

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

Criminal Appeal No.1431 of 2011

Between:

Parikala Koteswara Rao

... Appellant/accused No.1

and

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

...Respondent

Date of Judgment Pronounced: 06-08-2018

Submitted for Approval:

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

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

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

*** The Hon'ble Sri Justice C.V.Nagarjuna Reddy**
and
The Hon'ble Sri Justice Gudiseva Shyam Prasad
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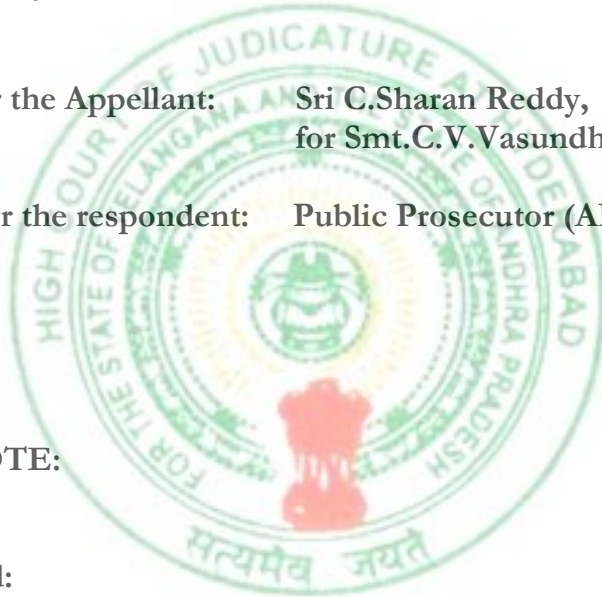
**! Counsel for the Appellant: Sri C.Sharan Reddy,
for Smt.C.V.Vasundhara Reddy**

^ Counsel for the respondent: Public Prosecutor (AP)

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? Cases cited:



The Hon'ble Sri Justice C.V.Nagarjuna Reddy

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**Counsel for the appellant: Sri C.Sharan Reddy
for Smt.C.Vasundhara Reddy**

Counsel for the respondent: Public Prosecutor (AP)

The Court made the following:

Judgment: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

Accused No.1 in Sessions Case No.652 of 2010 on the file of the Judge, Family Court –cum- Additional District & Sessions Court, Ongole, filed this Criminal Appeal against Judgment, dated 08-12-2011, passed therein, whereby he was convicted for the offence punishable under Section 302 IPC and sentenced to undergo Imprisonment for Life and also to pay a fine of Rs.1,000/-, and in default of payment of the same, to suffer Simple Imprisonment for a period of three months.

For convenience, the parties shall be referred to as they are arrayed in the Sessions Case.

The case of the Prosecution, as set out in the chargesheet, is briefly narrated hereunder:

Accused No.1 was the husband and accused No.2 was the mother-in-law of one Parikala Madhavi (hereinafter referred to as 'the deceased'); that they resided in Nalgonda District for two years, during which period the deceased was blessed with one child; that when the deceased became pregnant for the second time, accused Nos.1 and 2 on

suspicion that she has illegal contacts with PW.6, started harassing her without giving her proper food; that on information, PW.2- mother of the deceased took the deceased along with her to her house; that the deceased gave birth to the second child, but the accused did not visit her; and that on 19-09-2009, both the accused along with PWs.10 and 11 went to the maternal house of the deceased, negotiated with her and her parents in the presence of PWs.3 and 4 and took the deceased with them to their house in Tangutur Village.

That on the night of 20-09-2009, while accused No.2, PW.10 and PW.11 were sleeping on the roof of the neighbouring house, accused No.1 and the deceased were alone in their house; that accused No.1 again abused her in filthy language by suspecting her character; that the deceased slept in the late hours on that night; that at about 4.00 a.m. on 21.09.2009, accused No.1 poured kerosene on her body, due to which the deceased woke up; that in the meantime, accused No.1 lit her with match box; that the deceased raised cries, on hearing which, accused No.2, PW.10, PW.11 and their neighbours reached there and witnessed the deceased

burning; that accused No.1 poured water on the body of the deceased and tried to put off the flames; that PW.10 telephoned to 108 ambulance and shifted the deceased to RIMS Hospital for treatment; and that on information, the parents and relatives of the deceased came to the hospital and enquired her about the incident.

That on receipt of Ex.P.18- intimation, PW.17- Head Constable, Ongole II Town Police Station, visited the hospital, recorded Ex.P.19- statement of the deceased, and forwarded the same to P.W-19-Sub-Inspector of Police, Tangutur Police Station, on the point of jurisdiction; that PW.19 registered a case in Crime No.145 of 2009 under Sections 498(A) and 307 IPC of Tangutur Police Station on 21-09-2009 at 13.00 hours; that on receipt of Ex.P.16- Hospital Intimation, PW.16- Judicial First Class Magistrate, Special Mobile Court, Ongole, visited the hospital and recorded Ex.P.23- Dying Declaration of the deceased; that while undergoing treatment, the deceased died at 1.50 p.m., on the same day; that on receipt Ex.P.25- death intimation, PW.19 altered the provision of Law from Section 307 IPC to

302 IPC and issued express FIRs to all the officers concerned.

That PW.20- Inspector of Police, S.Konda Circle, who received the express FIR, sent a requisition to LW.23- Tahsildar, Tangutur, to conduct inquest over the dead body of the deceased; that LW.23 and PW.20 visited the scene of offence in Tangutur on 22.09.2009 at about 6.00 a.m., inspected the scene of offence in the presence of PW.12 and LW.13- Vailala Sada Siva Sastry, seized the burnt pieces of the clothes belonging to the deceased along with a match box and kerosene tin under the cover of Ex.P.14- Scene Observation Report duly attested by PW.12 and LW.13; that thereafter, LW.23 and PW.20 went to the Government Hospital, Ongole, secured the presence of the parents of the deceased and recorded their statements. That LW.23 conducted inquest over the dead body of the deceased in the presence of the panchayatdars (PW.13, LW.15- Munnangi Isac and LW.16- Bole Lakshmi) under the cover of Ex.P.15- Inquest report and sent requisition to the Government Medical officer to conduct autopsy over the dead body of the deceased with a team of doctors; that PWs.14 and 15- Civil Assistant Surgeons, who conducted autopsy over the

dead body of the deceased, issued Ex.P.17- Post-Mortem Certificate, opining that the cause of death of the deceased was 'Hypovolemic shock due to burns'; and that PW.20 secured the presence of PWs.1 to 11 and recorded their statements.

That during the course of further investigation, on 25.09.2009 at 9.30 a.m., both the accused surrendered before the Police by admitting their guilt; that PW.20 caused their arrest after explaining them the grounds of arrest and sent them for remand.

After completion of the investigation, PW.20 prepared the charge sheet against the deceased and filed the same in the Court.

On the basis of the chargesheet and the material collected during the investigation, the Court below has framed the following charges:

“FIRSTLY:-

That you/A1 being the husband of Perikala Madhavi and A2 of you, subjected to cruelty by suspecting her fidelity and harassed her and you thereby committed an offence punishable under Section 498-A of the Indian Penal Code; and within my cognizance;

And I hereby direct that you be tried by this Court on the said charge.

LASTLY:-

That you/A1, on 21st day of September, 2009 at Tangutur at about 4-00 am., have committed murder by causing the death of deceased Perikala Madhavi by pouring kerosene on her body and lit fire and thereby committed an offence, punishable under Section 302 of the Indian Penal Code, and within my cognizance;

And I hereby direct that you be tried by this Court on the said charge.”

As the plea of the accused was one of denial, they were subjected to trial, during which the Prosecution has examined PWs.1 to 20, got Exs.P.1 to P.28 marked and produced MOs.1 to 4. On behalf of the accused, DWs.1 and 2 were examined.

On appreciation of the oral and documentary evidence, the Court below has disposed of the case in the manner as noted herein before.

The Court below, while acquitting accused No.2 of the offence with which she was charged, convicted and sentenced accused No.1 in the manner as noted hereinbefore.

Mr.C.Sharan Reddy, learned Counsel representing Mrs.C.Vasundhara Reddy, learned Counsel for the appellant/accused No.1, submitted that though PWs.1 to 11 have turned hostile, the lower Court has wrongly convicted accused No.1 by relying upon Exs.P.19 and 23- Dying Declarations recorded by PW.17 and PW.16 respectively, which suffer from contradictions with each other; that both the Dying Declarations were a result of tutoring by PW.1 and other family members of the deceased as could be deciphered from the evidence of PWs.1 and 2- parents of the deceased; and that the lower Court has failed to realise that it is wholly unsafe to rely upon Exs.P.19 and 23, which remained uncorroborated, as none of the family members of the deceased examined as Prosecution Witnesses, supported the version of the deceased as recorded therein. The learned Counsel further submitted that from the evidence of PWs.1 and 2, it is quite manifest that the deceased caught fire accidentally when she tried to boil milk for her children and that even in Ex.P.14- Scene Observation Report, the presence of empty Kerosene tin was referred to and that PW.14- Civil Assistant Surgeon, who not only treated the deceased but also conducted the autopsy, did not refer to

kerosene smell, which supports the version of the parents of the deceased that the death was accidental but not homicidal. He has further submitted that accused No.1 has proved the plea of *alibi* set up by him through the evidence of DWs.1 and 2.

The learned Public Prosecutor for the State of Andhra Pradesh sought to support of the judgment of the lower Court.

We have carefully considered the respective submissions of the learned Counsel for the parties and perused the record.

This is a case where Exs.P.19 and P.23- Dying Declarations of the deceased are pitted against the oral testimony of the Prosecution Witnesses, who, evidently, for their own reasons, resiled from their earlier stands and sought to save the accused. It is ironical that the Defence Counsel had to place strong reliance on the testimony of the Prosecution Witnesses. In our opinion, no credence could be given to the evidence of these witnesses for the simple reason that the Prosecution was able to extract the

contradictions *vide* Exs.P.1 to P.13, which were the statements of PWs.1 to 11 recorded by the Police under Section 161 Cr.P.C., during the course of their investigation. Though, for obvious reasons, these witnesses have denied their having given such statements as noted above, the Prosecution was able to succeed in extracting the contradictions during the evidence of PW.20. He has deposed that initially, he visited the Government Hospital, Ongole, where he has examined and recorded the statements of PWs.1, 2 and 3 and later, he has secured the presence of PWs.4 to 11, examined them and recorded their statements. He has further stated that PWs.1 to 11 stated before him as in Exs.P.1, P.3 and P.5 to 13 respectively. Interestingly, in the cross-examination for the accused, no suggestion was put to this witness that either he has not recorded Exs.P.1, P.3 and P.5 to P.13 from PWs.1 to 11 respectively or that the contents thereof do not reflect the correct statements made by the latter.

Ordinarily, when a witness turns hostile, his conduct evokes serious suspicion. Therefore, the Court will be very slow in believing their statements. In a case where the

Prosecution was able to prove that the Investigation Officer has recorded the statements of the witnesses, which run contrary to the evidence given by them in the Court in order to help the Defence by taking a complete *volte-face*, such evidence cannot be taken into consideration even with a pinch of salt. The conduct of PWs.1 to 11 in taking a complete U-turn shows that they were evidently managed by accused No.1 for the reasons best known to him. Therefore, no credence could be given to the evidence of these witnesses.

Once we discard the evidence of PW.1 to 11 from consideration, there remain Exs.P.19 and P.23- the two Dying Declarations of the deceased recorded by PWs.17 and PW.16 respectively on 21-09-2009. The incident, allegedly, occurred at around 4.00 a.m., on 21-09-2009. While the first statement was recorded by PW.17 at about 7.50 a.m., at the RIMS hospital, Ongole, the second statement was recorded by PW.16, who was the Judicial First Class Magistrate, Special Mobile Court, Ongole, on the same day at about 8.30 a.m. No doubt, in Ex.P.19, the fitness of the deceased to make statement was not certified by the Doctor. Even

PW.17 has not endorsed thereon that the deceased was in a fit condition to give statement. Be that as it may, in Ex.P.23 recorded by PW.16, the Doctor has certified at three places that the patient is conscious, coherent and in a fit state of mind to give statement. The first endorsement marked as Ex.P.20 was made before preliminary questions were put by PW.16. The second endorsement marked as Ex.P.21 was made after preliminary questions were put and answers were elicited by PW.16 from the deceased and the third endorsement marked as Ex.P.22 was made by the Doctor after PW.16 completed the recording of Dying Declaration.

The learned Counsel for the appellant submitted that making three endorsements regarding fit state of mind of the deceased by the Doctor at three places in Ex.P.23- Dying Declaration is somewhat unusual and it creates a doubt about the authenticity of Ex.P.23. We are afraid we cannot accept this submission. A perusal of the original of Ex.P.23 would show that the Doctor appeared to be very cautious in certifying about the mental fitness of the deceased to make statement and as noted herein before, these endorsements were made at three different stages *viz.*, (i) prior to

commencement of preliminary questions by PW.16; (ii) after completing the preliminary questions and eliciting answers from the deceased and (iii) after recording her statement. Therefore, we do not find anything unusual in the Doctor making three endorsements so as to suspect the authenticity of Ex.P.23. A reading of Ex.P.23 clearly reveals that the deceased was candid and forthright in making her statement as to the events that have transpired leading to her suffering burns. Her statement does not suffer from any exaggerations or embellishments.

We are not impressed by the submission of the learned Counsel for the appellant that as per the evidence of PW.1, at 6.00 a.m., he talked to the deceased at Government Hospital and that therefore, it could be inferred therefrom that she was tutored to give a statement. He also sought to rely upon the testimony of PW.1 that as the appellant refused to return the dowry given to him at the time of marriage, himself and his relatives talked to the deceased and on the advise given by some of their relatives, the deceased made the statement against the appellant. This part of the evidence of PW.1 cannot be given any credence because he

did not explain the reason for giving a statement as in Ex.P.1 to the Police. He completely denied having given any statement as in Ex.P.1 to the Police except offering an explanation that as the accused failed to return the dowry, himself and other witnesses have stated as in Exs.P.1 to P.11. In our opinion, PWs.1 to 11 have changed their colours like chameleons to serve their own selfish ends and turned hostile in order to save the accused.

The law is well settled that unless the Dying Declaration is a result of tutoring or the same is so unnatural that no person of ordinary prudence would accept it, the Court is bound to accept the same in spite of the fact that it was not lent corroboration by any witness. The dying declaration is treated as an exception to the hearsay evidence as it is based on the maxim *Nemo oriturus praesumitur mentire*, which means, a man will not like to meet his maker with a lie in his mouth. As we are convinced that there is no reason for the deceased to falsely implicate the appellant, who was no other than her husband, and in the absence of any suggestion that she was tutored by her parents or any one else, we have no reason to disbelieve Ex.P.23.

The submission of the learned Counsel for the appellant that the latter was in Nalgonda at the time of the incident and that he went straight to the Hospital is based on the evidence of DWs.1 and 2. DW.1 claims to be a neighbour and DW.2 claims to be the employer of the appellant. DW.1 deposed that on the date of incident, the appellant went to Nalgonda on Beldar work. In his cross-examination, he has stated that the appellant came to the Government Hospital at Ongole at about 8.00 a.m. DW.2 deposed that the appellant used to work under him; that while himself and the appellant were on the way to their village- Tangutur from Nalgonda, the latter received a phone call to the effect that his wife was in serious condition and then, both of them have got down the bus at Ongole and went to the Government Hospital. In the cross-examination, he was unable to state the time at which the appellant has received the phone call and the place at which their bus was traveling at that time. He also failed to state as to how many hours after receipt of phone call, they reached Ongole. Interestingly, neither of these witnesses were examined by the Police during the investigation. If both

these witnesses had personal knowledge about the appellant not being in the village at the time of the incident, the appellant would not have failed to take them to the Police for giving their statements during the investigation. Indeed, if the appellant wanted to prove *alibi*, he would have been the first defence witness to examine himself and produce some reliable evidence such as the bus tickets, bus number *etc.* No such attempt was made by him to prove the plea of *alibi*. On top of it, in his examination under Section 313 Cr.P.C., he has not taken such a stand at all except giving cryptic answers to every question either as he is not aware or true or false or nothing. Though the family members of the deceased examined as Prosecution witnesses tried to save the appellant by stating that he was not present at the house at the time of the incident, as the appellant himself failed to come out with such a stand when an opportunity was presented to him during his examination under Section 313 Cr.P.C., no credibility could be attached to the testimony of those witnesses.

In **Arepalli Chalapathi Rao vs. State of A.P.**¹, this Court held as under :

“Alibi is a double edged weapon, in that, if the accused is successful in proving the same, he will be entitled for acquittal and in a converse case, this plea would operate as a link in the chain of circumstances for conviction. The false plea of alibi of the appellant strengthens the case of the prosecution that he was with the deceased at the time of the incident and the cause of her death was especially in his knowledge, thereby, placing the burden on him to explain the same, as envisaged under Section-106 of the Indian Evidence Act, 1872.”

Dealing with alibi, the Supreme Court in **State of Maharashtra v. Narisingarao Gangaram Pimple**², held that when the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the Court would be slow to believe any counter-evidence to the effect that that he was elsewhere when the occurrence happened. But, if the evidence adduced by the accused is of such a quality and of such a standard that the Court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no

¹ 2017(1) ALT (Crl) 441

² AIR 1984 SC 63

doubt, be entitled to the benefit of reasonable doubt and that for that purpose, it would be a sound proposition to be laid down that in such circumstances, the burden on the accused is rather heavy and that it follows, therefore, that strict proof is required for establishing the plea of alibi.

In **Debar Kundu Rama Krishna Rao v. State of West Bengal Crimes**³, the Kolkata High Court held that a false plea of alibi is also an incriminating circumstance giving an inference of guilt even in a case based purely on circumstantial evidence.

As regards the submission of the learned Counsel for the appellant that Kerosene smell was not noted in Ex.P.14- Scene Observation Report and in the evidence of PW.14, in our opinion, the same pales into significance once we accept Ex.P.23- Dying Declaration of the deceased. The plea that the death occurred on account of accident is belied by the recovery of MO.1- plastic can and MO.2- match box from the scene of offence. No explanation was offered by the defence as to the presence of these two material objects thereat.

³ MANU/WB/0265/1987 : (HC) 1 (1988) 654

On a careful consideration of the evidence on record in its entirety, we are of the opinion that the Prosecution has succeeded in proving the guilt of the accused beyond all reasonable doubts. Hence, we do not find any reason to interfere with the judgment of the lower Court

In the result, the Criminal Appeal is dismissed.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 6th August, 2018

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