorcycle was used by him to follow her. Had that been so, he would not have failed to inform the police as the police station was on the way to the hospital. According to him, he asked

his brothers to inform the police about the incident. His brothers however did not do so. They did not even state that P.W.1 asked them to report the incident to the police.

P.W.6, the immediate neighbour of the deceased and P.W.1, turned hostile. He did not speak of the presence of P.W.1 at the scene of the offence when the deceased was being boarded into the ambulance. Surprisingly, his wife Manohari (L.W.8) was not examined by the prosecution, though she was a crucial witness, both for supporting the version of P.W.1 and also the version of P.W.3, as P.W.3 claimed that she summoned Manohari (L.W.8) first.

P.W.12, the technician who came to the scene of the offence in the ambulance specifically said that the victim was screaming by the time they boarded her in the ambulance and she was not in a position to speak. She further confirmed that she did not speak to anybody and none accompanied the victim to the hospital in the ambulance. She categorically stated that none came to the ambulance when they were boarding the deceased by a stretcher. She also confirmed that the information received from their Hyderabad office was to the effect that there was a case of self-involvement burns in Nehrunagar, Nandigama. The testimony of P.W.12 finds support in Ex.P19 hospital intimation, which merely stated that the deceased was brought to the hospital by a 108 ambulance. Had P.W.1 really accompanied the deceased to the hospital at that point of time, Ex.P19 intimation would not have failed to mention the fact that she was brought by her husband in a 108 ambulance. The presence of P.W.1 at the scene and his version that his wife told him as to the attack upon her by the accused therefore appears to be a concocted story.

P.W.2, the father of the deceased, said that he met his daughter after she was shifted to the Vijayawada Government Hospital and she informed him that the accused poured petrol and set fire to her. However, he also stated that his elder sister B.Suseelamma, his second wife Swarupa Rani, his first wife's brother Madhusudhana Rao (L.W.4) and some others were also present when his daughter informed him of the same. Surprisingly, none of these persons who actually heard the deceased telling her father of the occurrence were examined. Except for Madhusudhana Rao (L.W.4), the others were not even shown in the list of witnesses. Further, though P.W.2 said that P.W.1 was also present in the hospital at that point of time, P.W.1 said nothing about it. The building-up of the case from stage to stage is therefore clearly manifest.

The motive attributing to the accused is also equally nebulous. According to P.W.1, the accused reacted when the deceased asked him not to come to their house. This was pursuant to the rumours that the deceased had developed illicit intimacy with the accused whereupon, P.W.1 informed his wife about the rumours and the consequences of the accused visiting the house during his absence. He however stated in his cross-examination that he did not question his wife with regard to the alleged illicit intimacy and only intimated her about the rumours. He however admitted that he had asked his father-in-law (P.W.2) to tell his daughter to tell the accused not to come to their house. He further stated that he had no doubt or suspicion as to any illicit intimacy between his wife and the accused, but he was told of such rumours by his brothers and others. P.Ws.4 and 5, the brothers of deceased, spoke of how they had seen the deceased and P.W.3 in the company of the accused. So, the motive attributed by virtue of this version was that the accused, upon being

spurned by the deceased, committed the offence. The other version which was put-forth was that P.W.1 owed money to the deceased and as he was not repaying the same, the accused quarrelled with the deceased and asked her to give her gold chain, whereupon an altercation took place between them resulting in the attack. This version was put-forth by P.W.3, P.W.2 and the prosecution, *vide* the charge-sheet. However, no gold chain was recovered, though the police claimed that the accused confessed to the commission of the crime and also helped in recovering the Sprite plastic bottle (M.O.1). Section 379 IPC was therefore dropped by the police themselves while laying the charge-sheet. However, the charge-sheet conveniently added a new angle to the case by saying that the deceased failed to fulfil the 'ill-desire' of the accused and therefore he attacked her. No mention was made by P.W.3 of any such angle. Significantly, P.W.1 admitted that he was embroiled in a lot of cheque bouncing cases and though he claimed that he owed the accused only Rs.5,000/- as on the date of the incident, he conceded that the accused was in possession of a promissory note and a cheque for an amount of Rs.60,000/-. His lame excuse was that though he had borrowed Rs.60,000/- and repaid most of it, he did not take back the promissory note and cheque as Rs.5,000/- was still outstanding. This version is difficult to believe, as P.W.1 admitted that he did not obtain any receipts for his repayments and baldly claimed that he allowed the accused to retain these documents, despite repayment of almost the entire sum due. It is therefore possible that P.W.1 was still due and liable to repay a sum of Rs.60,000/- to the accused.

Another crucial document relied on by the learned I Additional Sessions Judge, Krishna at Machilipatnam, was Ex.P21, the alleged statement of the deceased recorded by P.W.14, the Sub-Inspector of

Police. However, this document does not even bear the endorsement of the duty doctor as to the mental fitness and capacity of the deceased to make a statement. It is relevant to note that P.W.1 stated in his chief-examination that the deceased was administered a sedative at Nandigama Hospital before 5.30 PM. He confirmed this in his cross-examination also. She was thereafter shifted to the Vijayawada Government Hospital. According to P.W.14, he recorded Ex.P21 statement at about 6.30 PM. Had she been sedated, it is doubtful as to whether the deceased would have been in a position to make such a statement. The absence of certification by the duty doctor in this regard, and even by P.W.14, therefore assumes importance. When P.W.12 stated to the effect that the deceased was screaming and not even in a position to speak when she was boarded in the ambulance, it is difficult to believe that after being administered a sedative to ease her pain, the deceased would have been conscious and coherent enough to make a detailed statement as in Ex.P21. Be it noted that she allegedly informed P.W.14 that 'petrol was brought in a cool-drink bottle'. Whether she would have had such clarity of thought at that point of time is doubtful and renders this document highly suspect.

The failure on the part of the police to get the dying declaration of the deceased recorded by a Magistrate speaks volumes. Even if the Judicial Magistrate of First Class at Nandigama was on leave, in-charge arrangements would have been made, but no mention was made by the prosecution as to whether any steps were taken in this regard. Further, P.W.14 fairly admitted that he made no attempt to get the dying declaration of the deceased recorded at least at Vijayawada after she was shifted there and baldly stated that it was the duty of the doctor there to send intimation to the Magistrate. This

indicates the level of care taken by the police during the investigation of the case. As the status of mind of the deceased after her hospitalization is open to question, no credibility can be attached to Ex.P21 statement allegedly recorded by P.W.14.

In **SHAIKH BAKSHU V/s. STATE OF MAHARASHTRA**⁵, the Supreme Court was dealing with a dying declaration recorded by a Naib Tahsildar. This dying declaration was held to be credible by the trial Court because the medical officer was present when it was recorded. However, no mention was made in the dying declaration that it was read over and explained to the deceased. Though it was not stated so, the trial Court and the High Court held that it must be presumed that it was read over and explained. This was however held to be unacceptable by the Supreme Court. In the present case, there is no indication of the duty doctor either being present or finding that the deceased was in a fit state of mind to give a statement and there is no indication that Ex.P21 was read over and explained to the deceased as it purported to be a statement recorded under Section 161 CrPC and did not even bear her signature or thumb impression.

In **K.RAMACHANDRA REDDY V/s. THE PUBLIC PROSECUTOR**⁶, the Supreme Court affirmed the findings of the Sessions Court that even if the deceased is conscious in the strict sense of the term, there must be reliable evidence to show, in view of his intense suffering and serious injuries, that he was in a fit state of mind to make a statement regarding the occurrence. In the case on hand, there is no such evidence forthcoming from the prosecution.

⁵ (2008) 1 SCC (CrI) 679

⁶ (1976) 3 SCC 618

In **STATE OF U.P. V/s. SHISHUPAL SINGH**⁷, the Supreme Court discredited the dying declaration on the ground that it did not contain the signature of the deceased.

No doubt, a statement recorded under Section 161 CrPC may, in deserving cases, require to be treated as a dying declaration, but such a statement must be worthy of credence. In the case on hand, no such credibility attaches to Ex.P21 statement.

Though the learned Public Prosecutor would contend that the parameters that apply to dying declarations may not be applicable to a statement such as Ex.P.21, this Court is of the opinion that even if the same requirements do not apply, the statement must have the ring of truth, apart from satisfying the Court that it was made by the deceased in a fit and coherent state of mind. In the present case, there is no indication that the deceased was in a conscious and fit state of mind to make a statement, as no evidence whatsoever has been let in by the prosecution as to her mental status after she was hospitalized and sedated.

In **PANCHANAND MANDAL ALIAS PACHAN MANDAL V/s. STATE OF JHARKHAND**⁸, the dying declaration was not certified by any medical expert stating that the deceased was in a medically fit condition for giving the statement. The Supreme Court observed that though such certification is not mandatory, it is the duty of the officer who recorded the same to mention whether the deceased was in a mentally and medically fit condition for making such a statement, particularly when the case was of third-degree burns which could lead to death.

⁷ AIR 1994 SC 129

⁸ (2013) 9 SCC 800

In **ORIGALA ADAM V/s. STATE OF A.P. REP. BY PUBLIC PROSECUTOR, HIGH COURT OF A.P. HYD.**⁹, the dying declaration was recorded by a Head Constable. However, he did not record that he himself was personally satisfied with the mental condition and capacity of the deceased to give a statement. At the end of the statement, the doctor certified as to the consciousness and coherence of the deceased. Despite the same, this Court held that it would not be sufficient and when a dying declaration is recorded by any person or by a Magistrate or a third person, there should be evidence to show that the person who recorded or heard the statement of the victim was satisfied that the person, who gave such a statement, had a sound mind and could understand questions and answer the same.

In **MOHD. ISLAM V/s. STATE (NCT) OF DELHI**¹⁰, the statement was recorded by the Investigating Officer, but did not contain certification by the doctor that the victim was in a fit state of mind and health to make a declaration of that nature. The Supreme Court observed that though it had been held that such certification was not always necessary, when a statement of this nature is being recorded in a hospital, if the prosecution fails to get such certification, the document should be very cautiously considered. Though the treating doctor also signed the said statement, the Court held that it would be extremely difficult to accept the condition of the victim merely on an endorsement made by the doctor. Significant to note, the victim in that case was also in severe agony and sedated.

In **WAIKHOM YAIMA SINGH V/s. STATE OF MANIPUR**¹¹, the Supreme Court held that though there can be no dispute that a dying declaration can be the sole basis for conviction, such a dying

⁹ 2011 (1) ALT (CrI.) 298 (DB) (A.P.)

¹⁰ (2007) 15 SCC 718

¹¹ (2011) 13 SCC 125

declaration has to be proved to be wholly reliable, voluntary and truthful and further, that the maker thereof was in a fit medical condition to make it.

In **BHAGWAN V/s. STATE OF U.P.**¹², the Supreme Court observed that as per the Police Regulations, a dying declaration can be recorded by the Investigating Officer himself in the presence of two respectable witnesses and upon obtaining the signature or mark of the declarant and the witnesses at the foot of the declaration. In that case, the police had recorded the statement of the deceased under Section 161 CrPC. As the case registered at that time was under Section 326 IPC, the Supreme Court observed that the law empowered the prosecution to rely on the said statement by treating it as a dying declaration, as Section 32(1) of the Indian Evidence Act, 1872, made it clear that such a statement would be relevant as the person who made it was not available and even if the person was not, at the time when he made the statement, under the expectation of death. However, the Supreme Court cautioned that having regard to the extraordinary credence attaching to such a statement falling under Section 32(1) of the Indian Evidence Act 1872, extreme care and caution has to be taken while relying upon such a statement recorded as a dying declaration.

Though the learned Public Prosecutor would rely on this decision to support his contention that Ex.P21 should be accepted as a believable dying declaration, there are too many suspicious circumstances attaching thereto to accept the said statement as a true and valid dying declaration, unlike the case before the Supreme Court. There are too many conflicting circumstances emerging from the evidence to give the ring of truth to Ex.P21 statement.

¹² 2013 CRL. L. J. 512

In ***NALLAPATI SIVIAIAH V/s. SUB-DIVISIONAL OFFICER, GUNTUR***¹³, the Supreme Court observed that though there is no requirement of law that there should always be medical certification that the injured was in a fit state of mind at the time of making a declaration, such certification by the doctor is essentially a rule of caution and even in the absence of such certification, the voluntary and truthful nature of the declaration can be established otherwise.

In the present case, the mental status and fitness of the deceased at the time Ex.P21 statement was alleged to have been recorded is doubtful as P.W.1, time and again, asserted that the deceased had been administered a sedative prior to 5.30 PM itself. That being so, as to whether she was conscious at all is one issue. Whether she would have been coherent enough after being sedated, even if she was conscious, to make a statement is the second issue. Failure on the part of P.W.14 to obtain certification from the duty doctor as to the state of mind of the deceased if at all she was conscious, therefore assumes critical importance. That being so, a conviction solely based on Ex.P21, in the absence of corroborative evidence, cannot be sustained.

P.W.7, the other so-called witness at the scene, is equally unworthy of trust. His claim that he was having a meal with his friends at 3.30 PM on that day, when they heard cries and he and his wife came out of the house, while the friends continued with their meal, is rather difficult to believe. He admitted that he could not even name the others who were present there, clearly diluting his claim that he was actually present at the scene.

Given the aforesaid contradictions and inconsistencies in the prosecution's case, it cannot be ruled out that the deceased herself

¹³ 2008 (1) ALD (CrL.) 316 (SC)

committed suicide, be it for whatever reason. Insinuations were made in the evidence to the effect that P.W.1 was harassing her to sell the property given to her by her parents as he was in dire need of money to repay his debts, which had led to several cases being instituted against him in various districts. There is no clarity as to whether there was actual intimacy between the deceased and the accused, which might have been a reason for her to take her own life. Another crucial fact in this regard is the failure of the prosecution to present photographs of the scene of the offence. P.W.10 admitted that he had stated to the Sub-Inspector of Police that he had taken photographs of the scene of the offence from different angles. He however retracted from this statement. In the usual course of investigation, it is but natural that the police would have gotten the scene of the offence photographed. Suppression of such photographs, given the fact that P.W.10, the photographer, did state so in his Section 161 CrPC statement, leads to the inference that the prosecution is withholding evidence from the Court.

Significantly, the post-mortem examination report did not indicate as to how the deceased was burnt. No trace was found of either petrol or any other inflammatory material. It was not even put to the doctor, P.W.13, that only petrol could have been used and not kerosene or some other inflammatory material. Significantly, none of the burnt clothes of the deceased which were sent for examination to the Forensic Science Laboratory indicated the presence of petrol (Ex.P.26 FSL report).

Given the totality of the aforestated circumstances, there are many reasons to doubt the prosecution's vacillating versions. The prosecution therefore failed to prove beyond reasonable doubt that the accused caused the death of the deceased by pouring petrol and

setting her on fire. As his very presence at the scene is rendered doubtful, his conviction under Section 449 IPC is also equally untenable.

The judgment of the learned I Additional Sessions Judge, Krishna at Machilipatnam, in Sessions Case No.310 of 2008, to the contrary, is therefore unsustainable and is accordingly set aside. The appeal is allowed. As the appellant-accused was released on conditional bail during the pendency of this appeal, he shall forthwith report before the Superintendent, Central Jail, Rajahmundry, for completion of necessary formalities in the light of his acquittal. Bail bonds furnished at the time he secured conditional bail shall stand discharged. Fine amounts paid by him, if any, shall be refunded.



SANJAY KUMAR,J

Dr.SHAMEEM AKTHER,J

13th OCTOBER, 2017

PGS