

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

CRIMINAL APPEAL NO.232 OF 2011

Between:

Syed Kamruddin

.. Appellant

and

The State of A.P. rep. by its Public
Prosecutor, High Court, Hyderabad

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 04.09.2017

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

1. Whether Reporters of Local newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes/No
3. Whether Their Lordships wish to
see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

ANIS, J

*** THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

+ CRIMINAL APPEAL NO.232 OF 2011

% DATED 4th SEPTEMBER, 2017

Syed Kamruddin

.. Appellant

Vs.

\$ The State of A.P. rep. by its Public
Prosecutor, High Court, Hyderabad

.. Respondent

<Gist:

>Head Note:

! Counsel for the Appellant : Sri O.Kailashnath Reddy &
Sri Suresh Kumar Reddy
Kalava

^Counsel for the respondent : Public Prosecutor for the
State of Andhra Pradesh

? CASES REFERRED:

1. AIR 1958 SC 22
2. (2014) 14 SCC 646
3. (2015) 8 SCC 299
4. (1999) 8 SCC 161
5. 1991(2) APLJ 368
6. (2005) 12 SCC 287
7. (2007) 15 SCC 465
8. (2017) 1 SCC 529

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

CRIMINAL APPEAL NO.232 OF 2011

J U D G M E N T

(Per Sri Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 23.02.2011 passed by the learned VII Additional District and Sessions Judge, Madanapalle, in Sessions Case No.51 of 2010, convicting the appellant, the sole accused therein, under Section 302 IPC and sentencing him to imprisonment for life for committing the murder of his wife, Pullivalla Manjula @ Bujji, by pouring kerosene over her body and setting her on fire.

The case of the prosecution, in brief, was as under: The Sub-Inspector of Police, Panjani Police Station (P.W.15), received Ex.P1 complaint from P.W.1 stating that the accused had poured kerosene on the deceased, his sister, and set her on fire. P.W.15 registered a case in Crime No.16 of 2009 under Section 302 IPC and sent the express FIR to all concerned. Ex.P16 is the FIR. As the Inspector of Police of the jurisdiction was transferred and the post was vacant, P.W.15 was instructed by the Sub-Divisional Police Officer, Palamaner, to conduct the investigation in the case. He thereupon went to S.V.R.R.Hospital, Tirupati, and held an inquest over the body of the deceased after securing witnesses and panchayatdars. He then requested the Doctor to conduct the post-mortem examination of the body. P.W.15 examined P.Ws.1 to 5 and recorded their statements under Section 161 CrPC. On the next day, 26.02.2009, he visited the scene of the offence at Dommarapalem Village and prepared the rough sketch of the scene of the offence (Ex.P17). Ex.P18 is the scene observation-cum-seizure mahazarnama, whereunder he seized a

partly burnt red coloured cloth (M.O.1), a partly burnt green coloured plastic kerosene tin (M.O.2) and three beedi butts (M.O.3). This seizure was effected in the presence of mahazardars. On the same day, he secured the presence of P.W.6 and P.W.7 and recorded their statements. He enquired as to the whereabouts of the accused but found that he was absconding. The investigation was then taken over by T.Anjaneyulu, Inspector of Police, Palamaner, (L.W.17), who arrested the accused on 14.03.2009. Upon completion of the investigation, T.Anjaneyulu, Inspector of Police (L.W.17), laid the charge sheet.

Upon committal, the Sessions Court charged the accused with the murder of his wife, Pullivalla Manjula @ Bujji, by pouring kerosene and setting her on fire, thereby committing an offence punishable under Section 302 IPC. The accused denied the charge and claimed to be tried.

The prosecution examined 17 witnesses before the Sessions Court and marked in evidence 20 exhibits. The accused did not choose to adduce any evidence. Case properties were marked as M.Os.1 to 3.

Significantly, most of the prosecution witnesses did not support its case and turned hostile. The salient points in their evidence and the documentary evidence may now be noted.

P.W.1, the brother of the deceased, stated that she got married to the accused about 20 years previously and that they begot two children, P.Ws.3 and 6. He said that the accused and his sister used to reside in their village, Dommarapalem. About two years back, his sister poured kerosene and set fire to herself. The neighbours raised cries at 5.00 PM on 24.02.2009 and by the time he went to the house

of his sister, the flames had been put out by the neighbours. They then took his sister to the Government Hospital, but the doctors advised them to take her to Tirupati for better treatment, as her condition was serious. He stated that after they crossed Chittoor town, his sister lost her speaking ability. They then admitted her in S.V.R.R.Hospital, Tirupati, and the doctors at the said hospital attended on her but after half an hour; she died at the hospital while undergoing treatment. He stated that an inquest was conducted over her body by the police on 25.02.2009 at the hospital and he was examined at that time and that witness summons were also served on him to be present at the time of the inquest. He said that his sister committed suicide because she was unable to bear stomach pain. He stated that Ex.P1 was the report signed by him at the direction of the police and claimed that he did not know the contents thereof. At that stage, he was declared hostile and cross-examined by the prosecution. He then **denied** that he knew the contents of Ex.P1 report and that he had stated before the police as in Ex.P2, his statement recorded under Section 161 CrPC, to the effect that the accused poured kerosene over the body of his sister and set her on fire. He denied that he was deposing falsely because of a compromise with the accused and that his sister had never suffered from stomach ache. He denied knowledge of the Magistrate recording a dying declaration at Tirupati.

P.W.2, the wife of P.W.1, stated that the accused and the deceased used to reside in Dommarapalem and lived amicably. She said that the deceased died about two years ago but on the date of the incident, she was not present in her house as she had gone to Punganur. She claimed that she went to S.V.R.R.Hospital, Tirupati,

as the deceased had been shifted there. She said that she reached Tirupati on the next day of the incident at 10.00 AM and the deceased died at 12.00 noon at the hospital while undergoing treatment. She said that the deceased was suffering with stomach ache and committed suicide by pouring kerosene and setting herself on fire. She admitted that her statement was recorded by the police and claimed that she did not know the exact reason for the death of her sister-in-law. At this stage, she was declared hostile and in her cross-examination by the prosecution, she denied that she had stated against the accused to the police in her statement recorded under Section 161 CrPC (Ex.P3). She denied that she had informed the police that the accused had poured kerosene over the body of the deceased and set fire to her. She denied that she was deposing falsely due to a compromise with the accused.

P.W.3, the younger son of the deceased and the accused, aged 14 years, was asked necessary questions by the Sessions Court to know whether he was able to give rational answers. Upon satisfying himself in this regard, the Sessions Court permitted him to depose. Thereupon, he stated that his mother died on 25.02.2009. On 24.02.2009, he said that at around 5.00 PM his mother poured kerosene and set fire to herself unable to bear stomach ache. At that time, he said that he was in P.W.1's house but on coming to know of the same he rushed to his house and at that time, he saw his father putting out the flames. He said that his father sustained burn injuries to his hands in this connection. He said that his mother was shifted to the Government Hospital, Punganur, and thereafter to S.V.R.R.Hospital, Tirupati, where she died the next day. He said that he did not go to see his mother when she was taking treatment at the

hospital and that he was not examined by the police. He was then declared hostile and in his cross-examination by the prosecution, he denied that he had stated to the police as in Ex.P4, his statement recorded under Section 161 CrPC, to the effect that the accused poured kerosene over the body of his mother and set fire to her. He denied that he was deposing falsely at his dictation of the accused as he was his father and as he was residing with him. In his cross-examination by the defence, he said that the accused was also in the house of P.W.1 at the time of the incident and upon hearing cries only, he came along with them.

P.W.4 stated that the deceased was his maternal uncle's daughter. He said that she died about two years ago by pouring kerosene and setting fire to herself and that she committed suicide unable to bear stomach ache, with which she was suffering for a period of two years. She was taken to Punganur hospital and thereafter to Tirupati hospital. He said that he did not go to either place. He further stated that when the deceased was in flames, he and other neighbours put out the flames. At the first instance, the deceased raised cries and thereafter, other neighbours also raised cries. He denied being examined by the police. At this stage, he was declared hostile and in his cross-examination by the prosecution, he said that it was not true to say that the accused poured kerosene on the deceased and set her on fire and that after hearing the cries of P.W.3, he went to put out the flames. He denied that he had informed the police as in Ex.P5, his statement under Section 161 CrPC, and that he was deposing falsely to help the accused.

P.W.5, a resident of Dommarapalem Village, stated that about two years ago, at about 5.00 PM on one day, the deceased poured

kerosene and set fire to herself and that she committed suicide unable to bear stomach ache. He said that when the deceased poured kerosene and set herself on fire, he was not present at Dommarapalem and had gone to Punganur to buy provisions. He denied being examined by the police. He was declared hostile and in his cross-examination by the prosecution, he denied that the accused had poured kerosene on the deceased and set fire to her and that he was present in the village on that day. He denied that he was deposing falsely as the accused and the *defacto* complainant had compromised. He denied having stated to the police as in Ex.P6, his statement recorded under Section 161 CrPC.

P.W.6, the older son of the deceased and the accused, aged 15 years, was subjected to questioning by the Sessions Court to know whether he was able to give rational answers. Upon being satisfied in this regard, the Sessions Court permitted him to depose. He then stated that he was residing with his father at Dommarapalem at that point of time and that his mother had died about three years ago. He said that his mother poured kerosene and set herself on fire and at that time, he was outside the house playing with other children. The incident took place at about 2.00 PM. On hearing the cries of the villagers, he said that he went to his house but by that time, his mother was shifted to the hospital. He said that his father looked after his mother well. He denied being examined by the police. He was declared hostile and cross-examined by the prosecution. He then denied that he had stated to the police as in Ex.P7, his statement under Section 161 CrPC, to the effect that his father poured kerosene on his mother. He denied that he was deposing falsely to save his father.

P.W.7, a resident of Dommarapalem Village, stated that his house was situated adjacent to the house of the accused. He said that the deceased died about a year ago and that she poured kerosene and set herself on fire. He said that he was not present in the village on the date of the incident and on telephonic information given by the villagers about the incident, he came to his village and by that time, the deceased was taken to the hospital. He denied being examined by the police. At this stage, he was declared hostile and subjected to cross-examination by the prosecution. He then denied having stated to the police as in Ex.P8, his statement under Section 161 CrPC, that the accused poured kerosene on the deceased and set her on fire. He denied that he was deposing falsely to help the accused as the complainant and the accused had compromised.

P.W.8, a resident of Dommarapalem Village, stated that the deceased died about two years ago at S.V.R.R.Hospital, Tirupati. He stated that he took the deceased to S.V.R.R.Hospital for treatment, when she sustained burn injuries. He denied that an inquest was held in his presence but he said he signed on some papers upon the request of the police. He was declared hostile and cross-examined by the prosecution. He then stated that he signed on the inquest report without knowing the contents thereof upon the request of the police. He identified Ex.P9 as his signature on the inquest report. He denied being present at the time of the inquest and that he was deposing falsely to help the accused. He said that the deceased committed suicide unable to bear stomach ache and denied the suggestion that the accused was responsible for her death. In his cross-examination by the defence, he said that he was at the bed side of the deceased till her death and that his relations insisted upon the deceased giving a

statement against the accused to the Magistrate, who came to record her statement in the hospital. He further stated that he was present at the time of recording of her statement.

P.W.9, an inquest witness, stated that he accompanied the Sub-Inspector of Police, Panjani Police Station, to S.V.R.R.Hospital upon being informed that the deceased, belonging to Dommarapalem, died there. He however stated that he was not present when the inquest was conducted over the body of the deceased. He said that he and others were asked to wait outside and thereafter, the Sub-Inspector of Police came to him and asked him to sign on the inquest report. He stated that upon such request, he signed on the inquest report and identified Ex.P10 as his signature on the said report. He further stated that he did not express any opinion on the death of the deceased as he was not aware of the cause of her death. He was declared hostile at this stage and cross-examined by the prosecution. He then denied that he was present at the time of the inquest and that he signed the inquest report after going through its contents. He also denied having expressed his opinion that the deceased died because the accused poured kerosene over her and set fire to her.

P.W.10, a witness to the scene observation mahazarnama, also turned hostile. He admitted his signature (Ex.P11) on the said mahazarnama but claimed that he did not know the contents thereof. He was cross-examined by the prosecution upon being declared hostile and he denied that he was present at the time of observation of the scene of offence by the Sub-Inspector of Police, Panjani, and that the case properties were seized by the Sub-Inspector of Police. He however contradicted himself by then saying that the case properties were seized in his presence.

P.W.11, another witness to the scene observation mahazarnama, also turned hostile. He admitted his signature (Ex.P12) on the said mahazarnama but claimed that he did not know the contents thereof. In his cross-examination by the prosecution, he denied that he was present at the scene of the offence on 26.02.2009, when the Sub-Inspector of Police observed the scene and seized the material objects. He denied that the Sub-Inspector of Police prepared the proceedings at the scene of the offence in his presence and after the contents thereof were read over to him, he signed the same.

P.W.12, an Assistant Professor in S.V.Medical College, Tirupati, conducted the post-mortem examination of the body of the deceased. She stated that she found ante-mortem burn wounds present on the head, including face, neck, chest, abdomen, external genitalia, both upper limbs and both lower limbs except the soles. She opined that the deceased died at 7.45 PM on 25.02.2009 in S.V.R.R.Hospital, Tirupati, and the cause of death was hypovolemic shock as a result of burns. She stated that during her external examination of the body, she noticed kerosene smell on the body. She confirmed that Ex.P13 was the post-mortem examination certificate given by her. In her cross-examination, she confirmed that the dermo-epidermal burns on the body of the deceased were third degree burns which were fatal. She also admitted that the dermo-epidermal burns were up to 99%. She further stated that burn injuries were sustained by the deceased on her face and lips and if lips are burnt to the extent mentioned in her report, the patient may feel difficulty in speaking. She however admitted that she was not the doctor who attended on the deceased.

P.W.13, the Village Revenue Officer of Appinapalli and Pedda Velagatoor of Panjani Mandal, stated that he signed the inquest

report but claimed that nothing took place in his presence. Upon being declared hostile, he denied in his cross-examination by the prosecution that he was present on 14.03.2009 at about 5.40 PM at Pungamma Cheruvu and in his presence, the Circle Inspector of Police, Palamaner, arrested the accused and drafted a mahazarnama. He however admitted his signature (Ex.P14) on the arrest mahazarnama but claimed that he was not present at the time of arrest of the accused and he signed the same in the police station.

P.W.14, another witness to the arrest mahazarnama, admitted his signature therein (Ex.P15) but claimed that he signed the same, without going through the contents thereof, at Panjani Police Station at the request of the brother of the deceased. In his cross-examination by the prosecution, after being declared hostile, he denied having signed the mahazarnama at Pungamma tank, when the accused was arrested in his presence by the Inspector of Police, Palamaner. He denied signing the mahazarnama after going through its contents and that he was deposing falsely to help the accused.

P.W.15, the Sub-Inspector of Police, Panjani Police Station, spoke of the various steps taken by him during the investigation. In his cross-examination, he stated that on 25.02.2009, he received the complaint at 10.30 AM and that the report was received by the Magistrate along with the FIR at 12.04 AM on 26.02.2009. He stated that the distance between the Police Station, Panjani, and the Court at Punganur was 20 kilometres. He stated that upon telephonic instructions from the Circle Inspector of Police, he started investigation. He denied that a constable of the Police Station was present at the Government Hospital, Punganur, and the deceased informed him that she had herself poured kerosene over her body

and that information was passed on to him by the constable but he suppressed the same. He said that at 2.00 PM, he went to S.V.R.R.Hospital, Tirupati, and denied the suggestion that he did not conduct an inquest in the presence of P.Ws.8, 9 and others and that he obtained their signatures in the Police Station. He said that the scene of the offence was at the outskirts of the village and denied that he never visited the scene of the offence and the signatures were obtained only in the Police Station. He denied that material objects were planted for the purpose of this case and that his investigation was a table investigation.

P.W.16, the I Additional Junior Civil Judge, Tirupati, recorded the dying declaration of the deceased (Ex.P19) at S.V.R.R.Hospital. He said that at about 5.17 AM on 25.02.2009, he received intimation from S.V.R.R.Hospital, Tirupati, to record the dying declaration of the deceased. He rushed to the hospital and identified her with the assistance of the duty Doctor. He started recording the dying declaration at 5.25 AM after certification by the Doctor as to her state of mind. He said that he put a few questions and satisfied himself that the deceased was coherent, conscious and in a fit state of mind to give a statement. He then started recording her statement. She stated that on 24.02.2009 at about 6.00 PM, her husband, the accused, abused her in filthy language and there was a dispute between them regarding provisions, as her husband failed to provide food to her and her two sons. In this regard, on 24.02.2009 there was a dispute between them and her husband abused her and he poured 3/4th litre kerosene over her body and lit her to fire. At the time of the incident, both her children were playing outside the house. She, her husband and her two children lived in the house. The neighbours put

out the flames. As her husband failed to provide food to her and her children, there was a quarrel and her husband poured kerosene on her. P.W.16 said that he read over the contents of the statement to the deceased in verbatim and explained the contents, which she admitted as true and correct. He then obtained her left hand thumb impression thereon. At the time of his recording of her statement, he said that no one except the deceased and the duty Doctor was present. He said that the proceedings concluded at 6.00 AM and after recording of the statement, he again obtained the endorsement of the duty Doctor that the deceased was conscious, coherent and in a fit state of mind while giving the statement. He confirmed that Ex.P19 is the dying declaration of the deceased. In his cross-examination, P.W.16 stated that he received a written intimation from the hospital staff at 5.17 AM. He said that at that time he was in his earmarked bungalow which was at a distance of about 1 to 1½ kilometres from the hospital. He said that he went to the casualty ward where he found the deceased. He stated that in the dying declaration recorded by him, he mentioned that he had sent out all the attendants of the deceased, except the duty Doctor. He admitted that the lips of the deceased were burnt at the time of recording her statement but she gave her statement in a loud voice. He denied the suggestion that the deceased was not able to speak freely. He stated that in the dying declaration, after obtaining the thumb impression of the deceased, he did not mention LTI. He stated that the police was not present at the time he recorded the statement. He denied the suggestion that the deceased was unable to give her statement.

P.W.17, the Sarpanch of Appinapalli Gram Panchayat, stated that he was present at the time the inquest was held over the body of

the deceased along with P.W.9. He said that they came to know that the deceased died by pouring kerosene over her body and setting fire to herself. He confirmed that Ex.P20 inquest report contained his signature but claimed that he did not go through the contents thereof before affixing his signature therein. He was declared hostile and in his cross-examination by the prosecution, he claimed that he was not present when the witnesses were examined by the Sub-Inspector at the time of holding inquest over the body of the deceased. He denied that the said witnesses were present at the time of the inquest and as per the statements given by them, they came to the opinion that the deceased died because of burn injuries caused by her husband by pouring kerosene on her body and setting fire to her. He denied that he was deposing falsely to help the accused. In his cross-examination by the defence, he said that at the request of the S.I. of Police, he signed Ex.P.20 inquest report without knowing the contents. He further stated that Ex.P20 was not written in his presence.

Upon considering the aforestated evidence, the Sessions Court opined that the dying declaration (Ex.P19) was true, voluntary and admissible under Section 32 of the Indian Evidence Act, 1872. Opining that all necessary steps had been taken by P.W.16 while recording the dying declaration, the Sessions Court concluded that the same was sufficient to convict the accused of the murder of his wife, notwithstanding the fact that most of the prosecution witnesses turned hostile. The Sessions Court accordingly held him guilty and sentenced him to imprisonment for life, leading to this appeal.

Heard Sri O.Kailashnath Reddy, learned counsel representing Sri Suresh Kumar Reddy Kalava, learned counsel for the appellant/accused, and the learned Public Prosecutor for the State of A.P.

Sri O.Kailashnath Reddy, learned counsel, would contend that the dying declaration (Ex.P19) was not sufficient in itself to sustain the conviction of the appellant/accused. He would contend that as the deceased had sustained 99% third degree burns, she would not have been in a fit state of mind to give her statement and that the failure of the prosecution to examine the duty Doctor, who certified that she was in a fit state of mind to give such a statement, is fatal. He would further state that the evidence of P.W.12 indicated that the deceased, with her lips burnt to the extent mentioned in Ex.P13 post-mortem examination report, would feel difficulty in speaking and therefore, the dying declaration is rendered suspect and could not be the basis for sustaining conviction of the accused.

Per contra, the learned Public Prosecutor would point out that once the Judicial Magistrate, P.W.16, satisfied himself that the deceased was coherent, conscious and in a fit state of mind to give her statement and he also took the precaution of obtaining medical certification as to her state of mind to give such a statement before and after recording of her statement, the dying declaration (Ex.P19) is not open to attack. He would further state that once the Judicial Magistrate, P.W.16, confirmed that the deceased was in a position to speak loudly to give the details of the incident which ultimately led to her death, such a statement, recorded in accordance with the due procedure, is sufficient in itself to form the basis for the conviction.

There appears to have been some delay in the dispatch of the FIR to the Magistrate but this Court finds no significance in the same. Further, no contention or argument was urged touching upon this aspect. The prosecution witnesses not only turned hostile but also showed great desperation to support the accused. For example,

P.W.3 stated that the accused was with him in P.W.1's house, which was not what was stated by P.W.1 himself. P.W.3 contradicted himself, in fact, as he stated earlier that the accused was putting out the flames around the deceased when he reached the house. He stated that the accused also suffered burns but there is no evidence of the same. Notwithstanding this collapse of the prosecution's case owing to its turncoat witnesses, there still remains a crucial and clinching piece of evidence – Ex.P.19 dying declaration.

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

In ***KHUSHAL RAO***¹, the Supreme Court observed that it cannot be laid down as an absolute rule of law that a dying declaration cannot form the sole basis of conviction unless it is corroborated and that each case has to be determined keeping in view the circumstances in which the dying declaration was made. It was further observed that it cannot be laid down as a general proposition that a dying declaration is a weaker kind of evidence and such a declaration, recorded by a competent Magistrate in the proper manner and as far as practicable, in the words of the maker of the declaration, stands on a much higher footing than a dying declaration which depends upon oral testimony which may suffer from all the infirmities of human memory and character.

Again, in ***JAI KARAN V/s. STATE OF DELHI (NCT)***⁴, the Supreme Court affirmed that a dying declaration is admissible in

¹ AIR 1958 SC 22

² (2014) 14 SCC 646

³ (2015) 8 SCC 299

⁴ (1999) 8 SCC 161

evidence on the principle of necessity and can form the basis for a conviction if it is found to be reliable. Pointing out that it is in the nature of an exception to the general rule forbidding hearsay evidence, the Supreme Court cautioned that in order that it may form the sole basis for conviction, it must be shown that the person making it had the opportunity of identifying the person implicated and was thoroughly reliable and free from blemish.

It is relevant to note that Rule 33(2) of the Criminal Rules of Practice and Circular Orders, 1990, dealing with recording of dying declarations, prescribes that the Magistrate shall ask the declarant whether he is mentally capable of making a declaration, put simple questions to elicit answers from the declarant with a view to know his state of mind and record his own conclusion. The sub-rule further provides that he should also obtain, whenever possible, a certificate from the Medical Officer as to the mental condition of the declarant. It is therefore clear that obtaining medical certification as to the mental capacity of the declarant is not mandatory. It is essentially for the Judicial Magistrate to satisfy himself or herself as to this requirement before proceeding to record the declaration.

Sri O.Kailashnath Reddy, learned counsel, would however place reliance on the observation made by a Division Bench of this Court in **WADAPALLY VENKANNA V/s. STATE OF ANDHRA PRADESH⁵**. The Division Bench found that the Medical Officer in that case, who certified the fitness of the declarant to the dying declaration, was not examined and observed that it is necessary that the prosecution should insist upon examining the Doctor who gave the certificate regarding the state of mind of the declarant while

⁵ 1991(2) APLJ 368

making the dying declaration. This observation is relied upon to assail the reliability of Ex.P19 dying declaration, as the duty Doctor who certified the state of mind of the deceased both before and after recording of Ex.P19 dying declaration, was not examined.

However, reference in this regard may be made to the law laid down by the Supreme Court. In **SHANTI V/s. STATE OF HARYANA**⁶, the Supreme Court did not accept the contention that the dying declaration in that case ought to be rejected as the doctor who certified the fitness of the maker of the said declaration had not been examined. Taking note of the fact that the dying declaration had been recorded by the Chief Judicial Magistrate who was examined before the Sessions Court and that he had obtained the doctor's opinion about the condition of the patient being fit to make the statement, the Supreme Court acted upon the said dying declaration.

In **NALLAPATI SIVAIAH V/s. SUB-DIVISIONAL OFFICER, GUNTUR, ANDHRA PRADESH**⁷, the Supreme Court affirmed that it is not the requirement in law that the doctor who certified the condition of the victim to make a dying declaration should be examined in every case.

In the light of the aforestated case law, the observation of the Division Bench of this Court in **WADAPALLY VENKANNA**⁵ to the effect that the certifying doctor must invariably be examined in all cases involving a dying declaration does not constitute good law.

It is therefore clear that there is no mandate in law that the doctor who certified the mental fitness of the declarant to make a dying declaration should be examined without exception. Though there is no such requirement in law, in a fit case the failure of the

⁶ (2005) 12 SCC 287

⁷ (2007) 15 SCC 465

prosecution to examine the doctor may have significance. In the case on hand, however, this Court finds no reason to disbelieve the evidence of P.W.16, the Judicial Magistrate, who recorded the dying declaration of the deceased, as he satisfied himself as to the fitness of the deceased to make the statement. The certification by the doctor before and after recording of the statement, notwithstanding the fact that he was not examined, only lent support to P.W.16's belief, based on his own questions, that the deceased was conscious, coherent and fit to make the statement.

As regards the contention that the extent of burns suffered by the deceased itself rendered Ex.P19 dying declaration doubtful, reference may be made to **RAMESH V/s. STATE OF HARYANA**⁸, wherein, dealing with a dying declaration of a victim who had suffered 100% burn injuries but was certified by the doctor to be in a conscious state of mind and where the Magistrate had taken all due precautions while recording the dying declaration, the Supreme Court held that the dying declaration could not be discarded merely going by the extent of burns which the victim had suffered. The Supreme Court therefore held that the dying declaration, being a substantive piece of evidence, could be the basis of the conviction once the Court was convinced that the dying declaration was made voluntarily and was not influenced by any extraneous circumstances.

In the light of the aforestated settled legal position, this Court cannot belittle the sanctity and value of Ex.P19 dying declaration merely because of the deceased's extent of burns and as the duty Doctor was not examined before the Sessions Court. No doubt, the lips of the deceased were burnt but P.W.16, the Judicial Magistrate,

⁸ (2017) 1 SCC 529

categorically stated that she was still in a position to speak loudly. There is no reason to suspect P.W.16 and no irrefutable medical evidence was produced in support of the opinion of P.W.12, who conceded that she did not attend upon the deceased. The dying declaration recorded by P.W.16 bears the endorsements of the duty Doctor before and after recording of the statement and P.W.16 independently satisfied himself as to the mental capacity of the deceased to make the statement. Therefore, no further evidence was required on this count.

The statement given by the deceased, as recorded by P.W.16, is clear and lucid and does not brook any doubt or suspicion. Though Sri O.Kailashnath Reddy, learned counsel, would state that the possibility of tutoring of the deceased cannot be ruled out, this Court finds no evidence to even suspect the same. All the prosecution witnesses, including the relations of the deceased, turned hostile and supported the accused. Had they gone to the trouble of tutoring the deceased to speak against the accused in her dying declaration, they would not have backtracked from their own statements made to the police under Section 161 CrPC. That apart, to the extent that they did give evidence, all the witnesses spoke of the accused and deceased living amicably. If that was so, there is no reason to suspect that the deceased would have harboured any vendetta or animosity to the extent of implicating the accused falsely, knowing fully well that she would be rendering her own children without parental support.

Ex.P19 dying declaration clearly brings out that the accused was not providing proper food to the deceased and her children and this led to disputes between them. As to why the accused resorted to

the drastic act of pouring kerosene on the deceased and setting her on fire is not known as no evidence has been let in that he was in a state of inebriation when he did so. In any event, Ex.P19 dying declaration has the ring of truth and, as is well settled, can form the sole basis for conviction. The Sessions Court rightly held so and convicted the accused of murdering his wife, the deceased. The sentence imposed by the Sessions Court is in accordance with law and does not warrant interference. We therefore find no merit in this appeal.

The judgment of the learned VII Additional District and Sessions Judge, Madanapalle, dated 23.02.2011 passed in Sessions Case No.51 of 2010 is accordingly confirmed and the appeal is dismissed. Bail order dated 23.11.2016 in CrI.A.M.P.No.1872 of 2016 shall stand cancelled. The appellant/accused shall forthwith surrender before the Judicial First Class Magistrate, Punganur, and shall be sent to Central Prison, Kadapa, in accordance with the due procedure to suffer the rest of the sentence. In the event the appellant/accused fails to surrender as directed by this Court, the learned Judicial First Class Magistrate, Punganur, shall take appropriate measures in accordance with law to secure his presence and commit him to prison.

SANJAY KUMAR, J

ANIS,J

4th SEPTEMBER, 2017

Note: L.R. copies to be marked.
(B/o)
PGS/SVV