

THE HON' BLE SRI JUSTICE A.V. SESA SAI

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No. 704 of 2012

JUDGMENT: (per GSP, J)

This appeal is arising out of the judgment dated 06.07.2011 passed in S.C.No.484 of 2010 by the IV Additional District and Sessions Judge, (FTC), Mahabubnagar, convicting the appellant-accused, Jalala Srinu, for the offence punishable under Section 302 IPC, and sentencing him to undergo imprisonment for life, and also to pay fine of Rs.1,000/-; in default, to undergo simple imprisonment for a period of three months.

It is the case of the prosecution that on 07.11.2007, at 11:30 PM, the Assistant Sub Inspector of Police (PW.13) visited the Government Community Health Centre, Kalwakurthy, on intimation from Government Hospital, and recorded the statement of injured/deceased Smt. Sujatha, wherein she stated that about 12 years back, her marriage was performed with the accused, and they were blessed with a daughter and they all resided in Kalwakurthy. The deceased Sujatha worked as Aaya in CNR Hospital, and the accused used to harass Sujatha physically and mentally by suspecting her fidelity; that PW.1 pacified the dispute between the deceased and accused many times. On 07.11.2007, when the deceased was in CNR Hospital, the accused came there and picked up a quarrel with the deceased and brought her home, and at 10:50 P.M., and he poured kerosene on the deceased and set fire to her with an intention to kill her, due to flames she covered a blanket and the neighbours have shifted her to the hospital. PW.13 registered a case against the accused for the offence punishable under Section 307 IPC.

On the requisition of the Sub Inspector of Police, PW.10-Tahsildar recorded Dying Declaration of the deceased, and after that the deceased was shifted to the Osmania General Hospital, Hyderabad.

During the course of further investigation PW.13 visited the scene of offence and seized empty yellow colour kerosene tin (MO.1) and one black colour chappal (MO.2) at the scene of offence which is the house of accused.

It is the contention of the prosecution that the accused also sustained burns in the incident and was admitted in the Government Hospital, Kalwakurthy, for treatment and then PW.15 requested the Medical Officer to intimate the date of discharge of the accused.

On the requisition of the Police, PW.14, Judicial Magistrate of First Class recorded the Dying Declaration of the deceased at Osmania General Hospital, Hyderabad.

Later PW1 came to police station on 10.11.2007 at 6:30 AM, and informed PW.12 Sub Inspector of Police that while they were shifting the deceased to Kalwakurthy, near Amangal, the deceased succumbed to injuries on 09.11.2008 at 3:00 PM, and the dead body was brought to Government Hospital, Kalwakurthy. Thereafter, the police altered the Section 307 IPC, to Section 302 IPC, and PW.15-Inspector of Police took up investigation, and filed charge sheet.

The trial Court, after due process of trial, convicted the accused for the offence punishable under Section 302 IPC, and sentenced him to undergo imprisonment for life and also sentenced to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. Challenging the conviction and sentence passed against him by the trial Court, the accused preferred this appeal.

2. Heard the learned counsel for the appellant-accused; and the learned Public Prosecutor, representing the respondent State.

3. Learned Public Prosecutor submits that PW1 got his daughter married to the accused about 12 years prior to the incident, and they were blessed with one daughter. After marriage, the accused and deceased resided at Jedcharla and thereafter they shifted their family to Kalwakurthy to eak their livelihood. His daughter was working as Aaya in CNR Hospital, and

the accused was a Mason by profession. The accused suspected the fidelity of his daughter Sujatha and also demanded her to get money from him. As the demand of the accused was not met, he killed Sujatha by pouring Kerosene on her and setting fire to her. The incident occurred in the house of the accused. His house was situated at a distance of 1 KM from the house of accused at Kalwakurthy. He came to know about the incident through the neighbours of the deceased that she was shifted to Government Community Health Centre, Kalwakurthy, and he visited the Government Community Health Centre, Kalwakurthy, where her dying declaration was recorded by the learned Magistrate. Thereafter, she was taken to Osmania Hospital, Hyderabad, and while coming back to Kalwakurthy, on the way when they reached Amangal, she died; then he took the dead body after Post-mortem Examination and buried the dead body.

4. Originally basing on the complaint of the deceased Sujatha, criminal law was set in motion and, at the first instance; the police registered a case in Crime No.218 of 2007 for the offence under Section 306 IPC against the accused and took up investigation. As Sujatha died after recording her statement by the police, the Tahsildar and the learned Magistrate, the statements of Sujatha have to be considered as Dying Declarations under Section 32 of the Evidence Act. Ex.P11 is the requisition sent by the Inspector to the learned Magistrate, and Ex.P12 is the Dying Declaration recorded by the learned Magistrate which reads as under.

"On 8-11-2007 at 6:30 PM, I received requisition from SHO of Kalwakurthy PS to record the statement of Smt. Sujatha w/o Srinu, 25 yrs, occ: worker in Private Hospital, Kalwakurthy Mahabubnagar district. I reached at 8.00 pm Female Burns Ward of Osmania General Hospital, Hyderabad. I have identified the patient with the help of duty doctor.

I have put the following questions to know her conditions after disclosing my identity as a Magistrate.

- Q. Where is your native place?
Kalwakurthy
- Q. Married or not?
12 yrs back married.
- Q. How many children, what is husband duty?
One daughter 8 yrs, my husband is working as Mestri.
- Q. If you have inlaws?
No more.
- Q. Where are you now?
I am in government hospital.

From the above I came to conclusion that patient is conscious, coherent, and capable of making statement. She is responding to questions. On swearing. But her speech is mouth lean due to burn injuries on her lips, and on face. Face is presenting swelling.

The duty Doctor has certified the following.

Patient is conscious and coherent to give statement.

- Q. How you got burn injuries?
A. Yesterday night in my house my husband set fire to me, myself wear rug on me for preserve.
- Q. Who are present at the time of burning you?
A. My daughter present.
- Q. You brought to you hospital?

- A. Van came.
 Q. Where is your husband?
 A. Not known.
 Q. Why set fire by your husband?
 A. My husband demanded me to get Rs.10,000/-, when I refused, and quarrelled between us. Due to that cause he set fire to me.
 Q. How is your husband behave on you?
 A. Daily he used to consumed toddy and abused me in filthy language and beat me.
 Q. Any dowry allegations are there?
 A. My husband demanded me to get Rs.10,000/- and quarrelled me. Once a time my father gave me Rs.4000/-. He did not repay the amount to my father. When he did not repay the Rs.4000/- he did not give again, he didn't listen father sold land. He having money. He demanded to get money from the sold his lands. But I did not get money from my father. Due to that cause he poured kerosene and set fire to me.
 Q. If any talks with you?
 A. No.
 Fit condition to give statement and through. The contests are readover the recording the statement. To the deponent in telugu and he admitted them to be true and correct and put her RTI on this paper. Patient has been consceious recording."

Apart from three dying declarations of the deceased, the prosecution has examined 15 witnesses to bring home the guilt of the accused for offence under Section 302 IPC.

PW₁ is the father of the deceased, who came to know about the incident through neighbours and went to Government Hospital, Kalwakurthy, and saw his daughter. According to him, the accused married her 12 years prior to the incident, and they were blessed with one daughter, and after marriage they resided at Jadcherla, and later they shifted to Kalwakurthy, and his daughter worked in a hospital as Aaya, and the accused worked as mason, and the accused used to suspect the character of his daughter Sujatha, and he has also demanded Rs.5,000/- from him, and he paid that amount to the accused. It is his further evidence that the accused killed his daughter by pouring kerosene and set fire to her. His house was at a distance of 1 km from the house of accused at Kalwakurthy and on information about the incident, he went to Government Hospital, Kalwakurthy, to see his daughter.

PW₂ is the brother-in-law of the accused and his evidence reveals that the accused used to suspect the character of the deceased, and on coming to know about the incident of accused pouring kerosene on the deceased and set fire, he went to Area Hospital and noticed his sister-in-law with burn injuries, and then the police came to the hospital and recorded her statement, thereafter she was taken to Osmania General Hospital, Hyderabad, for treatment.

PW₃ is the sister of PW₁, and she stated that the accused demanded the deceased-Sujatha to get Rs.10,000/- from PW₁, and accordingly, PW₁ gave Rs.4,000/- to the accused. She further stated that the accused had suspected the fidelity of the deceased, and used to quarrel with her, and PW₃ went to the house of the accused and advised them not to quarrel with each other, and lead a happy marital life, and later she came to know through the daughter of the accused, that the accused and deceased were quarrelling with each other and on the fateful night, the deceased Sujatha attended to her duty at 9.00 PM, and the accused went to Hospital and brought her home, and thereafter, again she went to hospital and again the accused went to hospital and quarrelled with her, and brought her home, after half an hour the daughter of the accused came and informed PW₃ that the accused and deceased were quarrelling with each other.

The testimony of PW₃ reveals that the accused suspected the fidelity of the deceased and they were quarrelling prior to the incident after 9.00 PM on that night.

PW₄ is the neighbour of the accused. According to him, the accused used to consume alcohol and quarrel with his wife, and then he advised the accused to change his attitude. On the date of incident, the accused and the deceased quarrelled with each other, and one Shekhar Goud also advised them not to quarrel. While he was taking supper, he heard cries from the house of accused, and then he went and saw the deceased Sujatha in flames and fell down in front of his house. Before that deceased caught hold of the accused though she was having flames, and then himself and others extinguished the fire, and on enquiry Sujatha told him that the accused set her on fire and then 108 ambulance came and shifted Sujatha to the hospital.

The testimony of PW₄ reveals that he was an independent witness and a neighbour of the accused. His testimony clearly reveals about the presence of the accused at the scene of offence, and the deceased caught hold of the accused though she was having flames on her, and then they extinguished the fire. That is why there are burn injuries present on the body of accused, and they were caused when the deceased caught hold of

accused, which belies the defence of accused trying to save her. It is also obvious that there is no plausible explanation coming from accused about the death of the deceased.

It is obvious from the statement of this witness that when he enquired Sujatha, she told him that the accused set her fire. This is a *res gestae* under Section 8 of the Indian Evidence Act. The testimony of this witness reveals the transaction which is forming part of the transaction. It is also evident that 108 ambulance came there and Sujatha was shifted to Hospital. Nothing is elicited in the cross examination of this witness to discredit her testimony.

PW₅ is a Medical Practitioner who was running CNR Hospital at Kalwakurthy. He knew the accused and deceased. It is his testimony that the deceased Sujatha used to inform him, that the accused beat her in drunken condition frequently. He came to know that Sujatha was admitted in Government Hospital, Kalwakurthy with burn injuries, and when he went there, she told him that the accused set fire to her.

PW₆ worked as Staff Nurse in CNR Hospital, Kalwakurthy, along with the deceased. As a colleague, she stated that the accused used to visit CNR Hospital when deceased Sujatha was on night duty, and deceased tells her that the accused beat her and harass her. According to her, on the date of incident, Sujatha attended night duty in CNR Hospital and the accused came at 9.00 PM to the hospital, and took her home. On the next day, she came to know that Sujatha was admitted in Government Hospital, Kalwakurthy with burn injuries. The testimony of this witness also reveals that the accused used to harass the deceased and even on the previous day of the incident, he took her from the Hospital to his house, and on the very next day the incident had occurred.

PW₇ is the photographer, who has taken the photographs of the dead body which are four in number marked as Ex.P₁.

PW₈ is Panch witness for the observation of scene of offence of the house of the deceased and accused, which reveals that at the scene of offence, he found plastic bottle (MO.1) and a Chappal (MO.2). Ex.P₂ is the

crime details form. He is a circumstantial witness, who corroborates the fact of deceased received burn injuries in the house of accused, a circumstantial evidence.

PW₉ is the panch witness for inquest panchanama conducted over the dead body of the deceased, under Ex.P₃ and his testimony corroborated the testimony of other witnesses who spoke about the incident.

PW₁₀ is the Tahsildar, Kalwakurthy who has recorded the dying declaration of Sujatha on the requisition received from SHO, Kalwakurthy Police Station. Ex.P₄ is the dying declaration of Sujatha which reveals that the deceased Sujatha was working in Area Hospital that her husband poured kersone on her and set fire due to suspicion on her fidelity. Nothing is elicited in his cross examination to disbelieve his version. He is an independent witness, a Government official, who recorded the Dying Declaration of the deceased. There is no reason forthcoming to disbelieve his testimony.

PW₁₁ is the Civil Assistant Surgeon, Community Health Centre, Kalwakurthy. On 10.11.2017, he received requisition from Inspector of Police, Kalwakurthy, to conduct autopsy over the dead body of the deceased Sujatha. He noted burns on the face upto 4%, and upper and lower abdomen upto 18% burns on dorsal region of Lumbar, burns on upper limbs and lower limbs. He noted the injuries in the 11th Column of autopsy report which are antemortem in nature, which are of an extent of 95%, and the cause of death was due to shock, due to deep burns. Ex.P₅ is the post mortem examination report. PW₁₁ is a material witness. His testimony reveals the cause of death was due to burn injuries.

PW₁₂ is the Inspector of Police, Kalwakurthy, during the relevant period. He received information from PW₁ that his daughter died on the way to hospital and then he altered the Section of law from 307 IPC to 302 IPC and issued Ex.P₈ alteration memo and conducted further investigation in the case.

PW₁₃ was the Assistant Sub Inspector of Police, Kalwakurthy, during the relevant period. He received medical intimation from the

Government Hospital, Kalvakurthy, that the deceased Sujatha was admitted with burn injuries. He recorded her statement, Ex.P9 which can be considered as the first Dying Declaration, as the declarant had died subsequently. He sent a requisition to Tahsildar to record the dying declaration of Sujatha, as the Judicial Magistrate of First Class was not available at that time, as such, the Dying Declaration was recorded by the Tahsildar. There is no reason forthcoming to doubt the Dying Declaration recorded by the Tahsildar.

It is appropriate to refer to the arguments of the learned counsel for the appellant-accused, and the learned Public Prosecutor in respect of three dying declarations recorded by the police, Tahsildar, and the learned Magistrate.

Learned counsel for the appellant contends that there is variation in the contents of dying declarations and, therefore, the dying declarations are not reliable.

Learned Public Prosecutor submits that the sum and substance of all the three dying declarations is one and the same with regard to the main allegation that the accused poured kerosene and set fire to the deceased. The variation is only in respect of the motive of the accused. The deceased stated that the accused demanded Rs.5,000/- from her father, which is another reason for commission of offence by the accused, as such it is not going to affect the main content of the Dying Declaration, that the accused set fire to the deceased as spoken by the deceased.

Learned counsel for the appellant contended that the police, basing on the statement of the accused, has registered a case under Section 306 IPC, and later altered the Section of Law, basing on subsequent Dying Declaration. It is mainly argued that the demand of dowry of Rs.5,000/- from the deceased was not mentioned in the first two Dying Declarations and, therefore, the third Dying Declaration recorded by the learned Magistrate cannot be believed.

In fact, there is no abnormality or major improvement in the versions spoken by the deceased at three different points of time. The only thing

that the deceased stated in the Dying Declaration recorded by the learned Magistrate was about the demand of Rs.10,000/-, which was not present in the other two Dying Declarations. The main fact spoken by the declarant in all the three statements was with regard to the accused setting fire to her. Since the main fact of accused pouring kerosene and setting fire is proved, the remaining aspect of the demand of Rs.10,000/- can be taken into consideration as additional factor for commission of offence by the accused.

It is clear from the arguments advanced by the learned Public prosecutor that the dying declaration is a substantial piece of evidence. Basing on the dying declaration, a conviction can be based, depending upon the trustworthiness of the dying declaration. There are three dying declarations recorded at three different points of time. All the three dying declarations clearly reveal that the accused set fire to her, having suspected her fidelity, and demand of Rs.10,000/- was not met. There is corroborative evidence to the motive of allegation of infidelity and the demand of money and payment of Rs.4,000/-.

Some of the witnesses have spoken about the accused suspecting the fidelity of the deceased. There is corroboration to the Dying Declarations in that regard. It is not as if there is no corroboration to the Dying Declarations with regard to the motive for commission of this offence. It is also pertinent to note that just before the incident, a quarrel ensued between the accused and the deceased. The accused came to the hospital where she was working as aya and brought her home, and again she went to hospital, and again the accused went to the hospital and brought her home, and thereafter the incident has occurred. There is ample evidence on record to show that there were differences between the accused and the deceased and the accused has suspected the fidelity of the deceased. There was a quarrel just before the incident and thereafter the accused poured kerosene and set fire to her. In all the three Dying Declarations, the deceased stated that the accused set fire to her. There is no reason to disbelieve the Dying Declarations recorded by two agencies, the Executive and Judiciary.

It is pertinent to note that in Ex.P9, the statement of deceased Sujatha recorded by the police, wherein she stated that the accused suspected her

fidelity and poured kerosene and set fire to her. In the dying declaration recorded by the Tahsildar, she stated that the accused suspected her character and poured kerosene and set fire to her. In the dying declaration recorded by the learned Magistrate, she stated that the accused set fire to her as his demand of Rs.10,000/- was not met he quarrelled with her and set fire to her. In fact, in the dying declaration recorded by the learned Magistrate, she did not state that the accused had suspected her fidelity, and because of that reason, he poured kerosene and set fire to her. The accused demanded Rs.10,000/- from her and in that regard there was a quarrel, which was the reason for him to commit the offence. However, the two motives are supported by the testimony of the witnesses in this case.

The dying declaration recorded by the learned Magistrate is in accordance with the procedure established by law. There is endorsement of Medical officer who has certified that the patient was in a fit condition to give statement.

Merely because she stated in the earlier two dying declarations, the reason of the accused suspecting her fidelity and setting fire to her, do not disqualify the third dying declaration. In fact, the motive stated by the declarant was that the accused demanded Rs.10,000/- and as it was not met, he quarrelled with her, and poured kerosene on her and set fire to her is the additional fact spoken by the declarant. However, all the three dying declarations read together revealed that the accused set fire to her, may be with the motive as stated in the dying declarations. This cannot be considered as a discrepancy, much less a major discrepancy. The recording of dying declaration by the learned Magistrate cannot be disbelieved in the absence of any contradictory evidence. Since the contents of the dying declaration recorded by the learned Magistrate and the contents of the other two dying declarations was that the accused poured kerosene on the deceased and set fire to her, the importance of motive loses its significance, as there is direct evidence of the declarant about the incident.

It is the case of the appellant that the appellant has received burn injuries at the time of incident, and he had taken treatment in the hospital. Learned counsel for the appellant vehemently contended that the appellant

has received injuries when he tried to save the deceased. He placed reliance on the evidence of medical officer. PW.11 testified that LW.17 Dr. C. Raghavendra Patel worked in their hospital on contract basis, and later he has resigned the job and went to Delhi, and that on 14.11.2007, he examined the accused as outpatient. According to him the accused was admitted on 09.11.2007 and discharged on 14.11.2007. In fact, PW.11 has issued Ex.P6 outpatient tickets and also testified about issuance of Ex.P7-wound certificate by LW.17. Dr. Raghavendra Patel, who could be not examined in this case due to his resignation of his job and going to Delhi.

Learned Public Prosecutor argued that as per the outpatient tickets, the accused was admitted in the hospital on 09.11.2007 and discharged on 14.11.2007 may prove that he received burn injuries, but there is no evidence to show that he received burn injuries while he tried to save the deceased.

It is also argued that the accused has not taken any defence at any stage of the investigation till he was examined under Section 313 Cr.P.C. about trying to save her. However, the material on record clearly proves his presence at the scene of offence beyond reasonable doubt.

Section 106 of the Indian Evidence Act, 1872 reads as under:

“106. Burden of proving fact especially within knowledge:-

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.”

When the accused was present at the scene of offence and received burn injuries, it is his duty to explain how the deceased caught fire. As per Section 106 of the Evidence Act, the facts which are within the knowledge of the person have to be explained. The accused has not explained about the incident of death of deceased.

The contention of learned counsel for the appellant that the deceased has stated before police that no one was present at the time of incident except her husband, but she stated in the dying declaration recorded by Magistrate that her daughter was present, which is an improvement from her earlier version.

In fact, the condition of the deceased was with 90% burn injuries can be understood that the discrepancies with regard to the presence of her daughter, and motive hardly matters. If really the defence of the accused is correct, the dying declarations would not have reflected that the accused set fire to the deceased and she tried to protect herself covering with a rug. There is no need for the police, Tahsildar and Magistrate to falsely implicate the accused. If really they had to implicate him, there would not have been any discrepancy in the dying declarations on any aspect. So these discrepancies are natural and not material discrepancies. The deceased, due to her precarious condition with 90% burns, stated to the Magistrate about the demand of Rs.10,000/- by the accused, which she had not disclosed earlier to the police and Tahsildar and the quarrel which motivated in the commission of the offence. In fact, it can also be understood in the light of the dying declarations that since the presence of the accused is not doubted, he has to explain how the deceased suffered burn injuries, if he had not set fire to her as stated by the deceased in her dying declarations.

In this case if the defence of the accused is that he had also received burn injuries, he should explain how the deceased received burn injuries. The silence on the part of the accused, and the accused not taking any such defence in his Section 313 Cr.P.C. examination, the presence of accused, coupled with the dying declarations, reveals that the offence is committed by the accused.

The Hon'ble Supreme Court in **State of Madhya Pradesh v. Mohan Lal**¹ observed that "*A dying declaration can form the sole basis of conviction though courts look for corroboration from different circumstances since the same cannot be tested by cross examination. Such declaration being made under solemn*

¹ 1996 (2) Crimes 206, 209 (SC)

sense of impending death, the deceased is usually not likely to commit any mistake, and therefore the same is given great weight. But at the same time a court has the duty to scrutinise the same since the accused has no right of getting the statement tested by cross-examination. In **Vimla Devi v. State of U.P.**², it was observed that “the law attaches sanctity to the dying declaration on the principle that it is a statement made in extremity, when every motive to falsehood is silenced and the mind of the maker of the declaration is induced by the most powerful consideration of only to speak the truth”. In **Ramesh v. State of M.P.**³, it is held that conviction can be based on a dying declaration even if there is no corroboration. In **Chakiri Saidulu v. State of A.P.**⁴, it was observed that in a case where there are more than one dying declaration, comparison of all dying declarations for assessing the extent of incrimination is not necessary. In **Nallam Veera Satyanandam v. Public Prosecutor, High Court of A.P.**⁵ In the case of multiple dying declarations each dying declaration will have to be considered independently on its own merit as to its evidentiary value and one cannot be rejected because of the contents of the other, in cases where there are more than one dying declaration, it is the duty of the Court to consider each of them in its correct perspective and satisfy itself which one of them reflects the true state of affairs.

In the instant case, the three dying declarations clearly reveal that the accused had set fire to the deceased. The motive in two dying declarations is that the accused suspected the fidelity of the deceased and quarrelled with her on the date of incident and set fire to her, and that motive is supported by oral testimony of the witnesses who are independent and reliable. The motive in the third dying declaration is that the accused demanded money of Rs.10,000/- from the deceased and he quarrelled with the deceased on the date of incident and set fire to her, and that motive was also supported by the testimony of the witness Pw 1. Therefore, the sum and substance of all the three dying declarations is that the accused having quarrelled with the deceased on the previous day with regard to suspecting her fidelity and also demand for money had killed her on the next day by setting fire to her and,

² 2000 All LJ 1801

³ 1996 CrLJ 2656, 2658 (MP)

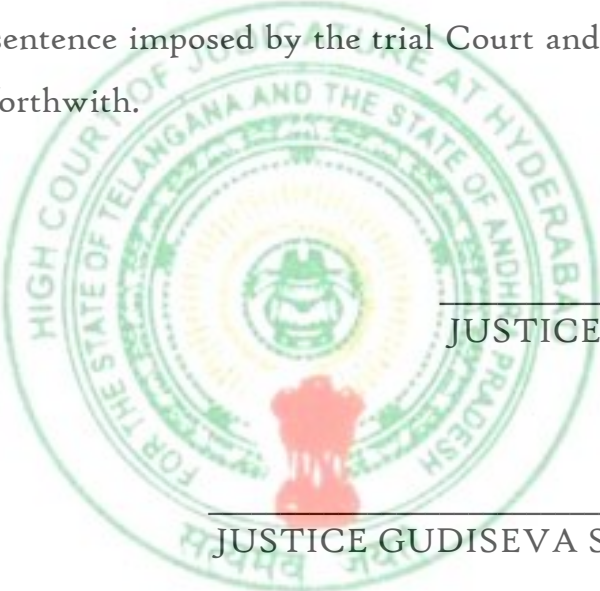
⁴ 1994 CrLJ 3782, 3789 (AP)

⁵ AIR 2004 SC 1708

in the process, he also received some burn injuries which is revealed in the medical evidence produced by the prosecution. Therefore, there is no doubt that the alleged offence is committed by the accused.

On consideration of the facts of the case, the prosecution has proved the guilt of the accused beyond reasonable doubt in the light of the dying declarations and the testimony of the witnesses. Therefore, the conviction recorded by the trial Court does not require any interference.

In the result, the appeal is dismissed, confirming the conviction and sentence passed by the trial Court in S.C. No.484 of 2010. The appellant-accused shall surrender before the Judicial Magistrate of First Class, Kalwakurthy, Mahabubnagar District, forthwith and he shall serve out the remainder of the sentence imposed by the trial Court and his bail bond shall stand cancelled, forthwith.



JUSTICE A.V. SESA SAI

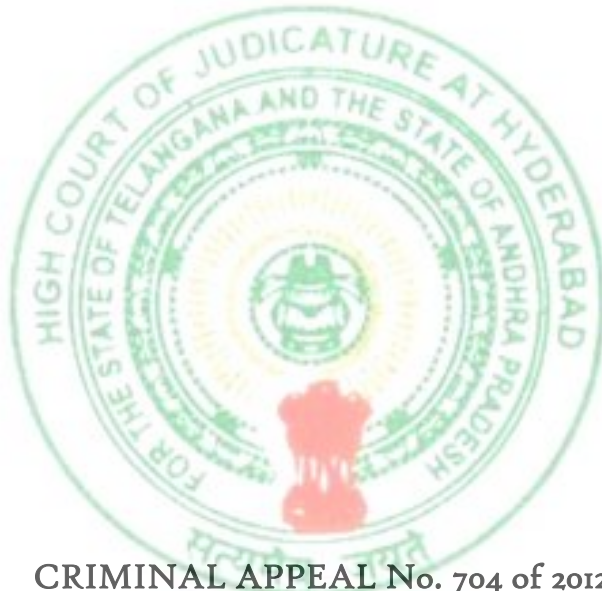
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