

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

CRIMINAL APPEAL NO.202 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 18.03.2010 in Sessions Case No.166 of 2008, whereby the learned Judge, Family Court-cum-Additional Sessions Judge, Karimnagar, held Ponnamm @ Ponnoju Venkateshwarlu (A1) and Khammam @ Thota Laxmi (A2) guilty of killing Kadarla Suguna by pouring kerosene on her and setting her on fire, thereby committing an offence punishable under Section 302 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for life. Aggrieved, they are before this Court.

The case of the prosecution was that A1 had kept the deceased as his mistress and was living with her; on 21.06.2007, the deceased left for coolie work and upon her return at about 8.00 PM, A1 and A2, another kept mistress of A1, picked up a quarrel with her to transfer her property in their name and when she refused to do so, A1 and A2 poured kerosene on her and set her ablaze, thereby causing her death intentionally and knowingly.

The Sub-Inspector of Police, Huzurabad (P.W.20), received telephonic information on 21.06.2007 at 9.00 PM that a woman was admitted in the Government Hospital, Huzurabad, with burn injuries. He thereupon went to the hospital and found the deceased admitted in the said hospital with burn injuries but in a conscious state. He recorded her statement (Ex.P28) and treating the same as a complaint, he registered Crime No.111 of 2007 under Section 307 read with Section 34 IPC against A1 and A2. Ex.P29 is the FIR sent

by him to the Court. He then requisitioned the Junior Civil Judge-cum-Additional Judicial Magistrate of First Class, Huzurabad (P.W.17), to record the dying declaration of the deceased. P.W.20 then recorded the statement of P.W.1, P.W.11, P.W.2, P.W.3 and P.W.6. He visited the scene of the offence, the house bearing No. 6-127, Gollawada, Huzurabad. He secured the presence of PWs.8 and 10 and recorded the scene observation and seizure panchanama (Ex.P10) and drew up a rough sketch. He seized a ten litre black coloured plastic kerosene can (M.O1), a match box (M.O.2) and saree pieces (M.O.3) in the presence of the said witnesses. He got the scene of the offence photographed through P.W.7, a photographer. He then recorded the statements of P.Ws.4 and 5. On 22.06.2007 at 12.00 noon, he received telephonic information from N.Joseph (L.W.13), In-charge of the Police Outpost at M.G.M Hospital, Warangal, that the deceased had expired. He thereupon altered the provision of law from Section 307 IPC to Section 302 IPC and sent the alteration Memo (Ex.P30) to the Court. He then handed over the case diary to the Circle Inspector of Police (P.W.18), Huzurabad Circle.

Thereupon, P.W.18 again examined P.W.1, P.W.11, P.W.2, P.W.3, P.W.4, P.W.5 and P.W.7 and found their statements to be on the same lines as recorded by the Sub-Inspector of Police (P.W.20). P.W.18 then examined P.W.9, Pasham Laxmi (L.W.15), Pasham Mohan Reddy (L.W.16), Pasham Sampath Reddy (L.W.17) and P.W.13 and recorded their statements. He visited M.G.M.Hospital, Warangal, and found the body of the deceased kept in the mortuary. He recorded the inquest panchanama (Ex.P20) in the presence of Prathapa Anjaneyulu (L.W.19), Prathapa Thirumal Reddy (L.W.20) and P.W.12 and then sent the body of the deceased for post-mortem

examination, after getting it photographed by P.W.13. Ex.P12 is the set of photographs. On 28.06.2007 at around 6.20 AM, he arrested A1 and A2 when they were in front of the Civil Hospital, Huzurabad. He conducted the confessional panchanama of both the accused in the presence and with the participation of P.W.13 and P.W.15. Ex.P21 is the admissible portion of the confessional panchanama of A1 and A2. Thereupon, A1 and A2 led P.W.18 and the panch witnesses to the house bearing No.6-127, situated near Shivalayam Street, Huzurabad. There, A1 went inside and brought out one pant (M.O.4) and one shirt (M.O.5) which were seized. The seizure portion of the panchanama is Ex.P22. P.W.18 then took the accused to the Police Station on the same day and thereafter produced them before the Judicial Magistrate of First Class, Huzurabad, and they were remanded to judicial custody. He sent the seized articles to the Forensic Science Laboratory for examination under Ex.P23 requisition. The final report of the laboratory (Ex.P26) was received by him stating that traces of flammable hydrocarbons were found in M.Os.4 and 5. He then laid the charge-sheet against A1 and A2.

Upon committal, the Sessions Court framed a charge indicting A1 and A2 under Section 302 IPC read with Section 34 IPC.

A1 and A2 denied the charge and claimed to be tried.

Thereupon, the prosecution examined 20 witnesses and marked in evidence 30 exhibits. No oral evidence was let in by the accused but they marked a portion of the statement made by a circumstantial witness (P.W.9) under Section 161 CrPC statement as Ex.D1. Case properties were marked as M.Os.1 to 5.

By the judgment under appeal, the Sessions Court, relying upon Exs.P18 and P28 dying declarations recorded by P.Ws.17 and

P.W.20 respectively, held that the prosecution had proved the guilt of A1 and A2 beyond reasonable doubt in pouring kerosene on the deceased and setting fire to her, on account of which she sustained burn injuries and died. They were accordingly convicted under Section 302 IPC read with Section 34 IPC and sentenced.

Sri P.Bhanu Prakash, learned counsel for the appellants/A1 and A2, would contend that the dying declarations were not worthy of credence and in the light of the evidence, oral and documentary, the Sessions Court was not justified in holding the appellants guilty of the offence and in consequently convicting and sentencing them to life imprisonment. Learned Public Prosecutor appearing for the State of Telangana would contend to the contrary that the judgment under appeal is unassailable on facts and in law.

The salient points emerging from the evidence may be noted:

P.W.1, a resident of Huzurabad, stated that he knew the deceased and that she had constructed a house on the right side of his house. He stated that he knew A1 by name but had never seen A2 before. He stated that A1 and the deceased lived together in a house located near Sambashiva Talkies, Huzurabad, and that the said house was their own. A1 and the deceased used to supervise the construction of the house which was adjacent to his house. He stated that the house of A1 and the deceased near Sambashiva Talkies was at a distance of one kilometre from their house located adjacent to his house. He stated that on the date of the incident at about 8.30 PM, the deceased came running with burn injuries over her body and fell down in front of her house adjacent to his house. He stated that somebody telephoned to the ambulance and she was taken to the hospital. After some time the police came there and along with them,

he went to the hospital. He said that the deceased was not in a position to speak and he did not know how the incident had happened and how she sustained burn injuries. He stated that the deceased was taken to the Government Hospital, Huzurabad, and when he visited her she was alive. She was shifted to M.G.M.Hospital, Warangal, and he also went to the said hospital along with two Home Guards. He was informed that on the next day at about 4.00 AM, the deceased died in M.G.M.Hospital. He admitted that he was examined by the police and claimed that he stated before them on the same lines as he had stated before the Court. At this stage, P.W.1 was declared hostile and was subjected to cross-examination by the prosecution. He then denied that he gave a statement before the Sub-Inspector of Police, Huzurabad Police Station (P.W.20), that at about 8.00 PM on 21.06.2007, while he was at his house the deceased came running to her house with burnt clothes and she was crying. He also denied that when he made enquiries with her, she informed him that A1 and his concubine (A2), by name Khammam Lakshmi, quarreled with her demanding that she transfer her property in their names and had also threatened to kill her and they brought kerosene and poured it on her and set fire to her. He denied that he had stated before P.W.20 as contained in Ex.P1-Section 161 CrPC statement. He denied that after receiving money from A1 and A2, he was deposing falsely in order to save them. In his cross-examination by the defence, he stated that the house of A1 near Sambashiva Talkies was surrounded by houses and from that house till their house, there were houses on either side of the road.

P.W.2, a resident of Huzurabad Town, stated that he knew the deceased and also A1. He stated that one Ganishetti Banusha was

the present Sarpanch, but earlier the brother-in-law of the deceased, Sudershan, was the Sarpanch. The present Sarpanch and Sudershan had a saw mill, in which A1 used to work. He stated that he did not know who A2 was, though he used to see her in Huzurabad but did not know any other details about her. He stated that the deceased had a house near Saraswathi Shishumandhir. He stated that A1 and the deceased used to live together. He stated that on the date of the incident at about 7.30 or 8.00 PM, he was at the kirana shop of one Akenepally Shiva Prasad and at that time, he and others saw the deceased coming on the road and she was burning. He stated that the shop owners in the area closed their shutters due to fear and he telephoned to 108 ambulance. He stated that he also telephoned to Huzurabad Police Station and to the Ward Member. He stated that as per the instructions of the ambulance people, he followed the deceased till she reached the back side of Ramgopal Saw Mill and fell on a cot. In the meanwhile, he stated that the neighbours came there and put out the fire and, in the meanwhile, the police and ambulance people reached the spot. He stated that even before the ambulance reached the spot, the deceased was shifted into an auto, but when the ambulance came, she was shifted into the ambulance and was taken to the Government Hospital, Huzurabad. He stated that he also went to the Government Hospital and in the meanwhile, the Ward Member and ex-Sarpanch, Sudershan (P.W.11), came to the hospital. He stated that he then left the hospital and went home. On the next day, he came to know that the deceased died while undergoing treatment in M.G.M.Hospital, Warangal. He admitted that the police examined him and claimed that he had stated before them what he had stated before the Court. At this stage, he was declared hostile

and was cross-examined by the prosecution. Then, he denied that he and others observed the deceased walking along with burn injuries and they made enquiries, upon which she informed them that A1 and his concubine, Khammam Lakshmi (A2), demanded that the deceased transfer her property in their names and when she refused, in order to kill her, they poured kerosene and set fire to her. He also denied that he had stated before the Sub-Inspector of Police, Huzurabad, (P.W.20) as contained in Ex.P2 - Section 161 CrPC statement. He stated that he was doing contracts in respect of sanitary works of Huzurabad Gram Panchayat, but denied the suggestion that he was doing such works at the request of the present Sarpanch, Banusha, and the ex-Sarpanch, Sudershan (P.W.11), in whose saw mill, A1 was working, and that he was deposing falsely so as to save A1 and A2.

P.W.3, a resident of Huzurabad, stated that he knew the deceased and A1. He stated that he did not know who A2 was. He stated that his house was situated near the house of the deceased and that the deceased had another house also. He stated that the deceased used to reside in her other house which was situated at a distance of one kilometre from his house. He stated that he did not know whether she was living alone or living with anybody. He stated that she was married, but had been deserted by her husband and used to stay with one person, Yadava by caste, but that person also died. He stated that it appeared that the deceased used to reside with A1, and that on the date of incident, the deceased came and fell down at her house with burn injuries. He admitted that he saw her but stated that he went inside his house and bolted the doors. He stated that it happened at about 8.00 PM and that he subsequently came to

know that the deceased was taken to the hospital, where she died. He claimed that the police had not examined him. At this stage, he was declared hostile and cross-examined by the prosecution. He then denied the suggestion that when the deceased came to the house with burn injuries, he and other persons of the locality made enquiries with her and she informed that A1 and A2 poured kerosene and set fire to her when she refused their demand to transfer her property in their names. He also denied the suggestion that he stated before the police that he and P.W.2 took the deceased to the Government Hospital, Huzurabad. He further denied that he had stated before the police as contained in Ex.P3 - Section 161 CrPC statement. He stated that it was not true to say that after taking money from A1 and A2, he was deposing falsely so as to save them.

P.W.4, an employee of the RTC and a resident of Shivalayam Street in Huzurabad, stated that he knew the deceased and A1. He said that he knew A2 but did not know her name. According to him, the house of the deceased was situated to the right side of his house and A1 and the deceased used to reside there. He stated that on the date of incident at about 7.30 or 8.00 PM, he was in house and was preparing to go for duty and at that time, his wife informed that some woman was going in the street crying. He stated that he then came out of the house and saw the deceased going with flames. He stated that all the people in the locality went inside their houses and bolted their doors. He stated that he also advised his wife to bolt the door and left the house to go to the depot. He claimed that the police had not examined him. He was declared hostile and was subjected to cross-examination by the prosecution. He then stated that A1, his blind wife and the deceased used to live together in the house of the

deceased which was adjacent to his house. He stated that he came to know that the deceased had another house in Huzurabad. He denied the suggestion that on 21.06.2007 at about 8.00 PM, when the deceased was running in the street with burn injuries he came out of the house and when he and others enquired, they came to know that A1 along with Khammam Lakshmi (A2), who is his concubine, demanded that the deceased transfer her property in their names and when she refused, A1 and A2 poured kerosene and set fire to her. He denied the suggestion that even before the date of the incident, he had knowledge that the deceased, A1 and A2 used to quarrel in respect of property matters. He denied that he was examined on 22.06.2007 by the Sub-Inspector of Police, Huzurabad Police Station (P.W.20), and that he stated before him as contained in Ex.P4. He concluded by stating that it was not true to say that after taking money from A1 and A2 and at their request, he was deposing falsely.

P.W.5, a resident of Shivalayam Street, Huzurabad, stated that she knew the deceased and her house was situated on the right side of her house. She stated that the main door of her house and the main door of the deceased's house were situated in opposite directions. She admitted that she knew A1 by name. She stated that she knew A2 but did not know her name. She stated that the deceased, A1 and A1's wife, who was blind, used to live together in the said house, which belonged to the father of A1. She stated that A2 used to work as a maid servant in the house of A.1. She stated that as on the date of the incident at about 8.30 PM, she and her children were inside the house and heard cries of a person. She stated that she then came out of the house and saw the deceased running away and she was burning. She stated that she came to

know that the deceased went to her other house but did not make any enquiries. She claimed that the police did not examine her but only made enquiries from her husband, who was no more. At this stage, she was declared hostile and subjected to cross-examination by the prosecution. Thereupon, she stated that she came to know that the deceased was having another house at Huzurabad, but denied that she had knowledge even prior to the incident, that the deceased, A1 and A2 used to quarrel in respect of property issues. She denied that on the date of the incident when she noticed the deceased going in the street along with burn injuries, she and others made enquiries and came to know that A1 and A2 forced the deceased to transfer her property in their names and when she refused, A1 and A2 poured kerosene and set fire to her. She denied that she was examined by the Sub-Inspector of Police, Huzurabad (P.W.20), on 22.06.2007 and that she had stated before him as in Ex.P5 - Section 161 CrPC statement. She concluded by stating that it was not true to say that as A1 was her neighbour and at his request she was deposing falsely in order to save A1 and A2.

P.W.6 was the Civil Assistant Surgeon, Government Civil Hospital, Huzurabad, who administered first-aid to the deceased at about 9.00 PM on 21.06.2007. He stated that he gave her fluids and antibiotic. He informed the police about her being brought to the hospital with burn injuries. He stated that at about 10.00 PM, the Magistrate of Huzurabad came to the hospital and talked to the patient. He confirmed that the patient was conscious and was in a position to understand questions and give replies thereto. The Magistrate recorded her statement. He also confirmed that before the Magistrate made enquiries with the deceased and after she recorded

her statement, he certified that the patient was conscious, coherent and in a fit state of mind to give the statement. He identified Ex.P6 as the certificate given prior to recording of the statement of the deceased and Ex.P7 was the second certificate after the Magistrate recorded her statement. As the condition of the patient was critical, he stated that he referred her to M.G.M. Hospital, Warangal. In his cross-examination, he stated that the deceased had sustained 90% burn injuries. He stated that antibiotic and pain killers would be added to the fluids but no sedative would be given to a patient like the deceased. He stated that normally sedatives would not be given as such a patient may go into depression. He clarified that sedatives would be given only if the patient sustained superficial burn injuries. He explained that the case of the deceased was not mentioned as a medico-legal case in the hospital register, as she was referred to M.G.M.Hospital, Warangal, after she was given first-aid. He denied the suggestion that when the deceased was brought to the hospital, she was not at all conscious. He explained that as there were no facilities in the Civil Hospital, Huzurabad, to treat the deceased, she was referred to M.G.M.Hospital, Warangal.

P.W.7, a photographer at Huzurabad, stated that he was taken by the police to a house situated near Shivalayam, Huzurabad, where he took photographs inside and outside the house. He identified Ex.P8 as the positive photos taken by him showing the inside of the house and Ex.P9 as the strip of negatives of Ex.P8 photos.

P.W.8, a resident of Huzurabad, stated that he knew P.W.10. He further stated that he knew the deceased and her house was situated in the same locality. He confirmed that in his presence and that of P.W.10, the police conducted the scene of the offence

panchanama (Ex.P10) in the house of the deceased, situated near Shivalayam. He stated that after drafting of the panchanama and upon going through the contents thereof, he and P.W.10 signed therein. He stated that the police also drafted a sketch showing the scene of the offence. The police seized a ten litre kerosene can from the house along with a match box. They also seized partly burnt pieces of a saree. He identified Ex.P10 scene of the offence panchanama and the black coloured empty kerosene can (M.O.1). He however admitted that the chit pasted on M.O.1 can did not contain his signature. He also identified the match box (Three Mangos Company) (M.O.2) but conceded that the signature in the chit pasted on M.O.2 was not his. He identified the pieces of saree (M.O.3) as the same that were seized in their presence but admitted that the chit pasted to the pieces of saree did not contain his signature. In his cross-examination, he stated that he could not say on which date the panchanama was recorded but it was at about 7.00 or 8.00 PM. He denied that he was called to Huzurabad Police Station and as per the instructions of the police, he signed in Ex.P10 in the police station.

P.W.9 is the younger brother of the deceased. He stated that he knew A1 and A2 by name. He stated that the deceased first married Malla Reddy of Bheempalli and after his death, she migrated to Huzurabad where she eked out her livelihood by doing coolie work. She contracted a second marriage with one Golla Ilaiah, but five years thereafter, he also died. He stated that subsequently she developed intimacy with A1 as he was also doing coolie work and they started living together. He stated that when he visited the house of A1, he saw his wife who was a blind woman and when he made enquiries with the deceased, she informed him that as A1's wife was

a blind woman, he kept the deceased as his mistress. He further stated that after the death of their mother, the deceased got four tulas of gold and having sold the same, she constructed a house at Huzurabad near Sambashiva Talkies. He stated that in the sixth year after A1 and his sister started living together, A2-Khammam Lakshmi, joined A1. He said that they questioned A1 as to this and he promised them that he would look after his sister, A2 and his wife without discrimination. His sister constructed another house in Gollawada, Huzurabad. Later, she telephoned him and informed him that A1 and A2 were pressurizing her to transfer the houses in their names. He stated that he then went to Huzurabad and questioned A1 and A2 about their pressurizing his sister to transfer the property. 10 or 15 days later, he was informed by the police that A1 and A2 had poured kerosene on his sister and set fire to her. He said that they committed this act in the house of his sister near Sambashiva Talkies. He stated that he immediately went to M.G.M. Hospital, Warangal, where he found his sister alive and upon his enquiries, she informed him that A1 and A2 pressurized her to transfer the property and when she refused their demand, they poured kerosene and set her on fire. He said that his sister died on the next day morning. In his cross-examination, he denied the suggestion that he had not stated before the police that when A2 joined the company of A1 and he made enquiries, A1 promised to look after his wife, his sister and A2 without discrimination. He denied the suggestion that his sister had not telephoned and informed him that A1 and A2 were pressurizing her to transfer the property and thereupon, he went to Huzurabad and questioned A1 and A2, who denied pressurizing his sister to transfer the property. He denied the suggestion that after the

death of his sister, when he got information, he went to Warangal and saw the dead body along with his elder brother and his wife. He denied having stated so in Ex.D1, his statement recorded under Section 161 CrPC. He denied the suggestion that his sister had committed suicide by pouring kerosene and setting herself on fire and that A1 and A2 were not responsible for her death.

P.W.10, a resident of Huzurabad town, stated that he knew A1 by name. He said that he did not know who A2 was. He denied knowing Thulasi Laxmana Murthy (L.W.10). He stated that the deceased died with burn injuries and when the Huzurabad police conducted the scene of the offence panchanama in the house of A1 situated near Shishumandir School, he was present along with other people. He said that they observed a kerosene tin, match box and pieces of a saree in the house of A1. He further stated that the police seized these articles under cover of the panchanama and he signed therein. He identified Ex.P10 as the said panchanama and certified that it contained his signature. He identified the kerosene can, match box and pieces of saree as M.Os.1 to 3. He however stated that the chits pasted on those articles did not contain his signatures. In his cross-examination, he said that his house was two houses away from that of A1 and that the police called him to the house of A1 while he was standing in front of his house. He denied the suggestion that the police did not conduct the scene of the offence panchanama and that Ex.P10 was not written at the house of A1 in his presence. He denied the suggestion that he was called to the police station and that the police obtained his signatures on Ex.P10 at the police station.

P.W.11, a resident of Huzurabad town, stated that he was the Sarpanch. He admitted knowing A1 by name and stated that he knew

A2, but did not know her name. He also admitted knowing the deceased but denied knowledge of whether she lived with any person or whether she lived alone during her lifetime. He stated that about more than a year previously he was informed in the evening that one lady with burn injuries was going in Sambashiva Talkies Street. He immediately rushed there, but did not find the woman, but found pieces of burnt flesh on the road. He stated that he informed the same to the police through phone and also to the 108 ambulance. He stated that he subsequently came to know that the said woman with burn injuries was the deceased. He stated that he was examined by the police and asserted that he had informed them what he had stated before the Court. At this stage, he was declared hostile and was subjected to cross-examination by the prosecution. Thereupon, he denied that on 21.06.2007 at 8.00 PM, while he was at his house, the deceased with burn injuries came to his house and informed him that A1 and A2 had demanded that she transfer her property in their names, poured kerosene on her and set fire to her and requested him to save her and then went towards Gollawada. He denied having stated before the police as contained in Ex.P11, his Section 161 CrPC statement. He admitted that A1 worked in his saw mill, but denied that he was deposing falsely in order to save him.

P.W.12, a resident of Huzurabad town, stated that she knew the deceased and that she died on account of burn injuries. She admitted that she was one of the inquest witnesses at M.G.M. Hospital, Warangal, as she had gone there for treatment. She stated that they observed burn injuries on the body of the deceased and that she affixed her thumb impression on the inquest panchanama after the police read over the contents thereof to her. She did not

know whether any blood relations of the deceased were present when the inquest panchanama was recorded. She stated that nobody informed them as to how the deceased sustained burn injuries.

P.W.13 was the photographer who took photographs of the body of the deceased on 22.06.2007 at the request of the Huzurabad police. He stated that he went to M.G.M. Hospital, Warangal, along with the police and photographed the dead body which had burn injuries. He identified Ex.P12 as the set of four photos and Ex.P13 as the strip of negatives thereof.

P.W.12 and P.W.13 were not subjected to cross-examination.

P.W.14 was a witness to the confessional panchanama of A1 and A2. He however turned hostile. In his chief-examination, he stated that he was a Ward Member of the 18th Ward of Huzurabad Gram Panchayat. He stated that he did not know A1 and A2 and that he had never seen them before. He stated that he did not know the deceased and how she died. He denied knowledge of registration of a case against anybody in relation to the death of the deceased. He stated that no person made any confession before him and P.W.15, whom he knew, in relation to the death of the deceased. He stated that the Huzurabad police never called him in relation to the investigation of the case relating to the death of the deceased. He stated that while he was going on the street near Amar photo studio about two years back, the Sub-Inspector of Police, Huzurabad Police Station, called him and obtained signatures on some papers. At this stage, he was declared hostile and subjected to cross-examination by the prosecution. When he was confronted with the signatures in the confessional panchanama of A1 and A2, he admitted his signatures therein (Exs.P14 and P15). He however stated that he signed in the

papers without going through the contents. He denied that on 28.06.2007, while he and P.W.15 were at Amar photo studio, the Circle Inspector of Police, Huzurabad Circle (P.W.18), came there and requested them to examine A1 and A2 as they were ready to confess to the crime committed by them. He denied that he and P.W.15 examined A1 and A2 separately and the same was reduced into writing by P.W.18 and they affixed their signatures in the said confessional panchanama after going through the contents thereof. He denied that A1 and A2 led them to a house near Sambashiva Talkies and after going into the house, A1 brought out a pant and shirt which smelt of kerosene and P.W.18 seized them in their presence. He denied that he and Danishetti Banusha, the Sarpanch, belonged to the same political party and as A1 was working in his saw mill, he was deposing falsely.

P.W.15, the other witness to the confessional panchanamas, also turned hostile. In his chief-examination, he stated that he knew P.W.14 but did not know A1 and A2 and saw them for the first time in Court. He stated that he did not know the deceased and how she died. He stated that he did not know whether the police registered a case against anybody. He stated that no person made a confession before him and P.W.14 in respect of the death of the deceased. He stated that when he was going on the street near Amar photo studio about two years back, the Sub-Inspector of Police, Huzurabad Police Station (P.W.20), called him and obtained his signatures on some papers. At this stage, he was declared hostile and cross-examined by the prosecution. When confronted with his signatures in the confessional panchanama of A1 and A2, he admitted his signatures, Ex.P16 and Ex.P17. He however stated that he signed the papers

without going through the contents. He denied that on 28.06.2007 while he and P.W.14 were at Amar photo studio, the Circle Inspector of Police, Huzurabad (P.W.18), came there and requested them to examine A1 and A2 who were ready to confess to their crime. He denied that he and P.W.14 examined A1 and A2 separately and P.W.18 reduced it into writing and after going through the contents thereof, he and P.W.14 affixed their signatures therein. He denied that A1 and A2 led them and the police to a house near Sambashiva Talkies and after going into the house, A1 brought out a pant and shirt which smelt of kerosene and the same were seized by P.W.18 in their presence. He denied that he was deposing falsely at the instance of the Sarpanch, in whose saw mill A1 was working.

P.W.16 was the Associate Professor in M.G.M. Government Hospital, Warangal, at the relevant time. He stated that on 22.06.2007, the deceased was brought to the hospital with 95% burn injuries as she was referred by the Medical Officer of the Government Civil Hospital, Huzurabad. He stated that she was brought at about 12.45 AM and she was alive and conscious at that time. He stated that she died at 9.30 AM on 22.06.2007.

P.W.17, the Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Huzurabad, at the relevant time, stated that she received a requisition through Huzurabad Police Station at about 9.50 PM on 21.06.2007. She stated that she immediately proceeded to the Government Civil Hospital, Huzurabad, where the deceased was admitted in the general ward. The Medical Officer was present, but no blood relations of the deceased were there. She stated that the deceased was conscious and after Medical Officer endorsed that she was in a fit state of mind to give a statement, she put general

questions to her and she gave answers. As she was satisfied that she was in a fit state of mind to give answers to her questions, she recorded her statement. She confirmed that Ex.P18 was the said statement. She confirmed that she started recording the statement at 10.05 PM and completed it by 10.20 PM. She said that at that time, the Medical Officer was by her side and after the recording of the statement, the Medical Officer endorsed that the witness was conscious, coherent and that she gave statement in a fit state of mind. Exs.P6 and P7 are the endorsements of the Medical Officer. She stated that when she recorded the statement, the deceased told her that A1, her husband, and his concubine, by name Punnama Lachamma (A2), poured kerosene and set fire to her for her property. The deceased further stated that the incident happened in their house and when she came out of the house with burn injuries, her relative P.W.1 took her to the hospital. In her cross-examination, P.W.17 admitted that in Ex.P18 statement it was not mentioned that A1 and A2 poured kerosene on the deceased in their house. She further stated that she received the requisition (Ex.P19) and though it contained the stamp of the Government hospital, no signatures of the Medical Officer or the Police Officer were found therein. She further stated that when she saw the deceased, her entire body was burnt except the face, but denied that the deceased was not in a position to put her right hand thumb impression on Ex.P18. She denied that the deceased was not in a position to give any statement before her as she had sustained severe burn injuries.

P.W.18, the Circle Inspector of Police, Huzurabad Circle, at the relevant time, spoke of the various steps taken by him during the investigation. In his cross-examination, he stated that he took up the

investigation on the afternoon of 22.06.2007. He adverted to the statement made by P.W.9 before him and the various omissions on his part. He however stated that P.W.9 had stated before him as contained in Ex.D1. He denied that Ex.P20 was prepared in the police station and not at M.G.M. Hospital, Warangal. He also denied that he brought A1 and A2 from their house and did not arrest them in front of the Civil Hospital, Huzurabad. He further stated that it was not true to say that A1 and A2 did not confess before the panch witnesses and lead them to the house near Sambashiva Talkies where A1 produced M.Os.4 and 5. He stated that the house bearing No.6-127 near Sambashiva Talkies was standing in the name of A1, but he had not filed any record in proof of the same. He stated that he made enquiries but found no evidence in proof of the deceased having any property in her name in Huzurabad town. He denied that there was no relationship between the deceased, on the one hand, and A1 and A2, on the other, and that they were not responsible for her burn injuries which ultimately led to her death. He denied that he had foisted a false case against them leaving the real culprit.

P.W.19, the Associate Professor of Forensic Medicine, Kakatiya Medical College, Warangal, at the relevant time, stated that on the requisition given by P.W.18, he conducted the post-mortem examination of the body of the deceased on 23.06.2007 from 9.20 AM to 10.20 AM. He confirmed that Ex.P27 was his report in this regard. He stated that he found ante-mortem mixed degree flame burns all over the body, except part of the face and both the soles. He further stated that blackening due to soot deposits was present on the burnt areas and the burns were there over 95% of the total body surface

area. He confirmed that the cause of death, to the best of his knowledge, was due to burns.

P.W.20, the Sub-Inspector of Police, Huzurabad, at the relevant time, spoke of the various steps taken by him commencing from recording of the statement of the deceased at the Government Hospital, Huzurabad, after receiving telephonic information at about 9.00 PM on 21.06.2007. In his cross-examination, he stated that the person who informed him on the telephone that the deceased was admitted in the hospital did not disclose his name, but he made a G.D. entry. He further stated that there was no Police outpost located in Huzurabad Government Hospital. He said that there was only one ward in the said hospital and when he entered the same, he was directed to the bed of the deceased. He confirmed that no relations of the deceased were present when he went there. He however stated that when he recorded the statement of the deceased, the Doctor was present, but he did not endorse on the statement that the deceased was in a fit condition to give it. He further stated that the statement recorded by him (Ex.P28) was written by the writer according to his dictation, but he did not mention therein that his writer recorded the statement as per his dictation and instruction. He admitted that Ex.P28 reflects as if the statement was recorded by him. He however stated that the endorsement 'on the basis of the above statement I have registered a case in Crime No.111 of 2007 under Section 307 read with Section 34 IPC and took up the investigation' was written by him. He stated that the deceased gave Ex.P28 statement in a clear manner and denied that the thumb impression contained therein and the thumb impression in Ex.P29 were different. He further denied that as the deceased suffered 95% burns, she was not in a position to

give a statement or put her thumb mark. He said that on the day the deceased was admitted in the hospital, he examined the Doctor and P.W.1. He denied the suggestion that A1 and A2 had nothing to do with the burn injuries sustained by the deceased and that he foisted a false case upon them.

On a conspectus of the evidence, though there are certain discrepancies in the case of the prosecution, the decisive factor to determine the guilt or otherwise of A1 and A2 for the offence charged are the dying declarations, Exs.P28 and P18. It may be noted that Ex.P28 was earlier in point of time, having been recorded by P.W.20 at 21.30 hours on 21.06.2007 at the Government Civil Hospital, Huzurabad. No doubt, this statement does not bear the endorsement by the duty Doctor attending upon the deceased that she was in a fit state of mind to make such a statement. Further, though P.W.20 stated that this statement was recorded by his writer upon his dictation, the said writer was not subjected to examination. These lacunae in this dying declaration would have been fatal, but for the fact that P.W.17, the Judicial Magistrate, thereafter recorded Ex.P18 dying declaration. The element of doubt which attaches to Ex.P28 recorded by the police cannot be extended to the dying declaration recorded by the Judicial Magistrate, P.W.17.

Perusal of Ex.P18 dying declaration reflects that the Duty Doctor certified before and after the recording of the statement that the deceased was conscious, coherent and in a fit state of mind to give a statement and that she remained so throughout the recording thereof. P.W.17 recorded the dying declaration in a question and answer form after satisfying herself as to the mental capacity of the deceased. The answer of the deceased to Question No.7 is relevant:

7. What happened? How did it happen?

To this, the deceased answered to this effect:

‘Our Venkateshwarlu, his concubine, both poured kerosene over me. Punnama Lachamma, Venkateshwarlu. For property they poured over me. When I went home, Mallesham brought me here. I have nothing more to say.’

In her deposition, P.W.17, no doubt elaborated a little more on this dying declaration by saying that the deceased also said that A1 and A2 had set fire to her. That statement does not find mention in Ex.P18. However, this lapse in itself may not be fatal. The deceased suffered up to 95% burns and she died within 12.00 hours thereafter. She would have been in great pain and traumatic stress at that time and that would perhaps be the reason for the brevity of her statement to P.W.17, when compared to the more detailed version that she gave to P.W.20 about half an hour earlier. Though most of the witnesses who actually saw her proceeding down the road while in flames turned hostile and retracted from the statements made by them to the police under Section 161 CrPC, with which they were confronted, it is difficult to believe that they would have turned away from the deceased who was in dire distress and locked their doors. All of them denied that she had informed them, when they enquired with her, that A1 and A2 doused kerosene and set fire to her when she refused to transfer her property to them. This is what is recorded in both the dying declarations and is the motive for A1 and A2 to resort to this extreme step. Though Ex.P18 does not contain a specific statement that A1 and A2 themselves set fire to the deceased, such an inference necessarily has to be drawn from the sequence of events as narrated in the said statement, to the effect that they poured kerosene on her for property. The deceased also mentioned A1 and A2 by name.

Though Sri P.Bhanu Prakash, learned counsel for the appellants, would assert that the deceased mentioned A2 as Punnama Lachamma, while her name was Khammam Lakshmi and argue that this clearly shows that A2 was not the one about whom the deceased was speaking, we find no merit in this argument. Half an hour earlier, when the deceased spoke to P.W.20, she specifically mentioned A2 by name. Even before P.W.17, she specifically spoke of Venkateshwarlu (A1) and his concubine and thereafter mentioned her name as Punnama Lachamma. As the deceased and A2 were concubines of A1, despite the fact that he had a living wife, it is natural for the deceased to refer to A2 by attaching his surname and she therefore mentioned her name as Punnama Lachamma.

In the light of the aforesaid two dying declarations, which taken together, clearly spell out the guilt of A1 and A2 beyond reasonable doubt, we are not prepared to accept that the discrepancies found in the case of the prosecution should be given weightage enough to discredit these dying declarations which have an overwhelming ring of truth.

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

In ***KANTILAL V/s. STATE OF RAJASTHAN*⁴**, the Supreme Court observed that one of the important tests of credibility of a dying

¹ AIR 1958 SC 22

² (2014) 14 SCC 646

³ (2015) 8 SCC 299

⁴ (2009) 12 SCC 498

declaration is that the person, who recorded it, must be satisfied that the deceased was in a fit state of mind and the Court must also be satisfied that the deceased was in a fit state of mind to narrate the correct facts of the occurrence. It was held that in the event the capacity of the maker of the statement was found to be impaired, such a dying declaration should be rejected as it would be highly unsafe to place reliance on it. This judgment is cited by Sri P.Bhanu Prakash, learned counsel, as Ex.P28 recorded by P.W.20 does not bear the endorsement of the Duty Doctor that the deceased was in a fit state of mind to give a statement. However, as already pointed out, when P.W.17 recorded the dying declaration of the deceased half an hour later, the Duty Doctor endorsed both before and after the recording of the statement that the deceased was conscious, coherent and in a fit state of mind. It therefore cannot be doubted that she would have been so even when P.W.20 examined her and recorded Ex.P.28, half an hour earlier. This judgment therefore does not further the case of the appellants.

In ***SURYAKANT DADASAHEB BITALE V/s. DILIP BAJRANG KALE***⁵, the deceased sustained 95% burn injuries and three dying declarations were recorded. Though Sri P.Bhanu Prakash, learned counsel, would rely on this judgment to argue that a person with 95% burn injuries cannot give a coherent statement, we find that no such general observation or finding was rendered by the Supreme Court to that effect. The case turned entirely upon the discrepancies in the three dying declarations, whereupon the Sessions Court acquitted the accused and the same was confirmed by the Supreme Court. This decision has no application to the case on hand.

⁵ (2014) 13 SCC 496

In ***SURINDER KUMAR V/s. STATE OF HARYANA***⁶, reference was made by the Supreme Court to its earlier judgment in ***SHAM SHANKAR KANKARIA V/s. STATE OF MAHARASHTRA***⁷ to the effect that though a dying declaration is entitled to great weight, it is worthwhile to note that the accused has no power of cross-examination and that is the reason why Courts insist upon the dying declaration being of such a nature as to inspire full confidence of the Court in its correctness. As that is so in the present case, we find that this judgment does not advance the case of the appellants. As pointed out in this judgment, there is neither a rule of law nor of prudence that the dying declaration cannot be acted upon without corroboration, but the Court must be satisfied that the dying declaration is true and voluntary. The dying declarations of the deceased in the case on hand satisfy all these requirements.

KAMALAKAR NANDRAM BHAVSAR V/s. STATE OF MAHARASHTRA⁸ is a case involving a deceased who suffered burn injuries to the extent of 94 to 95% and she was put on oxygen. The dying declaration of the deceased was stated to have been made to a Doctor who had not even treated her when she was alive. This so-called dying declaration was supportive to the defence and the deceased died within half an hour after it was allegedly made. In these circumstances, the Supreme Court held that the High Court rightly rejected the dying declaration. This decision is completely irrelevant to the case on hand, given the aforestated facts.

In ***JAI KARAN V/s. STATE OF DELHI (NCT)***⁹, the Supreme Court affirmed that a dying declaration is admissible in evidence on

⁶ (2011) 10 SCC 173

⁷ (2006) 13 SCC 165

⁸ (2004) 10 SCC 192

⁹ (1999) 8 SCC 161

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. This case involved in an extra-judicial dying declaration when the deceased was admitted with 95% burn injuries and the Medical Officer certified that the deceased was not in a fit condition to make the statement. Given the appurtenant facts, which diluted the reliability of the said dying declaration, it was rightly discounted. This decision is distinguishable on facts and therefore does not advance the case of the appellants.

Per contra, learned Public Prosecutor relied on **GULZARI LAL V/s. STATE OF HARYANA**¹⁰, wherein conviction of the accused was upheld as the Court found no infirmities in the statements made by the deceased and recorded by the police. This was a case where there was no dying declaration recorded by a Judicial Officer but despite the same, the conviction was based on the sole dying declaration made to the police. In the present case, there are two dying declarations – one, recorded by the police and the other, by a Judicial Magistrate. The conviction in the present case therefore stands on a far better footing as we find no major discrepancies or infirmities in the statements given by the deceased to P.Ws.17 and 20.

Learned Public Prosecutor also relied on **RAMESH V/s. STATE OF HARYANA**¹¹, wherein it was affirmed that a dying declaration is a substantive piece of evidence and can be made the basis for

¹⁰ (2016) 4 SCC 583

¹¹ 2017 (1) ALD (CRL.) 387 (SC)

conviction once the Court is convinced that such a dying declaration was made voluntarily and was not influenced by any extraneous circumstances. Significantly, the deceased in this case had suffered 100% burns and the Court held that this, by itself, would not *ipso facto* lead to the conclusion that the deceased was not in a proper state of mind to make a statement.

On the above analysis, we find that the conviction of A1 and A2 under Section 302 read with Section 34 IPC is unassailable on facts and in law. The sentence imposed upon them by the Sessions Court is justified and commensurate and does not brook interference.

The appeal is devoid of merit and is accordingly dismissed.



SANJAY KUMAR,J

Dr.SHAMEEM AKTHER,J

22nd AUGUST, 2017

PGS