

**THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

CRIMINAL APPEAL NO.821 OF 2012

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

The appellant is the sole accused in Sessions Case No.112 of 2008 on the file of the Court of I-Additional Sessions Judge, Adilabad (for short, trial Court). He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife namely Narwade Laxmi on 16-09-2007 at 7.00 AM. Vide Judgment dated 17-01-2012 the trial Court found the accused guilty of the charge under Section 302 IPC, and sentenced him to suffer 'imprisonment for life' and to pay a fine of Rs.1,000/- in default, simple imprisonment for two months.

2. The case of the prosecution as culled out from the evidence is as under:-

The accused is the husband of the deceased, while P.W.1 is the father of the deceased. P.W.2 is the brother of P.W.1, P.W.3 is another brother of P.W.1. The accused belongs to Palsi Village, while the prosecution party hails from Hadgaon Village in Maharashtra State. The marriage between the accused and the deceased took place about six years prior to the date of incident. Out of wedlock, they were blessed with two children. The evidence of P.Ws.1 to 3 discloses that there were quarrels between the accused and the deceased and P.W.1 used to provide money for the maintenance of the accused and the deceased. On the date of incident, P.W.4 and others went to take tea and while returning

home, they heard cries from the house of the accused. They rushed towards the house of the accused and found the deceased in flames. P.W.6 covered the deceased with a bed sheet and put off the flames. Thereafter, they called an ambulance and shifted the injured to Bhainsa Hospital. As soon as the injured was taken to Government Hospital, Bhainsa, P.W.12, the Civil Assistant Surgeon of the said Hospital, sent intimation to Bhainsa Police Station. On the very same day, P.W.1 and others went to Kuber Police Station and gave information about her daughter sustaining burn injuries and also about her admission in the Government Hospital. Basing the said information, P.W.15 registered a case in Crime No.74 of 2007, for an offence punishable under Section 307 IPC. Ex.P.8 is the First Information Report. Thereafter, P.W.15 received information from the Medical Officer of Bhainsa Hospital about admission of the injured in the hospital with burn injuries. He issued a requisition to P.W.13 Mandal Revenue Officer, Kuber, requesting him to record the dying declaration of the injured. P.W.15 also proceeded to the Bhainsa Hospital and recorded the statements of P.Ws.1 to 5.

3. On the basis of the requisition sent by P.W.15, P.W.13, the M.R.O., Kuber, proceeded to the Government Hospital and recorded the statement of the injured. He put some preliminary questions and after being satisfied with regard to the mental fitness of the deceased, recorded the statement of the injured. She stated that on 15-09-2007, her husband quarreled with her and thereafter they slept without taking meals on that night and that on 16-09-

2007, she gave some amount to her husband at 7.00 A.M., for bringing provisions and that immediately, the accused poured kerosene on her, set her ablaze and left the house. Ex.P.7 is the dying declaration. On the next day, P.W.15 visited the scene of offence, which is situated at Palsi village. In the presence of panch witnesses. P.Ws.8 and 9, he conducted a panchanama of the scene of offence and also seized M.O.1 burnt pieces of saree of the deceased, M.O.2 one aluminum vessel and M.O.3 the match box. On 17-09-2007, the injured was referred to Nizamabad Government Hospital for better treatment. On 22-09-2007, he received a telephonic message from Nizamabad Government Hospital about the death of the injured. On the basis of the said information, he altered the section of law from 307 I.P.C., to 302 I.P.C., and issued Ex.P.11, the altered memo. Thereafter, he gave a requisition to P.W.13 to conduct inquest over the dead body of the deceased, as the death was within seven years of marriage. He accompanied P.W.13 to the Government Hospital, Nizamabad, for conducting inquest. Further investigation was taken up by P.W.14, the Circle Inspector of Police, Bhainsa. On 22-09-2007, P.W.11 – the Civil Assistant Surgeon, Government Hospital, Nizamabad, conducted post mortem examination over the dead body of the deceased and issued Ex.P.6 the Post Mortem Report. She noticed burn injuries all over the body and opined that the cause of death was “shock and septicemia due to external depth of 90 – 95% burns all over the body”. P.W.14 continued with the investigation by recording the statements of P.Ws.5 and 7. On 7.10.2007 he arrested the accused and after completing the

investigation, filed the charge sheet, which was taken on file as PRC No.13 of 2008 on the file of Judicial Magistrate of First Class, Bhainsa.

4. On appearance of the accused, the said Court furnished copies of the documents as required under Section 207 Cr.P.C. As the case is triable by a Court of Sessions, the same was committed, which came to be numbered as S.C.112 of 2008. Basing on the material available, a charge under Section 302 IPC., came to be framed, read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

5. In support of its case, the prosecution examined P.Ws.1 to 15 and got marked Exs.P.1 to P.11 and M.Os.1 to 3. Out of the 15 witnesses examined by the prosecution, P.Ws. 7 to 9 did not support the prosecution case and were treated hostile by the prosecution. After the closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against him in the evidence of prosecution witnesses, to which he denied. Basing on the oral evidence of P.Ws.1 to 3 and also the dying declaration of the deceased recorded by the Mandal Revenue Officer, Kuber, the trial Court found the accused guilty for causing the death of the deceased. Challenging the same, the present appeal came to be filed.

6. The learned counsel for the appellant would submit that there are no direct eye witnesses to the incident and the case is based on

circumstantial evidence. According to him, the circumstances relied upon do not form a chain of events, so as to connect the accused with the crime. The learned counsel further submits that when a Judicial Magistrate of First Class was available at Bhainsa, no effort was made to get the dying declaration of the deceased recorded through a Magistrate at Bhainsa. Even otherwise, he submits that the dying declaration is in violation of Rule 33 of the Criminal Rules of Practice and hence no reliance can be placed on the same. Coming to the oral evidence, he submits that all the witnesses are interested witnesses and as such, there is every possibility of speaking false against the accused.

7. On the other hand, the learned Public Prosecutor would submit that there is no reason for P.Ws.1 to 4 to speak falsehood against the accused. He submits that they are the best persons to speak as to the harassment meted out to the deceased and also with regard to the manner in which the incident took place. The evidence coupled with the oral dying declaration of the deceased being consistent, pleads that the conviction awarded by the trial Court warrants no interference.

8. As seen from the record, there are no eye witnesses to the incident, and the case rests on the oral testimony of P.Ws.1 to 6 and also the dying declaration recorded by P.W.13. The incident is said to have taken place on 16-09-2007 in the morning hours and P.W.1 lodged a report at 9.00 P.M., on that night. It may be true that it may take some time for P.Ws.1 to 3 and others to reach the village of the accused and then lodge a report. The evidence of

P.Ws.4 and 5 discloses that on hearing the hue and cries from the house of the accused, they rushed there and found the deceased in flames. They put off the flames and thereafter took the deceased to the Government Hospital, Bhainsa. P.W.12 is the doctor who worked as Civil Assistant Surgeon, Government Areas Hospital, Bhainsa. According to him, on 16-09-2007, a patient by name Laxmi with burn injuries was brought to the hospital. Since it was medico-legal case, he sent intimation to Bhainsa Police, P.W.13 the M.R.O., Kuber, came to the Hospital and recorded the dying declaration. But, strangely, P.W.15, the Sub Inspector of Police did not make any effort to go to the Police Station for recording the statement of the injured, in spite of the intimation being sent by P.W.12 from the hospital. But, however, P.W.13, the Mandal Revenue Officer, states that pursuant to the requisition received from the hospital, he proceeded to the Government Hospital, Bhainsa and recorded the dying declaration of the deceased, which is brought on record as Ex.P.7. A perusal of the said dying declaration shows that he completed the recording of dying declaration at 4.26 PM., on 16-09-2017 i.e., even before registration of the crime and even before the report was given by P.W.1 to the police. In the said statement, the deceased is said to have stated that on 15-09-2007 night, her husband quarreled with her and all of them slept without taking food and that on 16-09-2007, she gave some amount to her husband at 7.00 AM., for bringing provisions to house, but immediately, her husband poured kerosene on her and set her ablaze. The said dying declaration, though at first blush appeared to be quite truthful, but a reading of

the cross-examination of P.W.13 and also the endorsement of the doctor on the said dying declaration, throws any amount of suspicion on the said document. P.W.13, in his cross-examination, admits as under:-

“ I did not state in Ex.P7 the place where I recorded the dying declaration. I did not endorse on Ex.P7 about receiving the requisition from the police for recording the statement, I did not state the time of receiving requisition and also the time of reaching the hospital for recording the statement. I did not state in Ex.P7 about police/any person identifying the said Laxmi. I did not state that the declarant was conscious and in a fit health to give statement. I did not disclose my identity in Ex.P7 to the declarant. I did not obtain endorsement from the doctor that patient was fit to give statement. The relations of the declarant were present in the hospital and they were by the side of the patient. I did not state in Ex.P7 that the doctor was also present at the time of recording the statement. There is no written endorsement by me on the reverse page of DD except endorsement by the doctor. I did not state in Ex.P7 the doctor identified the patient. It is not true to suggest that I did not record the statement of Laxmi and I have no knowledge about endorsement of the Doctor.”

9. As seen from the above, in the cross examination, P.W.13 admits that the family members of the deceased were present at the time of recording dying declaration. Strangely, when they were present by 4.26 PM., no effort was made by any of them to give any report till 09.00 PM. A perusal of the dying declaration would show that the doctor made an endorsement, not at the bottom of the dying declaration or at the top of the dying declaration, but on the next page, which is totally blank. Except the endorsement, nothing is mentioned on the paper. It appears that this certification came

to be taken at a later stage, which gets fortified by the admission made by P.W.13 that he did not ascertain about the condition of the deceased from the doctor.

10. From the dying declaration recorded by the Mandal Revenue Officer, it is clear that the relatives of the victim were present by her side. Therefore, the argument of the learned counsel for the appellant that the said statement was a tutored one cannot be thrown out or brushed aside. It is to be noted that in the dying declaration recorded by the MRO., the victim stated that in the morning of 16-09-2007, her husband poured kerosene, set on fire and then went away to get the provisions. When the dispute was with regard to not getting the provisions, the question of going to get the provisions after setting the deceased on fire appears to be unreasonable.

11. The evidence of P.W.6 discloses that on coming to know that the deceased suffered burn injuries, he visited the hospital and when enquired, the deceased informed him that the accused poured kerosene and set her on fire. It is to be seen that P.Ws.4 and 5 who went to the house of the accused on hearing the cries, neither questioned the deceased as to how she sustained injuries nor did the deceased disclose the manner in which the incident took place. P.W.6, who is speaking about the oral dying declaration by the deceased, was not examined at the time of inquest. There was no reference to any oral dying declaration at the time of inquest. P.W.15 in his evidence admits that P.W.13 recorded only the statements of P.W.1 to 4 and two others. P.W.15, who

conducted the initial investigation i.e., till the death of the deceased, did not examine P.W.6. After the death, P.W.14 is said to have examined P.W.6 on 27.09.2007 i.e., nearly 12-13 days after P.W.6 visited the hospital. No reasons are forthcoming as to why P.W.6 kept quiet without disclosing the same to parents of the deceased or to the villagers or to the police.

12. Having regard to the facts and circumstances stated above, we fell that it cannot be safe to rely on the oral dying declaration of the deceased to connect the accused with the offence.

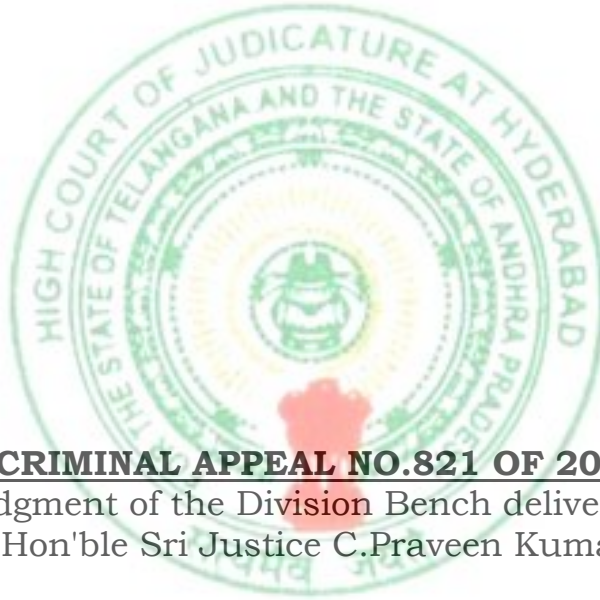
13. The Criminal Appeal is accordingly allowed and the judgment dated 17-01-2012 passed in Sessions Case No.112 of 2008 on the file of the Court of I Additional Sessions Judge, Adilabad is set aside. The appellant/accused shall be set at liberty forthwith unless he is required in connection with any other case. The fine amounts, if any, paid by him shall be refunded.

C.PRAVEEN KUMAR, J

T.AMARNATH GOUD, J

Date: 14.11.2017
TJMR

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CRIMINAL APPEAL NO.821 OF 2012
(Judgment of the Division Bench delivered by
Hon'ble Sri Justice C.Praveen Kumar)

Date: 14.11.2017

TJMR