

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CRIMINAL APPEAL NO.1274 OF 2012

Between:

Md. Vahed Miya

... Appellant

and

The State of A.P., rep. by Public
Prosecutor of High Court

... Respondent

Date of Judgment Pronouncement: _____ FEBRUARY, 2018

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether copies of the judgment may be marked to Law Reporters/Journals Yes/No
3. Whether His Lordship wishes to see the fair copy of the judgment? Yes/No

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

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>Head Note:

! Counsel for Appellant : Ms. Ammaji Nettem
(Legal Aid Counsel)

^Counsel for respondent : Public Prosecutor

? CASES REFERRED:

1. 2010 (1) ALD (Cr1.) 397 (SC)
2. 2011 (1) ALD (Cr1.) 641 (AP)
3. 2016 (1) ALD (Cr1.) 634
4. Cr1.A.No.34 of 2012 decided on 14.12.2017
5. (2012) 7 SCC 569
6. AIR 2016 SC 3209
7. (2006) 3 SCC 161

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
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CRIMINAL APPEAL No.1274 OF 2012

J U D G M E N T

(per Justice Sanjay Kumar)

This appeal under Section 374(2) CrPC is directed against the judgment dated 08.12.2011 passed by the Principal Sessions Court, Medak at Sangareddy, in Sessions Case No.563 of 2008. By the said judgment, the Sessions Court convicted the appellant-A1 under Section 302 IPC holding him guilty of murdering his wife, Sulthana Begum, but acquitted him of the charge under Section 498-A IPC. He was sentenced to undergo imprisonment for life along with payment of fine of Rs.10,000/- and in default, to suffer rigorous imprisonment for six months. A2, the mother of the appellant-A1, died and the case against her abated. A3, the son of the appellant-A1 through his first wife, was acquitted of the charges under Section 498-A and 302 IPC.

The prosecution's case was as follows: On 17.12.2006, the Assistant Sub-Inspector of Police, R.C.Puram (P.W.11), was instructed by the Sub-Inspector of Police, R.C.Puram (P.W.13), to record the statement of Sulthana Begum, who was admitted in the burns ward at Osmania General Hospital, Hyderabad, having suffered burn injuries. P.W.11 went to the hospital and upon the Duty Doctor identifying Sulthana Begum, he recorded her statement (Ex.P9) at 8.00 P.M. on that day and obtained her right thumb impressions therein. Upon receipt of Ex.P9 from P.W.11, at 11.00 P.M. on the same day, P.W.13 registered a case in Crime No.441 of 2006 under Sections 307 and 498-A IPC. Ex.P2 is the

FIR. On 18.12.2006, P.W.13 himself visited the Osmania General Hospital, Hyderabad, and recorded the statement of Sulthana Begum, apart from the statements of P.Ws.1 to 5 and Modin Bee (L.W.5). He then visited the scene of the offence and recorded the statements of P.W.6 and the neighbours, G.Anjamma (L.W.8) and Balamani @ Swaroopa (L.W.10). He secured the presence of P.Ws.7 and 8 and conducted the scene of the offence panchanama in their presence. He also seized a kerosene bottle (M.O.1). Ex.P13 is the scene of the offence panchanama along with the rough sketch. On 20.12.2006 at about 8.00 A.M., P.W.13 received intimation of the death of Sulthana Begum and altered the provision of law to Section 302 IPC. Ex.P14 is the alteration memo. He then handed over the case diary to the Circle Inspector of Police (P.W.12). Thereupon, P.W.12 took up investigation in the case. He again orally examined the witnesses but did not record their statements as they were already recorded. He conducted an inquest over the body of the deceased in the presence of Shaik Khasim (L.W.13) and Raheemunnisa (L.W.14). Ex.P10 is the inquest report. He then sent the body for post-mortem examination. Ex.P11 is the post-mortem examination report certifying that death was caused by 'burns'. He arrested A1 and A2 on 05.01.2007. A3 was arrested on 16.03.2007. After conclusion of the investigation, he laid the charge sheet against the three accused.

As per the charge sheet, the case of the prosecution, while replicating the contents of the statement recorded in Ex.P9, was that Sulthana Begum was the third wife of the appellant-A1 and was staying with him and A2, his mother. The second marriage of the appellant-A1 was not disclosed at the time he married

Sulthana Begum. However, when the appellant-A1 received provident fund amount of Rs.30,000/- from Shapurnagar factory, where he worked earlier, the second wife of the accused came to him and took Rs.10,000/-. She started staying with the accused but Sulthana Begum did not allow her to do so. Due to the quarrels between them, the second wife left the house. Later, the step-son of Sulthana Begum - A3, the son of the appellant-A1 through his first wife, came and started staying in the house. There were frequent quarrels between Sulthana Begum and A1 to A3. On 16.12.2006 at about 6.00 P.M., a quarrel took place between Sulthana Begum, on the one hand, and A2 and A3, on the other, in the presence of A1 and A3 became furious and told A1 to kill Sulthana Begum. Thereupon, A1 beat Sulthana Begum mercilessly, poured kerosene over her and set her on fire.

The charges framed by the Sessions Court against the three accused read as under:

'CHARGE No.1:

That you A1 to A3 on 16th day of December, 2006 at 1800 hours at Nethajinagar Bandlaguda being husband, mother-in-law and brother-in-law of the deceased Sulthana Begum, w/o Vaheed Miya, aged 25 years, subjected the such woman to cruelty due to matrimonial disputes, and thereby you committed an offence punishable under section 498-A IPC and within my cognizance.

CHARGE No.2:

That, you A1 to A3 on the same day time and place mentioned supra, committed murder by intentionally (or knowingly) causing the death of wife of A1 of you viz. Sulthana Begum, aged 25 years by beating her and pouring Kerosene on her and setting fire to her body, that you

thereby committed an offence punishable under section 302 of Indian Penal Code and within my cognizance.'

All the accused denied the charges and claimed to be tried. Thereupon, the prosecution examined 15 witnesses and marked in evidence 16 exhibits. M.O.1 was also marked. The defence did not choose to adduce any evidence. Upon considering the evidence, oral and documentary, the Sessions Court passed the judgment as aforestated, leading to this appeal by A1.

Significantly, the record reflects that P.Ws.1, 2 and 3, the siblings of Sulthana Begum, turned hostile and did not support the prosecution's case. They all stated that their sister had committed suicide. P.Ws.4 and 5, cousin brothers of the deceased, also turned hostile and said the same. P.W.6, a resident of the same locality, also turned hostile and claimed that he had no knowledge of the affairs of the family of the accused or the death of the deceased. P.Ws.7 and 8, witnesses to the scene of the offence panchanama, also turned hostile. P.Ws.9 and 10, witnesses to the alleged confession panchanama, also did not support the prosecution's case and turned hostile. P.Ws.11, 12 and 13, police officials, spoke of the various steps taken by them during the course of the investigation. P.W.14, an Assistant Professor in Osmania General Hospital, Hyderabad, stated that he conducted the autopsy over the body of the deceased and confirmed that Ex.P11 was the post-mortem examination report furnished by him. He confirmed that the burns were to the extent of 80%. P.W.15, the learned II Metropolitan Magistrate for Railways at Secunderabad at the relevant time, stated that he received a requisition from the Station House Officer, Afzalgunj Police Station, on 17.12.2006 at 4.30 A.M.

to record the statement of Sulthana Begum who was admitted in the burns ward of Osmania General Hospital, Hyderabad. He then proceeded to the burns ward of the said hospital where he identified the patient with the help of the Duty Doctor. After putting preliminary questions to her to understand her fitness to give a statement, he opined that she was conscious, coherent and capable of giving a statement and proceeded to record it. He also obtained the endorsement of the Duty Doctor to the effect that the patient was in a fit state of mind to give the statement. He obtained her right toe impressions therein as her thumbs were burnt. He then obtained the endorsement of the Duty Doctor that the patient was coherent and fit throughout the recording of the statement. He confirmed that Ex.P15 was the requisition received by him and Ex.P16 was the dying declaration of the deceased.

As practically all the prosecution witnesses turned hostile, the prosecution's case rested essentially upon the dying declarations, Exs.P9 and P16. The Sessions Court convicted the appellant-A1 relying upon the same.

In this regard, it may be noted that P.W.11 admitted that he did not obtain certification of the Duty Doctor that Sulthana Begum was in a fit state of mind to give a statement before he recorded Ex.P9. This statement was recorded by P.W.11 on 17.12.2006 at 8.00 P.M.

The requisition (Ex.P15) given by the Sub-Inspector of Police, Afzalgunj Police Station, to P.W.15 bears out that Medico-Legal Case No.48281, IP No.44341 of ABC Ward of Osmania General Hospital, Hyderabad, finds mention therein. The requisition stated to the effect that one patient, by name Sultana W/o. Vahed, was

admitted in ABC ward of Osmania General Hospital, Hyderabad, on 16.12.2006 at 11.40 P.M. and she was alleged to have set fire to herself on 16.12.2006 at 7.30 P.M. at her residence and received 82% injuries. The Duty Doctor was stated to have advised recording of her dying declaration. This document bears the endorsement that it was received by P.W.15 on 17.12.2006 at 4.30 P.M. As P.W.15 recorded the dying declaration at 5.00 A.M., the mentioning of the time on the requisition (Ex.P.15) as 4.30 P.M. is obviously a mistake and it should be read as 4.30 A.M. In effect, Ex.P16 dying declaration was much earlier in point of time to Ex.P9 dying declaration, recorded by P.W.11.

Ex.P16 dying declaration reflects that the Duty Doctor certified at 5.00 A.M. on 17.12.2006 that the patient was conscious, coherent and in a fit state to give the dying declaration. It also records that P.W.15 asked the deceased her name and whether she knew Telugu and he then informed her that he was a Magistrate and that he had come to record her statement. From her replies to these questions, P.W.15 recorded the opinion that the patient was conscious, coherent and capable of making the statement and that she was in a fit condition to give the statement.

P.W.15 then asked her as to how she got burnt. In response, she stated thus: "My husband returned home drunk at 6.00 P.M. that night and beat me. I then called my elder brother on the phone and asked him to come. When I returned home, my husband, Vahed, my husband's first wife's son, Mohammed, beat me severely. I received injury on my leg. Keeping me in the house, my husband poured kerosene over me and set me on fire. Due to the flames, I raised cries. Someone came and poured a bowl of

water on me. Meanwhile, my brothers and my relations came and brought me to the hospital in an auto. My husband and his first wife's son are responsible for my burning. They only burnt me."

P.W.15 then asked her as to how many years it was since her marriage and she replied that it was 1½ years since she got married. She also stated that she had no children and that the first wife of her husband had expired but there were three children. P.W.15 then asked her as to how her husband used to look after her earlier and she replied that even earlier he used to beat and torture her and he used to drink heavily. She added that there were no disputes as to dowry.

Thereafter, the Duty Doctor certified at 5.25 A.M. that the patient was conscious, coherent and in a fit state of mind throughout the recording of the statement. The right toe marks of Sulthana Begum find place in both pages of Ex.P16.

Now, a look at Ex.P9 dying declaration. This statement was recorded by P.W.11 at 8.00 P.M. on 17.12.2006. On each page, the right thumb impression of Sulthana Begum is stated to have been obtained by him. Perusal of Ex.P9 statement reflects that it is much more detailed than Ex.P16. More pertinent to note, the version recorded therein is entirely different from that reflected in Ex.P16 dying declaration. Sulthana Begum is stated to have said that she was the second wife of the appellant-A1. Significantly, she did not mention the other second wife at all, who finds mention in the charge sheet. As to the events on the fateful evening of 16.12.2006, she said that her husband woke up at 4.00 P.M. and she made tea and after giving it to him, she also had some. She then told him that it was 4.00 P.M. and asked him whether he was

going to work. He replied that he would not be going for work. She threatened to call her elder brother and her husband said that he would break her legs if she went out. Mohammed (A3) asked her as to why she was bothered whether her husband went to work or not. She asked him why he was interfering and when she went near him, he hit her and she hit him back. Thereupon, her husband also hit her and continued to beat her. Her mother-in-law (A2) went away muttering as to why they did not kill her. Then, both of them beat her severely and her husband went into the house and got a kerosene oil bottle and poured it over her. Mohammed stood at the gate. Her husband lit a matchstick, threw it on her and ran away. She cried out 'fire fire'. One man came and poured water on her and put out the flames and she fell down. A tenant, who lives in their house and whose name might be Swaroopa, came there and asked whether there was no one. The basthi people then came there and scolded her husband and her mother-in-law and informed her aunt, Modin Bee (L.W.5), who came and called her brothers.

Surprisingly, P.W.11 claimed that he secured the right thumb impression of Sulthana Begum on each page of Ex.P9. When P.W.15 noted at 5.00 A.M. on that day that her thumbs were burnt and that was the reason why he took her right toe impressions on Ex.P16, it is inexplicable as to how her thumb impressions could have been taken by P.W.11 in the night. Further, it is patent that apart from being far more detailed when compared to Ex.P16, the version put forth by Sulthana Begum, as recorded in Ex.P9, completely differed. In one, she said that her husband was drunk but not in the other. In fact, as per Ex.P9, he

woke up at 4.00 P.M. and had the tea made by her. As per Ex.P16 dying declaration, the incident is stated to have occurred within the house, whereas Ex.P9 dying declaration speaks to the effect that Sulthana Begum was burnt outside the house. The scene of the offence panchanama and sketch also bear out that the offence was committed in the compound outside the house. However, no steps were taken by the police to examine the inside of the house to ascertain whether there was any indication of the deceased having been burnt inside the house and having run out thereafter.

Ms.Ammaji Nettem, learned counsel for the appellant-A1, would submit that in the light of the discrepancies in the two dying declarations, no credence can be given to either of them. She would point out that P.W.13 admitted in his deposition that he also recorded the statement of the deceased on 18.12.2006 but, for reasons unknown, the said statement was not produced. She would also point out that Ex.P12 First Information Report was only registered at 11.00 P.M. on 17.12.2006, despite the fact that a Medico Legal Case was registered long prior thereto, leading to Ex.P15 requisition being given to P.W.15 at 4.30 A.M. and recording of Ex.P16 dying declaration at 5.00 A.M. itself on that day. She would contend that the delay in the registration of the FIR leads to doubt in as much as Ex.P15 requisition recorded that it was a case of suicide. In the light of the aforestated circumstances, the learned counsel would submit that the conviction of the appellant-A1, resting solely upon Exs.P9 and P16 dying declarations, cannot be sustained. She relied upon case law to support her argument.

In **STATE OF ANDHRA PRADESH V/s. P.KHAJA HUSSAIN**¹, the Supreme Court held that in case of multiplicity of dying declarations, such declarations should be consistent on material facts. In **SUNDARAPALLI SATYANARAYANA @ SATTIBABU V/s. STATE OF ANDHRA PRADESH**², this Court, relying upon **P.KHAJA HUSSAIN**¹, observed that inconsistencies in multiple statements of the deceased may become glaring contradictions and held, on facts, that differences in the narrative in the two dying declarations in that case were flagrant, leading to a circumstance where it would not be safe to convict on the strength thereof.

In **KONIKINENI RAMA KOTESWARA RAO V/s. STATE OF ANDHRA PRADESH**³, a Division Bench of this Court observed that the statement recorded from a seriously injured person partakes the character of a dying declaration if he dies thereafter and law attaches enormous importance to a dying declaration, as the presumption is always that a dying declaration reveals the true state of affairs. In this scenario, it was held that suppression of a dying declaration would have a serious impact upon the case of the prosecution. The Division Bench opined that there is no other alternative but to draw an inference that had the suppressed dying declaration recorded from the deceased been made part of the record, it would not have supported the case of the prosecution.

More recently, in **HARIJANA NARASIMHA V/s. THE STATE OF ANDHRA PRADESH**⁴, a Division Bench of this Court, relying

¹ 2010 (1) ALD (CrL.) 397 (SC)

² 2011 (1) ALD (CrL.) 641 (AP)

³ 2016 (1) ALD (CrL.) 634

⁴ CrL.A.No.34 of 2012 decided on 14.12.2017

on **SUDHAKAR V/s. STATE OF MAHARASHTRA**⁵ and **RAJU DEVADE V/s. STATE OF MAHARASHTRA**⁶, opined that inconsistencies in dying declarations, in the absence of any direct evidence as to the incident, would necessitate the benefit of doubt being extended to the accused. In **SUDHAKAR**⁵ and **RAJU DEVADE**⁶, the Supreme Court held to the effect that in the case of multiple dying declarations which were at variance with each other, the test of common prudence is to examine which of the dying declarations is corroborated by evidence and each dying declaration would have to be considered independently on its own merits, so as to appreciate its evidentiary value. The Supreme Court held that it was the duty of the Court to consider each such dying declaration in the correct perspective and satisfy itself as to which one of them reflects the true state of affairs.

Be it noted that, in **P.MANI V/s. STATE OF T.N.**⁷, the Supreme Court affirmed that though a conviction could be recorded on the basis of a dying declaration alone, it must be found to be wholly reliable and in a case where suspicion could be raised as regards the correctness of the dying declaration, the Court would have to look for corroborative evidence before acting upon such a dying declaration.

In the present case, Ex.P15 requisition reflects that the police treated Sulthana Begum's death as a suicide, but Ex.P16 dying declaration, recorded by P.W.15 pursuant thereto, was to the contrary. The case built up by the prosecution, as reflected in the charge sheet, finds no mention in either of the two dying

⁵ (2012) 7 SCC 569

⁶ AIR 2016 SC 3209

⁷ (2006) 3 SCC 161

declarations. There is no mention of an existing second wife, whereby Sulthana Begum would become the third wife. There is also no mention of the second wife having returned, leading to quarrels between her and the deceased. None of the prosecution witnesses, including the immediate family and other family members of the deceased, supported the prosecution's case. They all spoke in one voice of the deceased having committed suicide. Further, no explanation has been offered by the prosecution to account for the variations in time leading to delayed registration of the FIR. The glaring inconsistency in Ex.P16 dying declaration is as to the place where the incident occurred. As per this dying declaration, the deceased was set on fire inside the house but this is not the prosecution's case at all. No evidence whatsoever was gathered by the police as to the possibility of the incident having occurred within the house.

Coming to Ex.P9 dying declaration, it was recorded by P.W.11 but without even obtaining certification from the Duty Doctor as to the mental status of the deceased and her fitness to give such a statement. P.W.11 also did not record any opinion to the effect that he satisfied himself as to the mental fitness of the deceased to give such a statement. The circumstance of the right thumb impressions of Sulthana Begum being obtained therein, as already stated *supra*, also adds a dubious character to it. That apart, when the version recorded by P.W.11 therein is at complete variance with the version given by the deceased herself to P.W.15, as recorded in Ex.P16, corroboration by independent evidence becomes essential. Significantly, Modin Bee (L.W.5), the aunt of the deceased, who was first summoned as per Ex.P9 dying declaration,

was not even examined. Similarly, Balamani @ Swaroopa (L.W.10), who also finds mention therein as one of the first persons to arrive upon the scene, was not examined.

To compound matters further, the prosecution, for reasons best known to it, did not even produce the statement of the deceased recorded by P.W.13 on 18.12.2006.

Taken cumulatively these factors render nugatory the evidentiary value of Exs.P9 and P16 dying declarations. The inconsistencies and contradictions therein completely demolish the prosecution's case. There is no independent corroborative evidence to support either of the versions recorded in Ex.P9 and Ex.P16. In such circumstances, this Court necessarily has to extend the benefit of doubt to the appellant-A1. The conviction of the appellant-A1, resting solely upon Exs.P9 and P16 dying declarations, therefore cannot be sustained.

The appeal is accordingly allowed, setting aside the judgment dated 08.12.2011 in Sessions Case No.563 of 2008 on the file of the Principal Sessions Court, Medak at Sanga Reddy, and acquitting the appellant-A1 of the charge under Section 302 IPC. He shall be set at liberty forthwith, if not required in relation to any other case. Fine amount, if any, paid by him shall also be refunded.

SANJAY KUMAR, J

M.SEETHARAMA MURTI, J

16th FEBRUARY, 2018

Note : L.R.Copy to be marked.

(B/O) PGS