

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE MS. JUSTICE J.UMA DEVI**

CRIMINAL APPEAL No.927 of 2011

JUDGMENT : *(Per Hon'ble Sri Justice Suresh Kumar Kait)*

The present appeal is preferred against the judgment dated 19th July 2011, passed in Sessions Case No.312 of 2009 by the III-Additional Sessions Judge, Warangal, whereby, the appellant was found guilty for the offence under Section 302 of IPC. Accordingly, he was sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default of payment of fine, to suffer simple imprisonment for two months.

2. The case of the prosecution is that about 10 years prior to the incident, the deceased was married to the appellant. They led happy marital life and were blessed with two children. Subsequently, appellant being addicted to drinking, used to frequently beat the deceased, demanding additional dowry. In this connection, panchayats were held. Unable to bear the torture, the deceased earlier attempted to commit suicide. Since three days prior to the commission of offence, the appellant was continuously consuming liquor and was beating the deceased in order to send her to her parents' house. On 07.05.2009, he beat the deceased indiscriminately. The deceased approached the elders and narrated about the torture. Elders admonished the appellant. Later, deceased returned home. Then, appellant followed her by saying "*Inka Chava Ledane*". He picked up kerosene tin, poured kerosene on her and lit fire. Due to shock, the deceased came out with flames, by making hue and cry. The family members of the deceased rushed to her,

extinguished the fire and shifted the deceased to MGM hospital, Warangal. The deceased succumbed to injuries on 10.05.2009 while undergoing treatment.

3. On 10.05.2009, on receiving report/Ex.P-2 from PW-1, PW-23/Inspector of Police altered the section of law from 307 of IPC to 302 of IPC and issued altered FIR/Ex.P-27. He then visited the hospital and held inquest over the dead body in the presence of PW-14. Ex.P-29 is the inquest panchanama. Thereafter, he forwarded the dead body for postmortem examination. On the same day, PW-17/the Associate Professor, Forensic Department, KMC, Warangal held autopsy over the dead body and opined that the cause of death was due to burns. Ex.P-20 is the postmortem report.

4. After completion of investigation, the investigating officer filed the charge sheet. Charges were framed against the appellant for the offences under Sections 302 and 498-A of IPC and explained to him. He pleaded not guilty and claimed to be tried. The appellant was not found guilty for the offence under Section 498-A of IPC and was accordingly acquitted of the said charge.

5. On 07.05.2009 at 08.51 a.m., the deceased was admitted in MGM hospital, Warangal. On receiving the said information from hospital, PW-22/Sub-Inspector of Police rushed to the hospital and recorded the statement of deceased, which is marked as Ex.P-21. He then forwarded the statement to the Police Station. On receiving Ex.P-21 at 10.30 hours, PW-18, the then A.S.I. of Police, Mills Colony Police Station, registered

the same as a case in Crime No.147 of 2009 under Sections 498-A and 307 of IPC and issued FIR which is marked as Ex.P-22. In the meanwhile, at around 10 a.m., on receiving requisition/ Ex.P-18 through the Outpost Police of MGM hospital, Warangal, PW-16/ the then VI Additional JFCM, Warangal visited the hospital and at 10.40 a.m., he recorded the dying declaration of deceased, which is marked as Ex.P-19.

6. In the present case, PWs.1 and 2 are parents, PW-3 is the sister and PW-4 is the brother of the deceased. All these material witnesses turned hostile. The entire case of the prosecution rests on the dying declaration/Ex.P-19 recorded by PW-16, the then VI Additional JFCM, Warangal and the statement of the deceased/Ex.P-21 recorded by PW-22/ Sub-Inspector of Police, Mills Colony Police Station.

7. The important contents of Ex.P-19 are that on the day of incident in the morning hours, appellant abused the deceased saying she was not dying still and for how many days she would survive. Saying so, he poured kerosene, set her on fire and then fled away. On hearing her cries, neighbours rushed to the scene, put up the flames, called for ambulance and shifted her to the hospital.

8. To prove its case, the prosecution examined PWs.1 to 23 and marked Exs.P-1 to P-35 and M.Os.1 to 7. After closure of prosecution evidence, appellant was examined under Section 313 Cr.P.C. He denied the incriminating evidence and stated that on 07.05.2009, she herself poured kerosene and set herself on fire. On behalf of accused, DW-1 was examined and Ex.D-1 was marked.

9. Learned counsel appearing on behalf of appellant submitted that the incident took place on 07.05.2009 at 8 a.m. and deceased was rushed to the hospital in burn condition at 8.55 a.m. A perusal of Ex.P-17 shows that at the time of taking the deceased to MGM hospital, Warangal, her sister was with her. In the column of “Alleged cause”, it is recorded that “kerosene burns due to self-pouring on 07.05.2009 at 8 a.m.”. To prove the said fact, DW-1/Civil Assistant Surgeon at MGM hospital, Warangal was examined. He deposed that on 07.05.2009 at 8.37 a.m., the deceased was brought to the hospital by her sister i.e. PW-3. On his enquiry about the injuries sustained by her, the deceased informed that she sustained injuries by herself pouring kerosene. The said information was incorporated by duty Doctor in the slip attached to the case sheet. Basing on that information, he forwarded the requisition/Ex.P-17 to the outpost Police. The deceased did not disclose that her husband i.e. the appellant herein poured kerosene on her. The slip is marked as Ex.D-1.

10. Since all the material witnesses turned hostile, the case mainly rests upon the statement/Ex.P-21 recorded by PW-22/S.I. of Police at 9.45 a.m., and the dying declaration/Ex.P-19 recorded by PW-16/Judicial Magistrate at 10.40 a.m. Learned counsel for appellant submitted that as per Ex.P-17, which is supported by DW-1/Dr.T.Naveen Kumar, the deceased herself poured kerosene. Therefore, the statements recorded under Exs.P-21 and P-19 cannot be relied upon for the reasons that PWs.1, 2 and 3 stated that they tutored the deceased to make allegations against the appellant. Learned counsel for appellant further submitted that PW-22 has taken signature of deceased on Ex.P-21,

whereas, PW-16/Judicial Magistrate has taken the thumb impression on Ex.P-19 stating that the right hand fingers of deceased were burnt. He submits that Ex.P-17 was recorded at 9.45 a.m., whereas Ex.P-19 was recorded at 10.40 a.m. As there are variations in the statements recorded by the S.I. of Police/PW-22 and the Judicial Magistrate/PW-16, the appellant deserves to be acquitted.

11. Learned public prosecutor appearing on behalf of the State submits that on information from the hospital, PW-22/S.I. of Police immediately rushed to the hospital and recorded the statement of deceased. In her statement, the deceased deposed as under :

“I am working as private teacher in child labour school since ten years. I was married about 10 years back. I have two male children. My 1st son’s name is Teja, 7 years. 2nd son’s name is Dilip, 5 years. My husband sells trees medicines in villages by wandering. We lived happily for about two years. Later, my husband addicted to drinking. After consuming liquor, he used to beat frequently and harassing for want of additional dowry and also to accept for second marriage. There were about 10 panchayats held before our caste elders. After advice of caste elders, for some time, we lived happily and again started harassment. Since three days, my husband Ravi having heavy drunk came to house and beat me on the pretext to go to my parents’ house. Today i.e. on 07.05.2009 morning at about 7 a.m., I went to our caste elder and informed about beating by my husband. Then, my husband came behind and beat me in the presence of our caste elder. When I went to my home, my husband came behind me stating that “Inka Chavaledeme”. While

stating, took kerosene tin and poured on me and lit. When I came out of my house with burning and crying, neighbours telephoned to 108 ambulance and when 108 ambulance came, shifted me to MGM hospital for treatment and admitted in the hospital. I have received burn injuries from my neck to legs and all over my body.”

Similar statement was recorded by the Judicial Magistrate/PW-16.

12. No doubt, in this case, PWs.1 and 2 are parents, PW-3 is the sister and PW-4 is the brother of the deceased. They all did not support the case of the prosecution. Neighbours/PWs.5 and 6 also did not support the case of the prosecution. The case rests upon the dying declaration/Ex.P-19 and Ex.P-21/the statement of the deceased recorded by the S.I. of Police/PW-22. In the judgment in **Nallapati Sivaiah v. Sub-Divisional Officer, Guntur**¹, it is held as under :

“The dying declaration must inspire confidence so as to make it safe to act upon. Whether it is safe to act upon a Dying Declaration depends upon not only the testimony of the person recording Dying Declaration – be it even a Magistrate but also all the material available on record and the circumstances including the medical evidence. The evidence and the material available on record must be properly weighed in each case to arrive at proper conclusion. The court must satisfy to itself that the person making the Dying Declaration was conscious and fit to make statement for which purposes not only the evidence of persons recording the dying declaration but also cumulative effect of the other evidence including the medical evidence and the circumstances must be taken into consideration.

It is un safe to record conviction on the basis of a dying declaration alone in cases where suspicion is raised as regards

¹ AIR 2008 SC 19

the correctness of the dying declaration. In such cases, the court may have to look for some corroborative evidence by treating dying declaration only as a piece of evidence.”

13. In a case decided by this Court in **Bogi Bhadraiah v. State of Andhra Pradesh**², it is held;

“When there is absolutely no other evidence and when the conviction has to be rested upon a solitary circumstance viz., to the dying declaration, the Court is required to be satisfied that such a declaration does not suffer any factual or legal infirmity. The infirmities and inconsistencies noticed by us have already been mentioned above. Added to this, the prosecution failed to prove the presence of the appellant at the place of occurrence.”

14. In the case in hand, the material witnesses i.e. PWs.1 to 6 have not supported the case of the prosecution. Then, it becomes duty of the Court to see whether the statements recorded by PWs.16 and 22 are believable and can be relied upon.

15. No doubt, when the deceased was crying with flames, PWs.5 and 6 called ambulance and thereafter the deceased was taken to the hospital. With the deceased, PW-3/her own sister was present at the time of recording the details in Ex.P-17. In the said document, it is stated by the deceased that she herself poured kerosene, and nowhere mentioned that kerosene was poured by her husband i.e. the appellant. Ex.P-17 was recorded at around 8.55 a.m. Thereafter, at 9.45 a.m., PW-22/S.I. of Police recorded the statement of deceased in Ex.P-21, wherein, the deceased made allegations against the appellant.

² 2008 (1) ALD (Crl.) 825 (AP)

16. Learned counsel for appellant submitted that the statements of deceased in Exs.P-19 and P-21 are tutored, however, the deceased spoke truth in her first opportunity in Ex.P-17.

17. The jurisprudence on probative value of dying declaration is no more *res integra*. The doctrine of dying declaration as enshrined under Section 32 of Evidence Act, 1872 is an exception to the general rule contained in Section 60 of the Evidence Act which says oral evidence in all cases must be direct i.e. it must be the evidence of a witness who claims he saw the incident. The dying declaration is an exception in the sense that it is the statement of a person who cannot be called as a witness and therefore cannot be subjected to cross-examination. His statement is divulged through the evidence of another person who records such statement called dying declaration. If the dying declaration infuses confidence and the court concludes that the said declaration is free from prompting or tutoring, it can base the conviction on the sole dying declaration without seeking for corroboration from other evidence. Its acceptability is based on the legal maxim *nemo moriturus praesumitur mentire*, which means “a man will not meet his maker with a lie on his mouth”. Generally it is believed that the truth sits on the lips of a dying person and in his last moments of departing from the mundane world, he would not venture to tell lies more so with regard to cause of his death and about his assailant. This belief generally guides the courts to accept the dying declaration. Of course, if the accused can, by cogent material,

able to raise a suspicion about the genuineness of the dying declaration, then the court may reject the dying declaration or seek for corroboration.

18. It is not in dispute that the deceased has got two minor children. After receiving more than 80% burn injuries on her body, she might have thought about her children. Therefore, she would certainly not make any allegation against her husband i.e. the appellant if he was innocent. The trial Court has not rightly believed that in such a situation, the deceased would tilt on tutoring by her parents and sister i.e. PWs.1 to 3 and make allegation against the appellant. When she was thinking about the minor children, she would not have made allegation against the appellant, whereas, she has been consistent in Exs.P-21 and P-19 recorded by PW-22 and PW-16 respectively.

19. As far as the signature on Ex.P-21 and thumb impression on Ex.P-19 are concerned, Ex.P-21 was recorded at 9.45 a.m., whereas, Ex.P-19 was recorded at 10.40 a.m. Within one hour gap, the burns on the fingers of deceased might have increased, due to which, she could not put her signature on Ex.P-19 recorded by the Judicial Magistrate/PW-16. The said witness has specifically mentioned that due to burns on the fingers of right hand, the deceased was unable to put her signature. Therefore, he took thumb impression of the deceased on Ex.P-19. PW-16 is a judicial officer, who, before recording the statement, put specific questions and come to the conclusion that the deceased was in a fit state of mind to give the statement. PW-16, in any stretch of imagination, cannot be said to be an interested witness or not recorded

the statement as stated by the deceased. No doubt, DW-1/Dr.T.Naveen Kumar has deposed before the Court that he recorded in Ex.P-17 that the deceased herself poured kerosene. But, that seems to be an information given by the sister of deceased/PW-3 since she was, at that point of time, with the deceased.

20. The parents of the deceased/PWs.1 and 2, the sister/PW-3 and her brother/PW-4 turned hostile. Keeping in view the fact that the deceased, being their daughter and sister, would dye, and if the appellant i.e. husband of deceased would go to jail, then, there will be no one to look-after the minor children. Keeping that view in mind, all the witnesses mentioned above have not supported the case of the prosecution.

21. In view of the above discussion and the legal position, we are of the considered view that the statement of deceased recorded by PW-22 i.e. Ex.P-21 and the dying declaration/Ex.P-19 recorded by the Judicial Magistrate/PW-16, are consistent, and accordingly, cannot be doubted.

22. Therefore, we find no illegality or perversity in the impugned judgment dated 19th July 2011, passed in Sessions Case No.312 of 2009, by the III-Additional Sessions Judge, Warangal. Accordingly, we confirm the same.

23. Finding no merit in this appeal, the same is accordingly dismissed.

24. The appellant was released on bail vide order dated 28th November 2016 on completion of five years. Therefore, the appellant is directed to

surrender before the trial Court within one week from the receipt of copy of this judgment, to serve the remaining sentence.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

J. UMA DEVI, J

6th April, 2018

N.B :

Office to furnish copy of this judgment to the trial Court forthwith.

(b/o)
ajr

