

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

CRIMINAL APPEAL No.1166 of 2011

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

1) The sole accused in S.C.No. 48 of 2011 on the file of the I Additional District and Sessions Judge, Ongole, is the appellant herein. He was tried for an offence punishable under Section 302 IPC, for causing the death of his wife Jinni Joseph (hereinafter referred to as "the deceased") with knife on 09.07.2010 at 6.00 a.m. By its judgment, dated 07.07.2011, the learned Sessions Judge convicted the appellant for the offence punishable under Section 302 IPC and sentenced him to suffer "rigorous imprisonment for life" and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for one month.

2) The facts as culled out from the evidence of the prosecution witnesses are as under:

i) PW.5 is the father of the deceased. The marriage of the accused with the deceased was performed about 15 years ago and out of wed-lock they were blessed with a son and daughter. The deceased studied upto intermediate, completed beautician course and also did diploma in travel and tourism. About 1 ½ year prior to the date of incident, the deceased was brought to Andhra area, where she worked in a school called "care and share" at Budhavaram. Later, she worked in a beauty parlour for one month.

During summer vacation the deceased came to Kerala. After summer vacation, she joined in a school as a teacher. The accused was working in a pipes company near Buddavaram. In the beginning there were good relations between the accused and the deceased, but thereafter disputes arose between them. Whenever the deceased telephoned, her mother used to instruct the deceased to return to their place if it is not good in Andhra. The deceased was informing them that the accused was suspecting her as having illicit intimacy with Shankar.

ii) PW.6 is a friend of the deceased and also her colleague. According to her, she developed acquaintance with the deceased about two years prior to her death through one Shankar, who was working as a driver in Nirmala Convent at Vijayawada. According to her, in May, 2010, she joined in Universal Techno School, Pusapadu and on the information furnished by Shankar, PW.6 stayed in the house of the deceased for a period of four days and when the deceased informed that her husband was coming, she shifted to another house. The deceased informed her that her husband got habituated to bad habits and is suspecting her fidelity. Her evidence further shows that about 4 or 5 days prior to the date of incident, herself and Sankar went to the house of the deceased, at that time the accused was also present in the house. The said Sankar introduced the accused to PW.6. Both of them talked for some time and later, PW.6 left the house.

iii) On the date of incident ie., on 07.07.2010 at about 9.00 p.m., while PWs.1,2 and 4 and others were playing caroms in the veranda of Brahmamgari temple, they heard cries from the house of the deceased. On hearing the same, they stopped playing and went towards the house of the deceased. At that point of time, the deceased came out of the house with bleeding injuries on chest and stomach followed by the accused holding a blood stained knife in his hand. On seeing PWs.1, 2 and others, the accused ran away from that place. It is said that the deceased was uttering something, which they could not understand as the language of utterances was in Malayalam. Pursuant to a telephone call made, 108 ambulance came to the place within half an hour and later the deceased was shifted to Government Hospital, Chirala.

iv) On 08.07.2010 at about 12.20 a.m., PW.14, who is the incharge of the outpost P.S. of Government Area Hospital, Chirala, received hospital intimation (Ex.P14) for recording the statement of the deceased in this case. He proceeded to the hospital for recording the statement of the injured, but she was sleeping. At about 4.00 a.m., when the deceased woke up, he recorded her statement in the presence of the duty doctor. Ex.P15 is the statement of the deceased, which was endorsed by the duty doctor. Later, PW.15 sent Exs.P14 and P15 to Chirala I Town Police Station, through one homeguard.

v) PW.16-the Head Constable of Inkollu Police Station, received Exs.P14 and P15 from the outpost of Government Area

Hospital, Chirala. Basing on which, he registered a case in Crime No.26 of 2010 for the offence punishable under Section 307 IPC and issued Ex.P16-the first information report. He proceeded to Chirala Government Area Hospital, at 5.00 p.m., where he was informed that the injured was sent to N.R.I. Hospital, Mangalagiri. Thereafter, he went to Ankireddipalem village, examined and recorded the statements of PWs.1 to 3. Thereafter he prepared a rough sketch of the scene in the presence of PW.12 and another. Ex.P1 is the observation report. At the scene, he seized blood stains and blood stained shirt (M.O.1) which were on the cot. He also prepared a rough sketch of the scene which is marked as Ex.P17. From there, PW.16 proceeded to N.R.I. Hospital, where the deceased was treated. By then the deceased was in a unconscious state, as such he could not record her statement.

vi) PW.17 is the doctor, who examined the injured at Area Hospital, Chirala. According to him, on 08.07.2010 at 0.10 a.m., he treated the injured and noticed the following injuries:

1. A contusion frontal head 3 x 3 superficial red in colour
2. Stab injury on the medial aspect of right breast 2 x 1/2 x deep bleeding present
3. Stab injury is medial to left breast 2" x 1/2" x deep.
4. Below the 3rd injury one stab injury is measuring about 2" x 1'2" x superficial bleeding present
5. A stab injury on the right upper abdomen 2" x 1'2" x deep bleeding present.
6. A stab injury on the right aspect of umbilicus 2" x 1'2" x superficial bleeding present.
7. At right iliac fossa a stab injury is about 2" x 1/2" x superficial

8. A stab injury is on the back of chest 2" x ½" x superficial bleeding present
9. On the left aspect of abdomen ½" x ½" x superficial bleeding present.
10. A stab injury at left fore arm 2" x ½" x superficial present
11. Injury on the left elbow 1 x ½" x superficial bleeding present
12. Bite mark on the left cheek.

He opined that the above said injuries are grievous in nature and the same might have been caused by a sharp edged object. Ex.P20 is the wound certificate issued by him.

vii) The evidence of PW.20-the Casualty Medical Officer in NRI Hospital, Chinakakani, Guntur District, would show that the injured was admitted in the hospital on 08.07.2010 at 12.11 p.m. He sent a requisition to the Magistrate, Mangalagiri to record the dying declaration of the injured. Pursuant to the requisition sent by PW.20, PW.8-the Additional Junior Civil Judge, Mangalagiri, proceeded to NRI Hospital, Mangalagiri and recorded the dying declaration of the injured. According to PW.8, the doctor endorsed on the dying declaration that the injured was in fit state of mind to give statement. After putting some simple questions to know the state of mind of the deceased and after satisfying himself that the deceased was in fit state of mind, he recorded the statement of the injured, which is placed on record as Ex.P5.

viii) On 09.07.2010 at about 8.30 a.m., PW.16 received Ex.P18-the death intimation of the deceased from N.R.I. Hospital, Mangalagiri. Thereafter, he submitted a memo altering the section

of law from 307 IPC to 302 IPC and the same was informed to PW.18-the Inspector of Police, who took up investigation in the matter. PW.18 along with PW.16 and others proceeded to scene of offence and examined the scene apart from recording the statement of PWs.1 to 4. He found that the scene of offence as described in Ex.P1 and Ex.P.17, which were prepared by PW.16. Thereafter, he proceeded to N.R.I. Hospital, Mangalagiri, recorded the statement of PW.5 and others and then held inquest over the dead body of the deceased in the presence of PW.12 and others. Ex.P7 is the inquest report. He got photographed the dead body of the deceased through PW.13. Ex.P8 to P12 are the photographs. Later, he sent the body to Government Hospital, Mangalagiri, for postmortem examination.

ix) PW.14-the Civil Assistant Surgeon, Government Hospital, Mangalagiri, conducted autopsy over the dead body of the deceased and issued Ex.P13-the postmortem certificate. According to him, the cause of death was “due to hemorrhage with stab wounds (with sharp object)”.

x) On 11.07.2010 at 11.00 hours, on reliable information PW.18 along with PW.12 and PW.3 went to Pusapadu cross road, where he arrested the accused. On interrogation, he confessed about the commission of offence. Since he was speaking in Hindi he recorded the statement of the accused with the assistance of HC 130. Pursuant to the confession made, the accused led them to a place which is near S.S/ 2 transformer and produced the knife,

used in the commission of offence. At the time of arrest of the accused, PW.18 found the accused with a bandage to his right palm. When enquired, he stated that he sustained the injury at the time of incident. PW.19-the Civil Assistant Surgeon, Government Area Hospital, Chirla, deposed that he examined the accused and found an incised wound on right palm measuring 2 x 0.25 cm., in subcutaneous deep. He opined that the above said injury is possible with M.O.2 knife. After collecting all the material papers and after completing the investigation, he filed the charge sheet which was taken on file as P.R.C.No.2 of 2011 on the file of the Additional Judicial I Class Magistrate, Chirala. On committal of the case to the Sessions Division under Section 209 Cr.P.C., the same came to be numbered as S.C.No.48 of 2011.

3) Basing on the material on record, 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.

4) In support of its case, the prosecution examined PWs.1 to 20 and got marked Exs.P1 to P24, M.Os.1 and 2 and Ex.X1. After the closure of evidence, the accused was examined under Section 313 Cr.P.C., with reference to the incriminating circumstances appearing against him, in the evidence of the prosecution witnesses, to which he denied. No oral evidence was adduced on behalf of the accused but Ex.D1-contradiction in Section 161 Cr.P.C. statement of PW.5 was marked.

5) After considering the oral and documentary evidence and relying upon the dying declaration of the deceased, the learned Sessions Judge convicted the accused in the manner referred to above. Challenging the same, the present appeal came to be filed.

6) The main ground urged by the learned counsel for the appellant is that there is absolutely no legal evidence to connect the accused with the crime. According to him, the two dying declarations cannot be relied upon since the same came to be recorded in telugu, which language was not known to the deceased. Placing reliance on the evidence of PWs.1 and 2, he submits that the deceased, who is a malayalee, does not know telugu, which is evident from the language spoken to by her after the incident. He further submits that the Magistrate, who recorded the dying declaration, did not make any effort to know whether the deceased knows telugu. According to him, the version which is set out in telugu is not the correct version of the incident which the deceased has spoken at the time of recording the dying declarations. He further submits that if the two dying declarations are excluded from consideration, there is no other evidence to connect the accused with the crime. He further submits that the deceased was staying in Andhra since last 1 ½ year only as such she could not have learnt telugu, so fluent, as deposed at the time of recording the dying declaration. The next ground urged by the learned counsel for the appellant is that when the deceased was able to sign on the statement recorded by the Magistrate, no explanation is forthcoming as to why a thumb impression of the

deceased was taken in the statement recorded by the constable which was earlier in point of time. Having regard to the said discrepancy he would contend that there is any amount of suspicion with regard to version set out in the two dying declarations. Coming to the evidence of PWs.1 and 2, he pleads that their evidence does not by itself show that it was the accused alone, who caused the death of the deceased. Definitely the deceased would have informed PWs.1 and 2 in telugu as she was aware that the persons, who gathered there are the telugu speaking people, as to the cause of death. Taking objections with regard to arrest and recovery, he would contend that the evidence on record is not sufficient to connect the accused with the crime.

7) On the other hand, the learned Additional Public Prosecutor would contend that there is no necessity for the Magistrate to speak falsehood. He took us through the evidence of learned Magistrate to show that he recorded the statement in the manner deposed by the injured. He further submits that the reason for not signing on the statement recorded by the constable was that as the I.V. fluid was being administered to her at that time and that she was unable to put her signature, due to which the constable obtained her thumb impression on the statement. He further submits that there is no reason for PWs.1 and 2 to speak falsehood. Their evidence clearly shows that the deceased came out of the house with bleeding injuries followed by the accused holding a knife. Taking into consideration the evidence of all the witnesses,

he submits that the accused has a motive to do away with the deceased.

8) The point that arises for consideration is whether the accused was responsible for the death of the deceased?

9) In order to appreciate the same, it would be necessary to refer to the evidence of few of the witnesses examined by the prosecution.

10) Coming to motive for the accused to kill the deceased, it is not in dispute that the accused, who is the husband of the deceased, was living elsewhere and used to come to the house of the deceased now and then. PW.5, who is the father of the deceased, in his evidence categorically deposed that the deceased was informing them on phone about the accused suspecting her as having intimacy with one Shankar. His evidence further discloses that the relationship between the accused and the deceased was not good, which was being informed regularly on phone by the deceased to PW.5 and his wife. PW.6 the colleague of the deceased in her evidence, deposed that she knows the deceased since two years prior to the death of the deceased through one Shankar, who was working as a driver in Nirmala School. According to her, Shankar told her that the deceased was working in Care and Share charitable trust, Vijayawada. Her evidence is to the effect that the deceased was informing her about the bad habits of the accused and also beating her. The deceased also informed her that her husband was doubting her fidelity as she was talking with

others apart from suspecting illicit intimacy with Shankar. Her evidence also shows that she stayed in the house of the deceased for 4 days and when the deceased informed about her husband coming, she joined another house at Ankireddypalem.

11) PW.10, who was the Director of Dady's Home, Buddavaram Village, Gannavaram Mandal, in his evidence deposed that the deceased worked in their home from 06.03.2009 to 12.01.2010 as Cafeteria incharge. The said home used to look after orphans having HIV. He further deposed that now and then the husband of the deceased used to come to her and the deceased was cordial with everybody including Shankar, who was working as driver in Nirmala Convent.

12) From the evidence referred to above, it is clear that the accused, who was not living with the deceased, as he was pursuing his livelihood elsewhere, was suspecting the deceased as having illicit intimacy with Shankar. The evidence of PW.6 would show that few days prior to the date of incident herself and Shankar went to the house of the deceased, by which time the accused was present in the house, whereby suspicion about the closeness of the deceased with Shankar was fortified. Further, the deceased used to inform her father and mother on telephone about the accused suspecting her. Having regard to the above circumstance, we feel that the accused developed a grouse against the deceased and has a motive to do away the deceased.

13) Coming to the incident in question, the prosecution mainly relied upon the evidence of PWs.1 and 2 and two dying declarations of the deceased. It is to be noted that the main plank of the arguments of the learned counsel for the appellant is that the deceased, who is a Keraliat, does not know telugu and it is very difficult to believe as to how the two authorities recorded her dying declarations in telugu. Before testing the same, it is to be noted that the incident in question took place on 07.07.2010 at about 9.00 p.m. The evidence of PW.1 would show that on that day, himself along with PW.2 and others were playing carom board in the veranda of Brahmangari temple. The house of the deceased was at a distance of 25 feet from the temple. There was a cement road between the temple and the rented house of the deceased. While they were playing caroms, they heard cries from the house of the deceased. On hearing the same, they stopped playing caroms and went towards the house of the deceased. The deceased came out of the house with stab injuries on the chest followed by the accused with a knife in his hand. On seeing PW.1 and others, the accused ran away. The neighbours proceeded towards the deceased, who is said to have stated something in Malayalam, which they could not follow. Having regard to the nature of injuries sustained, she was immediately shifted to Government Hospital, Chirala in 108 ambulance. In the cross-examination he admits that after the incident there was heavy rain and that he does not know whether the rain was for one and half hour. His evidence is to the effect that the deceased joined in the

house about 20 to 25 days prior to the date of incident. He admits that there is no compound wall to the house and there is a metal road in front of the house of the deceased. To a suggestion that the accused is not the person, who stabbed the deceased, was denied by him. He also denied the suggestion that he did not witness the actual incident.

14) PW.2 is another eye witness, who, in his evidence states that on that day himself, PW.1 along with others were playing caroms in the veranda of Brahmamgari temple. At about 9.00 p.m., they heard cries and weeping from the rented house of the deceased. While they were proceeding towards the house of the deceased, she came out of the house with bleeding injuries on chest and stomach. Her husband also came out of the house with a knife. According to him, the accused was holding a knife and on seeing them, he ran away towards cement road. In the meanwhile, the neighbours called for an ambulance and the deceased was shifted to the hospital. He admits that the neighbours questioned the deceased as to what happened, but they were not able to understand her language. In the cross-examination it was elicited that till the arrival of ambulance, the deceased was shouting in her language, but to a suggestion that he was not present at the time of the incident, was denied by him.

15) PW.4, who is also a resident of the same area, in his evidence deposed that on 07.07.2010 at about 9.00 p.m., while he was watching TV in the house, he heard cries from outside. He thought

that the mother of PW.3, who was suffering with cancer, might have died and as such he came out of the house. People, who gathered there, informed him that the husband of the deceased stabbed her and ran away.

16) PW.3 was working as a V.R.O. of Idupulapadu village during that time. His evidence is to the effect that on 07.07.2010 at about 9.00 or 9.10 p.m., while he was in his house, heard cries from the bazaar, which is nearer to his house. Thinking that his mother, who was suffering with cancer and staying in a shed opposite to his house died, he went towards his mother, but she was alright. He noticed people at the house of the deceased. When enquired, they told him about the incident. Subsequently, PW.3 acted as a panch witness for the scene of offence, rough sketch, recovery of material objects and arrest of the accused. Though he was cross-examined at length, but the suggestions put to the witness mainly relate to the panchanamas and the arrest made.

17) From the evidence of all the four witnesses referred to above, it is clear that there was an incident on 07.07.2010 at 9.00 p.m., pursuant to which, the deceased came out of the house with bleeding injuries followed by the accused with a knife in his hand. On seeing PWs.1, 2 and others coming towards the deceased, the accused left the place. It is to be noted that PWs.1 and 2 stated that the deceased was raising cries in Malayalam and as such they could not follow what she was saying. As stated earlier, though

PWs.1 and 2 were cross-examined but nothing useful was elicited to disbelieve their presence at that time. Though the counsel for the appellant was able to elicit some variations with regard to rain on that day, we feel that their evidence establish that the incident took place in which the deceased came out of the house with bleeding injuries followed by the accused with a knife. Keeping this aspect in the background we shall now proceed to deal with the two dying declarations recorded by the Magistrate and constable.

18) The argument of the learned counsel for the appellant is that the deceased could not have made the statement in telugu as she was a Malayali. It is to be noted that in the first dying declaration recorded by the police which is placed on record as Ex.P15, the deceased categorically stated that due to suspicion, her husband stabbed her with a knife. It would be useful to extract the relevant portion in Ex.P15, which is as under:

“On 07.07.2010 at about 9.00 p.m., my husband came to me at Ankireddypalem village from Gannavaram. From the time of his coming over to me quarreled with me on suspicion of my character, picked up a vegetable cutting knife, pounced upon me and stabbed on my breast, chest, stomach and on both hands indiscriminately. All this is happened with suspicion on my character. When I raised cries, the villagers came and rescued me.”

19) It is not in dispute that the said dying declaration was recorded in telugu and the same was endorsed by the doctor, who also spoke about the statement made by the deceased.

20) The next dying declaration was recorded by the Magistrate, wherein the deceased stated as under:

“My husband Joseph has suspicion on me, because I have many friends. For that suspicion, last night, at about 9.00 p.m., stabbed me number of times on my stomach. When the neighbours rushed, my husband went away from there.”

21) A reading of any one of the dying declaration or both amply establish that the accused is said to have stabbed the deceased by suspecting her fidelity.

22) Two grounds are sought to be advanced, to disbelieve the two dying declarations. The first argument is that no reasons are given as to why the deceased initially put thumb impression on the first dying declaration recorded and signed in the dying declaration recorded by Magistrate and second one being whether the deceased could not have made the dying declaration in telugu, the language in which it was written.

23) Learned counsel for the appellant relied upon a judgment of the Apex Court in *Kashi Vishwanath v. State of Karnataka*¹ to show that any statement made and recorded in the language unknown to the deceased cannot be accepted and the same has to be viewed with suspicion. We will deal with the case referred to

¹ (2013) 7 SCC 162

above a little later but before that it has to be seen whether the deceased could have narrated the events in telugu.

24) The reason why the deceased could not sign in the first dying declaration is clear not only from the evidence of PW.15, but also from the contents of the statement, wherein she stated that I.V. fluids were administered to her at that time and as such she could not sign. Hence her left thumb impression was obtained. The same was spoken to by PW.15. To a suggestion that he obtained thumb impression on a white paper and thereafter prepared Ex.P15, to suit the case of prosecution, was denied by PW.15. In fact, Ex.P15 contains the endorsement of the doctor stating that the patient was conscious and coherent at the time of making statement. To a suggestion that he attested a fabricated document was denied by PW.17, the doctor who made the endorsement. The suggestions given to the doctor and PW.15 remained as suggestions without any other material to substantiate the same. Therefore, the argument of the learned counsel for the appellant that thumb impression was taken on white paper and thereafter the contents were filled up cannot be accepted. There was every justification for the constable to take the thumb impression of the injured after recording her statement.

25) Coming to the second aspect, in the second dying declaration recorded by the Magistrate, the deceased categorically states about the incident. A perusal of the said dying declaration would show that before her statement was recorded, the learned

Magistrate obtained the endorsement of the doctor, and then put some preliminary questions to the injured to know her mental condition. The said questions were put in telugu and the answers were given in telugu itself. On being satisfied, he then asked in telugu as to what happened, to which she answered in telugu. The same was spoken to by the Magistrate, who was examined as PW.8. He admits that by mistake he did not mention in what language he explained the contents of the dying declaration, as he did not feel that the injured does not belong to Andhra Pradesh. Further in the cross-examination, it was elicited that the deceased answered in telugu only. Therefore, we feel that the argument of the learned counsel for the appellant that the deceased does not know telugu may not be correct, in the absence of any evidence to show that the deceased knew only Malayalam. There was no need for the Magistrate to speak falsehood and no motive was attributed to the Magistrate to speak falsehood. The said statement which was recorded in telugu was attested by the doctor, who was also not questioned about its authenticity and genuinity. Apart from that, PW.6, who is a colleague of the deceased; who knows the deceased since two years prior to the incident and who also stayed in the house of the deceased prior to the incident, categorically states in re-examination that the deceased was fluent in English, Malayalam and Telugu. To a suggestion that the deceased does not know telugu was denied by her. To a suggestion that she did not state to inspector of police in her 161 Cr.P.C. statement that the deceased knows telugu was denied by her and nothing was put to the

investigating officer to disprove the same. Hence, the argument of the counsel that the deceased does not know Telugu cannot be accepted.

26) In *State of Rajasthan v. Bhup Singh*² the Apex Court while considering the failure to record the dying declaration in the same language and not in question and answer form, held as under:

“10. Assuming that the deceased gave her statement in her own language, the dying declaration would not vitiate merely because it was recorded in a different language. We bear in mind that it is not usual that courts record evidence in the language of the Court even when witnesses depose in their own language. Judicial Officers are used to the practice of translating the statements from the language of the parties to the language of the Court. Such translation process would not upset either the admissibility of the statement or its reliability, there are other reasons to doubt the truth of it.”

27) In *Guguloth Narsu @ Bhaskar v. State of A.P. (Crl.A.No.782 of 2010)* a Bench of this Court held as under:

“However, there is one other criticism which Sri P.Prabhakar Reddy, has mounted. That is, the victim belongs to Lambada community and the statement recorded by P.W.15 is in Telugu Language. There is no statement that followed that the contents of the dying declaration have been translated into Lambada language and that was understood by the victim as true and correct. Learned counsel for the appellant has also placed

² (1997) 10 SCC 675

reliance upon the judgment rendered by the Supreme Court in Kashi Vishwanath v. State of Karnataka³ in this regard.

If the victim is not familiar with the Telugu language at all, material in support of such a plea ought to have been brought forth during the examination of any of the witnesses. It was never even suggested that the victim does not speak or understand Telugu language at all and that she is only familiar with the Lambada tribal language alone.

In the absence of any material available on record, we cannot conclude that the victim does not know Telugu language at all. Further, when the learned Magistrate has deposed that after disclosing his identity, he started recording her statement, during his cross-examination there was not even a suggestion left that as to whether he has ascertained that she understands Telugu language at all or not. Entire concentration during the cross-examination is riveted around the proforma, which the learned Magistrate carried with him.

Therefore, we cannot infer that the victim does not know Telugu language at all. It is a different thing that she might be equally conversant with Lambada Language. This apart as per Rule 33 (3) of Criminal Rules of Practice, the Magistrate was required to record the statement in the language spoken to by the victim. Therefore, if the victim has made her declaration in Telugu language, recording of that statement by the Magistrate in Telugu language is not wrongful.”

28) As stated earlier, the deceased was staying in Andhra area and working at village level since two years. In view of the above, it cannot be said that the deceased was not aware or could not have answered in telugu. The judgment of the Apex Court relied upon by the learned counsel for the appellant in Kashi Viswanath's case

³ (2013) 7 SCC 162

(1 supra) may not be of any help to him. It was a case where a telugu speaking lady was done to death in Karnataka. Three dying declarations came to be recorded by different authorities, in kannada. None of the dying declaration was recorded by a Judicial Magistrate. The first one was recorded by Tahsildar, Hubli, second dying declaration was recorded by the P.S.I., Bendigeri Police Station, Hubli and third by Bendigeri Police, in the presence of duty doctor. The contents of three dying declarations were found to be inconsistent with each other apart from that it has come on record that the deceased only know Telugu and no other language. Further, the said dying declarations do not contain the endorsement that the deceased was in a fit state of mind to give a statement. Therefore, the said judgment may not be of much help to throw out the two dying declarations in this case or at least the dying declaration recorded by the Magistrate, which in our view inspires confidence to act upon it.

29) Apart from that, it is also to be noted that the contents of the dying declaration recorded by the Magistrate gets corroboration from the evidence of PWs.1 and 2, who saw the deceased coming out of the house with stab injuries, followed by the accused holding a blood stained knife. Even assuming that there is some discrepancy with regard to arrest and recovery, the above circumstances namely motive, the evidence of PWs.1 and 2 coupled with, the dying declaration recorded by PW.8, in our view are sufficient to hold the accused responsible for the death of the deceased.

30) For the aforesaid reasons, we are of the opinion that the prosecution succeeded in establishing the guilt of the appellant/accused beyond reasonable doubt and the trial Court was right in convicting the appellant.

31) In the result the appeal fails and it is accordingly dismissed, confirming the conviction and sentence passed in S.C.No.48 of 2011 on the file of the I Additional District and Sessions Judge, Ongole.

32) Consequently, miscellaneous petitions, if any, pending shall stand closed.

13.07.2018
gkv



C.PRAVEEN KUMAR, J

KONGARA VIJAYA LAKSHMI, J

