HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.650 of 2011

JUDGMENT: (ORAL)

(Per Suresh Kumar Kait, J)

Vide the present appeal, the appellant/State of A.P., has challenged the judgment dated 31.12.2008 passed in S.C.No.411 of 2006 by the Spl. Judge for SPE & ACB Cases-cum-II Addl. District & Sessions Judge (Fast Track Court), Nellore, whereby, the respondents/accused Nos.A.1 to A.8 were found not guilty and accordingly acquitted from the charges under Sections 498-A and 302 IPC against A.1 and Section 201 IPC against A.2 to A.8.

2. The case of the prosecution is that the marriage of A.1 was performed with the deceased about 10 years prior to the date of the incident and they were blessed with two daughters (1) P.W.2-Arkati Nagamuni Lakshmi, aged 8 years and (2) L.W.4-Arkati Nagamuni Chandra, aged 4 years by the date of incident. A.2 and A.4 are the parents; A.3 is the brother of the deceased. A.2 to A.4 are residents of Petluru, whereas A.1 is a resident of Venkatagiri. A.1 is the younger brother of A.4. A.5 and A.8 are the paternal uncles, whereas A.6 and A.7 are the cousins of the deceased. The allegations of the prosecution are that since 5 years prior to the incident, A.1 was addicted to bad vices and was subjecting the deceased to mental and physical cruelty. When A.1 necked out the

deceased, she took shelter in the house of A.2 and A.4. Due to heavy pressure of debts, A.1 left Venkatagiri. For the purpose of studies of her children, the deceased shifted to Venkatagiri and was residing at the house of A.1 at Narasimharaopet Street, Venkatagiri. The deceased was eking out her livelihood by collecting rents of the houses (L.W.8 – Kalimili Rajani is the tenant of the deceased). With financial aid of A.2 and A.4, the deceased was running a dish connection at Petluru. One week prior to the date of incident, A.1 was found wandering in the street, by P.W.2. When she called her father A.1, he did not heed her words. A.1 developed aversion against the deceased and was not compromising in settlement of dish connection collections.

3. On 10.10.2004, A.1 went to the house and picked up quarrel with the deceased in respect of dish connection collections. On that date, there was heavy rainfall. At about 5.00 p.m., the rain stopped. Then A.4 had taken P.W.2 and L.W.4-Nagamuni Chandra to the shop of P.W.3-Paruchuru Sampoornamma, which is opposite to the house of the deceased, in order to purchase eatables to the children. A.1 used that opportunity with an intention to kill the deceased. He poured kerosene over the deceased and lit fire to the deceased and left the place. The deceased put off the fire by dipping into a water tub. But, by then, she sustained 90 to 95% burns. By hearing her shouts, A.4, P.W.3, P.W.4-Paruchuri Laxmi Narasamma, P.W.5-Guddeti Sudhakar, L.W.8-Rajani, with the help of others, shifted the

deceased into an auto and sent the deceased along with A.4 in that auto for treatment. A.4 took the deceased to the hospital of P.W.10-Dr. Harikrishna Prasad, who, in turn, administered saline to the deceased and advised A.4 and others to take the deceased to Nellore for better treatment and to give report to the Police. In the meanwhile, A.4 telephoned to A.2 and A.3 and they came in Sumo vehicle of A.7. A.2 to A.7 shifted the deceased to Jaya Bharath Hospital, Nellore in that vehicle. P.W.8-Dr. A.V. Rukmini treated the deceased and sent hospital intimation Ex.P.20 to IV Town Police Station, Nellore.

4. P.W.11-B. Venkataswamy, Head Constable No.608 of IV Town Police Station, Nellore went to the hospital and recorded Ex.P.21 – statement of the deceased at 00.15 hours on 11.10.2004 in the presence of P.W.8. P.W.11 sent Ex.P.21 to Station House Officer, Venkatagiri Police Station on point of jurisdiction, through Ex.P.22-memo. P.W.12-U Jaya Rao, SI of Police, Venkatagiri P.S., in turn, registered the same as a case in Cr.No.135/2004 for the offences under Sections 498-A and 307 IPC and submitted original FIR Ex.P.23 to the Court. In the meanwhile, P.W.8 had also sent Ex.P.16-hospital intimation to P.W.9-Sri P.R. Rajeeev, the then IV Addl. Judicial First Class Magistrate, Nellore, who in turn went to the hospital on 11.10.2004 at 8.00 a.m., and recorded Ex.P.19-dying declaration of the deceased from 8.00 a.m., to 8.20 a.m., in the

presence of the duty doctor-P.W.8. P.W.12 filed memo before P.W.9 for supplying copy of Ex.P.19.

5. Further case of the prosecution is that P.W.12 visited the scene of offence on 12.10.2004 in the presence of P.W.1-Chilakurthi Sreenivas, Panchayat Secretary of Petluru village and P.W.6-Bandi Govindaswamy, Revenue Inspector of Venkatagiri and observed the scene of offence under cover of Ex.P.1-Panchanama, collected M.O.1-plastic kerosene can, M.O.2-partly-burnt saree piece, M.O.3-polo sports *topi*, M.O.4-burnt hair and M.O.5-parts of burnt petty coat pieces and took Exs.P.6, P.7, P.8, P.9 and P.10-photographs of the scene of offence through P.W.7-Salapakshi Sankaraiah, a private photographer. P.W.12 also prepared rough sketch of the scene offence Ex.P.24. On the same day, P.W.12 went to Jaya Bharath Hospital, Nellore, examined A.4 and recorded her 161 Cr.P.C. statement. He also examined the daughters of the deceased and recorded their 161 Cr.P.C. statements. P.W.12 went to Venkatagiri, examined and recorded the 161 Cr.P.C., statements of P.Ws.3, 4, 5 and L.W.8-K Rajani, the residents of that locality. P.W.8 issued Ex.P.15-wound certificate stating that the deceased had 90 to 95% burns and they are grievous in nature. On 14.10.2004 at 12.30 hours P.W.1 gave Ex.P.2-report stating that A.2 to A.8 burnt the dead body of the deceased in Petluru burial ground. P.W.12 in turn re-registered the same as FIR in Cr.No.135/2004 under Sections 498-A, 302, 201 r/w.34 IPC and submitted original

FIR Ex.P.25 to the Court. On receipt of copy of Ex.P.25, P.W.14-K. Sreenivasa Rao, the then Inspector of Police, Venkatagiri took up investigation, visited the burial ground and observed, the dead body of the deceased was being burnt. P.W.14 got the flames photographed under Exs.P.11, P.12 and P.13 through P.W.7. He put off the fire and conducted Ex.P.3-inquest panchanama in the presence of P.W.6, L.W.10-Koppala Vasu, a village servant and L.W.11-Thupakula Pullaiah and prepared Ex.P.24-rough sketch of the scene of offence. P.W.1 and L.W.2-Cheekolu Sundara Ramaiah, who used to burn dead bodies at the burial ground of Petluru, stated that A.2 to A.8, after the death of deceased, in the early hours on 14.10.2004, brought the dead body to Petluru and hurriedly proceeded with funeral formalities without intimating the same to P.W.1 or to Police, knowing that crime was pending and in order to screen the evidence and to save A.1, they burnt the dead body of the deceased. P.W.14 collected the burnt bones and ash at that place and sent them for post-mortem and chemical examination. P.W.13-Dr. S. Janaki Ramaiah, Medical Officer, Govt. Hospital, Venkatagiri examined the bones and issued Ex.P.26-post-mortem report reserving his opinion till the report of FSL. Later on, P.W.13 issued post-mortem certificate dated 10.12.2004 stating that there is no use of sending pieces of different bones to FSL because bones were damaged up-to 80%. P.W.14

examined P.W.7, the photographer. P.W.14 arrested A.1 to A.8 and sent them to judicial custody.

6. Thereafter, the charge sheet was taken on file for the offences under Sections 498-A, 302 and 201 r/w.34 IPC against A.1 to A.8 by the learned Judicial Magistrate of I Class, Venkatagiri in PRC No.16/1995. After appearance of accused before him, the learned Magistrate furnished copies of the documents as provided under Section 207 Cr.P.C., and committed the case to the Court of Sessions by his order dated 19.07.2006. The Principal District & Sessions Judge, Nellore has numbered the same as Sessions Case No.411/2006 and made over the same to III Addl. District & Sessions Judge (FTC) Nellore for trial and disposal. After appearance of A.1 to A.8 before the said Court and after hearing Addl. Public Prosecutor and learned counsel for accused, the Court framed charges under Sections 498-A and 302 IPC against A.1 and under Sections 201 IPC against A.2 to A.8. When the charges were read over and explained to A.1 to A.8, they pleaded not guilty and claim to be tried. The learned trial Judge, after considering the evidence of the prosecution witnesses and the statements under Section 313 Cr.P.C., of the accused, has acquitted all the accused from the charges mentioned above.

7. The present appeal has been filed against all the accused, however, learned Public Prosecutor appearing on behalf of the appellants/State submits that State has decided not to press the

present appeal against A.2 to A.8 and to contest the appeal against the acquittal of A.1. Accordingly, we hereby dismiss the present appeal insofar it relates to A.2 to A.8.

8. Learned Public Prosecutor appearing on behalf of the State submits that date of incident is 10.10.2004 at 5.00 p.m., and P.W.11 – Constable recorded statement on 11.10.2004 at 0015 hours – Ex.P.21. As per the said statement, the deceased stated that her husband was addicted to bad vices. He spent away money and fell in dues. Her husband used to harass her for money and sometimes he sent her to parental house and she stayed at Petluru village. For the purpose of studies of children, she is residing at Venkatagiri. Her husband left the house 5 years back and rarely visited the house. She further stated that her husband developed grouse against her with regard to property and on 10.10.2004 at about 1700 hours, he entered into the house and poured kerosene on her and lit fire; she was in flames and after sometime her mother came to the spot and shifted her to private hospital at Venkatigiri; from there she was shifted to Jayabharath Hospital, Nellore for treatment. Thereafter, P.W.9 recorded dying declaration Ex.P.18, wherein the deceased stated that her husband was addicted to vices and spent away money for his vices and fell in dues. A.1 used to harass her for money and sometime, she went to her parents' house and stayed for sometime at Petluru. For the purpose of studies of children, she was residing at Venkatagiri.

9. Learned Public Prosecutor further submits that the aforesaid dying declaration was recorded in the presence of P.W.8 Dr. A.V. Rukmini. Despite that, the learned trial Court ignored the aforesaid evidences and acquitted all the accused including A.1 against whom there is direct evidence that he came to the deceased on the date of incident, poured kerosene and lit her on fire. Thus, the learned Public Prosecutor submits that the present appeal deserves to be allowed against A.1 and he should be convicted under Section 302 and 498-A IPC.

10. Before the trial Court, to prove the allegations, prosecution has relied upon Ex.P.21-statement of the deceased, recorded by P.W.1, Head Constable, Ex.P.19 dying declaration of the deceased recorded by P.W.9, the Magistrate, evidences of P.Ws.1 to 5 eye-witnesses, P.W.6, 7, 8 and 10 to 13. P.W.1 is the Panch for Ex.P.1-scene of offence and recovery of M.Os.1 to 5. After the death of the deceased, he gave report under Ex.P.2 stating that A.2 to A.8 set fire to the dead body of the deceased in burial ground of Petluru village. The said evidence does not prove that A.1 committed the offence.

11. P.W.2 in her evidence stated that her father and mother used to live separately and now and then her father used to visit their house and during her father's visit, her mother and father used to have quarrels. As per her evidence, she used to live along with her mother and A.4, and that on the date of incident, A.4, herself and

her sister Chandra went out for purchasing some material and they returned to their house while their mother was burning in flames.

12. As per the case of the prosecution, at that time, A.4 enquired the deceased and the deceased informed that A.1 poured kerosene and left the house. But, P.W.2, in her evidence deposed that she did not remember whether A.4 had enquired her mother how she got into flames. She further stated that her mother has not stated how she got into flames, but asked her to study well. She was declared hostile by the Addl. Public Prosecutor and cross-examined. In the cross-examination, she admitted that she stated to Police that on enquiry her mother Saritha had informed A.4 that her father (A.1) poured kerosene and left the house. She supported the prosecution only when she was treated as hostile and cross-examined and suggested by Addl. Public Prosecutor, and so, that part of evidence is not looked into by the trial Court. As A.4 is the mother of the deceased involved in the offence under Section 201 IPC, she was not examined as witness to say that the deceased has stated to her that A.1 poured kerosene and set her on fire.

13. The other witnesses P.Ws.3 to 5, who are neighbours to the house of the deceased, did not support the case of the prosecution.

14. On the other hand, P.Ws.3 and 5 deposed that the deceased committed suicide and thus supported A.1. P.W.3 Paruchuru Sampoornamma is having house and beedi bunk opposite the house

of the deceased as shown in Ex.P.24 rough sketch. As per her cross-examination, the house of A.1 and her shop are separated by a road and the house of A.1 is visible and she can see what is happening there from her shop and when the incident took place, she was at her shop and that within one minute, one can reach the house of A.1 from her shop.

15. As per the case of the prosecution, on the date of incident, A.4 along with the children of the deceased went to the shop of P.W.3-Paruchuru Sampoornamma, which is opposite to the house of the deceased, in order to purchase biscuits and on returning home, found the deceased in the water tub with burn injuries. P.W.3 has stated that A.4 informed her that the deceased poured kerosene and set herself ablaze. She also stated that since A.4 raised cries stating that her daughter poured kerosene on herself and lit fire, so she came to know that Saritha herself poured kerosene and lit fire. She was treated as hostile by Addl. Public Prosecutor and was cross-examined. In the cross-examination, she denied the suggestion that she stated to Police as in Ex.P.4 to the effect that she found smoke and cries from the house of A.1 and then they rushed there and learnt that A.1 poured kerosene on Saritha and set fire to her.

16. As per deposition of P.W.4 Lakshminarasamma, who was attending household works, the house of the deceased is located

towards South of their house. She stated that she does not know how the deceased died.

17. P.W.5-V. Sudhakar, who is running a hotel towards North of the house of the deceased, in his evidence, deposed that he learnt that the deceased burnt herself, rushed to her house and that the deceased was shifted to the hospital in an auto. He deposed that he learnt that Saritha set herself ablaze and he does not know the reason for it and that the neighbours have stated to him that Saritha poured kerosene on herself to threaten A.1. He was treated as hostile by Addl. Public Prosecutor. In his cross-examination by Addl. Public Prosecutor, he denied the suggestion that he stated to Police as in Ex.P.5, in his 161 Cr.P.C. statement to the effect that he learnt that A.1 poured kerosene and lit fire to Saritha and now, to help A.1, due to compromise, he is deposing falsehood.

18. We note, it is observed by the trial court that during the course of evidence of P.Ws.2 to 5, it was revealed that there were disputes between the deceased and A.1, and the deceased was running dish connections business at Petluru and was collecting rents of the house in which L.W.8-Rajani was living as tenant. As per P.W.3, Rajani was not paying rents to A.1 and A.1 was demanding rents and in that connection, A.1 and Rajani were having some disputes. P.W.5 in his cross-examination deposed that A.1 has demanded rent from Rajani and she told A.1 that she will pay the rent to A.4, and she will not give rent to A.1. He also stated that

earlier, on one occasion, the deceased sprinkled chilli powder on A.1 and at that time himself and one Natarajan, junior paternal uncle of A.1 and one Ramesh have questioned the deceased and then she tried to hang herself to a fan and they warned her and then she told them that they have nothing to do with their family affairs.

19. The evidence of P.W.1 reveals that there were disputes between A.1 and the deceased. A.1 was having dish antenna business at Petluru. After the disputes, the deceased was collecting the rents of the dish antenna and also rents from the house at Venkatagiri, in which L.W.8-Rajani was living. A.1 was disputing with the deceased with regard to the collection of amounts from dish antenna and rents. When A.1 questioned the deceased as to why she sprinkled chilly powder against him and when she was also questioned by the relatives, she tried to hang herself. Thus, there were only domestic quarrels between the deceased and A.1 and the prosecution failed to prove that A.1 subjected the deceased to cruelty. On the other hand, the deceased herself occupied the properties of A.1, and was collecting the rents from the house and dish connections. Thus, it is established that deceased herself subjected A.1 to cruelty.

20. As per the case of the prosecution, after the deceased sustained burns, she was shifted to the hospital of P.W.10-Dr. Hari Krishna Prasad of Venkatagiri and he advised the parents and others to shift the deceased to Nellore Hospital. P.W.10, in his evidence,

deposed as "A. Saritha was brought to my hospital mentioning that she poured kerosene on her and sustained injuries". He was treated as hostile by Addl. Public Prosecutor and cross-examined. In his cross-examination he denied the suggestion that he stated to Police as in Ex.P.19 to the effect that himself and his wife Dr. Koteswari gave first aid to the victim and they gave saline and then referred the patient. He further stated that nobody stated to him that she poured kerosene on herself and lit fire. He denied the suggestion, that, to accommodate the accused, he deposed falsehood. P.W.1-B.sreenivas, who gave Ex.P.2-report, in his cross-examination, deposed as "it is true that in Ex.P.2 I have mentioned that kerosene was poured on Saritha and she burnt herself".

21. Ex.P.2 reveals that the deceased sustained burn injuries in an attempt of suicide. In addition to the above, P.W.8 in her evidence deposed that she treated the deceased and issued Ex.P.15-wound certificate stating that the deceased sustained 90 to 95% burns. She was also present when P.W.11 and P.W.9 recorded statement and dying declaration of the deceased and certified that the deceased was in fit state of mind while recording the statement and dying declaration. As per the prosecution, P.W.11-B Venkata Swamy, Head Constable No.608 of IV Town P.S., Nellore, received Ex.P.20-hospital intimation from P.W.8 and went to Jaya Bharath Hospital and recorded Ex.P.21-statement of the deceased at 00.15

hours on 11.10.2004. In Ex.P.21 the deceased stated that A.1, instead of looking after her properly, beat and abused her and was not living with her properly and so she went to the house of her mother. Later on, for the education of her children, she was living at Venkatagiri. On 10.10.2004 at about 5 to 5.30 p.m., A.1 poured kerosene and set fire to her with a matchstick and she sustained burn injuries on her body from neck. Sometime thereafter her mother came there and all have shifted her to Jaya Bharath Hospital, Nellore. She also stated that there were disputes between her and A.1 with regard to property and for that property, A.1 with an intention to kill her poured kerosene over her. Later on, P.W.8 sent hospital intimation Ex.P.16 to P.W.9, a Magistrate of Nellore on 11.10.2004 at 7.00 a.m., and the same was received by P.W.9 at 7.20 a.m., and he went to hospital at 8.00 a.m., and recorded the dying declaration of the deceased under Ex.P.18 from 8 a.m. to 8.26 a.m. In Ex.P.18, P.W.9 stated that the duty doctor opined that the declarant is conscious and coherent and in fit state of mind. In order to know about the state of mind, he put some preliminary questions and satisfied with the answers and then recorded the dying declaration. In the dying declaration, the deceased stated that her marriage was performed with A.1 about 10 years ago and she got two daughters and that about 5 years ago, A.1 left her. He incurred debts of 2 ½ lakhs in gambling and left her without informing her and one Nataraju, one of the creditors, abused her and then she filed

a case against him and then the said person kept quiet. She further stated that herself and her father started dish business at Venkatagiri and gave connections. Thereafter, her husband came into her house and damaged the dish, amplifiers and other articles and that happened one day prior to *jathara* on Wednesday evening and that she filed a case and that A.1 also sent his creditors against them and that Raju, one of the creditors, talked with her rudely.

22. With regard to the aforesaid incident, she stated that on 10.10.2004 at 5.00 p.m., A.1 came to her house and quarrelled with her and told her children to go out of the house and in that quarrel, A.1 poured kerosene and set fire to her and ran away. The Magistrate endorsed in Ex.P.18 that after recording the declaration, he read over the same in Telugu and after satisfying the same to be correct and true, the deceased affixed thumb impression. At the time of recording the declaration, except himself and duty doctor, none were present and the declarant was conscious throughout the recording of the declaration. P.W.8 made Ex.P.17-enrodrsement on Ex.P.18 stating that the patient is conscious and coherent and in a fit condition of mind to give the statement.

23. It is not in dispute that if a dying declaration made voluntarily and truthfully by a person in a fit condition to make such statement, can be relied upon without corroboration and primary effort of Court is to ascertain whether dying declaration is true as held by this Court in the decision in 2008 (2) ALD (Crl.) 645 (AP).

24. P.W.8 in her cross-examination deposed as "on seeing Saritha I have fixed the percentage of burns as 90 to 95%. The person having received 90 to 95% of burns will not survive and they will die." In page No.4 of her evidence, she deposed that when Saritha was admitted in hospital, she was on duty from 8.00 p.m. to 8.00 a.m., and as per her, after recording dying declaration by the Magistrate, she left the hospital. As per her, she is not qualified to treat the deceased and Dr.M.Ramalinga Reddy, Surgeon, has given the treatment. In her evidence, P.W.8 did not state any reason why she did not give intimation to the local Magistrate immediately after admission of the deceased in the hospital. As per her, she gave intimation to the IV Town Police, Nellore, which is near to the hospital. Ex.P.20-hospital intimation given to the Police is not disclosing when it was received by P.W.11. P.W.8 in her cross-examination deposed as "it is true that there is no mention in Ex.P.20 at what time she gave requisition to Police and at what time they have received." She admitted that as per prosecution, P.W.11 after recording Ex.P.21-statement of the deceased, sent the same to P.W.12-SI of Police, Venkatagiri through Ex.P.22-official memo and that P.W.12 registered Ex.P.21 as a case in Cr.No.135/2004 and submitted original FIR Ex.P.23 to Judicial First Class Magistrate, Venkatagiri. In the FIR, it is stated that Ex.P.21 was received by P.W.12 on 11.10.2004 at 21.00 hours and as per the endorsement of

the Judge, the FIR reached the Court on 12.10.2004 at 12.30 p.m. through P.C.No.3800.

25. Though counsel for the accused contended before the trial Court that prosecution failed to explain the delay in between 00.15 hours, but since the accused have been acquitted, we are not inclined to discuss the said issue. It is an admitted fact that the investigating officer did not collect the case sheet of the deceased from Jaya Bharath Hospital, Nellore to show when the deceased was taken away from Jaya Bharath Hospital. No witness was examined to prove when the deceased died. After the death of the deceased, Ex.P21 was recorded with the help of P.Ws.11 and 8 to save their skin only to show that he stated that there were no details as mentioned in Ex.P.18 in Ex.P.2. On the date of the incident, there were disputes between A.1 and the deceased. As per the case of the prosecution itself, the deceased had occupied the house of A.1 and she was collecting the amounts of dish connection business at Petluru and rents from L.W.8-Rajani. So, there was every possibility for the deceased to give her dying declaration against A.1 as observed by the trial Court. The house in which the occurrence had taken place is adjacent to the road and opposite to the house and bunk of P.W.3.

26. Whereas P.W.3, in her evidence, clearly deposed that if any incident happens in the house of the deceased, it is visible from her bunk. As per the case of the prosecution, on the date of incident,

A.4, the mother of the deceased along with the children of the deceased, i.e. P.W.2 and another went to the bunk of P.W.3 and purchased biscuits and returned to the house of the deceased and found the deceased with burns in the water tub. None of the witnesses stated that on the date of incident, A.1 came to the house of the deceased and left the same after setting the deceased on fire. If really A.1 had come to the house of the deceased at the time of incident, he would have been noticed by P.W.3, the neighbours – P.Ws.4 and 5, or at least by P.W.2, the daughter of A.1. But, none of them have stated that A.1 had come to the house of the deceased at the time of the incident and left the place after the incident.

27. In the case of *Middolla Harijana Thimmaiah @ Thimmappa (A.1) v. State of A.P., and others*[1], this Court held as under:

> "Evidence given by hostile witness need not be totally rejected – Such portion of evidence could be considered to conclude whether the accused entitled to benefit of doubt – information gathered by the accused in the hostile evidence will be helpful to him only when there is no sufficient independent evidence that the guilt of the accused is proved beyond all reasonable doubt."

28. In addition to the above, the details mentioned in Ex.P.18 are not mentioned in Ex.P.21 and in Ex.P.18, the deceased stated that she installed dish at Venkatagiri, but as per the witnesses, the dish was installed at Petluru and not Venkatagiri. As per the statement

[1] 2005 (1) ALT (Crl.) 192 (DB) (AP)

made in Ex.P.18, she filed a case against A.1 as A.1 damaged her dish and amplifier. But, no such case record was produced by the prosecution. Thus, there are suspicious circumstances against Exs.P.18 and P.21-dying declarations recorded by P.W9, the Magistrate, and P.W.11-Head Constable.

29. From the above discussion and evidence, it is clear that none of the neighbours, more particularly P.W.3, who is having house and bunk opposite to the house of the deceased, have not stated that she observed A.1 at the house of the deceased at the time of the incident. Even as per the case of the prosecution, she did not witness that A.1 came to the house of the deceased prior to the incident or left the house of the deceased after the incident. If really A.1 had come to the house of the deceased at the time of the incident, he would have been seen by P.Ws.2 and 3, but it is not the case of the prosecution. As per the evidence of P.Ws.3 and 5, the deceased occupied the house of A.1 and residing therein and collecting amounts of the dish business at Petluru and rents of the house in which L.W.8-Rajani was residing against the will of A.1.

30. Moreover, P.W.8 did not state any reason why she did not send intimation to the Magistrate to record the dying declaration till 7.00 a.m. on 11.10.2004, when as per her case the deceased was admitted in her hospital on 10.10.2004 at 9.55 p.m., and the deceased was having 90 to 95% burns and she may certainly die. As per the case of the prosecution, the parents and relatives of the

deceased were with the deceased during that time. So, there is every possibility for them to tutor the deceased to give statement against A.1, with whom the deceased was having quarrels.

31. Keeping in view the above discussion and the evidence on record, we find no illegality or perversity in the judgment dated 31.12.2008 passed in S.C.No.411 of 2006 by the Spl. Judge for SPE & ACB Cases-cum-II Addl. District & Sessions Judge (Fast Track Court), Nellore.

32. Finding no merit in the present appeal, we confirm the judgment of the trial Court and the present appeal is dismissed accordingly.

As a sequel, miscellaneous petitions if any pending in the appeal stand closed.

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SURESH KUMAR KAIT, J

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T. RAJANI, J

March 19, 2018
MRR