

**HONOURABLE SRI JUSTICE A. RAMALINGESWARA RAO**

**AND**

**HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA**

**CRIMINAL APPEAL No.305 OF 2013**

**JUDGMENT:** [Per Hon'ble Sri Justice A. Shankar Narayana]

The appellant herein viz., V. Narasimha is the accused, who faced trial for the charge under Section 302 of Indian Penal Code, 1860 (for short 'IPC'), on the ground that he alleged to have killed his wife Smt. Narsamma (hereinafter referred to as 'deceased') having subjected her to cruelty suspecting her fidelity.

2. The learned Additional Metropolitan Sessions Judge - cum - II Additional District and Sessions Judge, Ranga Reddy District, Cyberabad, at L.B. Nagar, Hyderabad, believing the evidence let in by the prosecution and mostly relying on the dying declaration of the deceased recorded by the learned Magistrate, PW.8, arrived at the conclusion that the prosecution could prove the charge against the accused beyond all reasonable doubt and recorded conviction under Section 235(2) of the Code of Criminal Procedure, 1973 (for short 'Code'), for the charge under Section 302 of IPC, and inflicted Imprisonment for Life besides imposing a Fine of Rs.500/- and in default to suffer Simple Imprisonment for a period of six (6) months by his judgment under challenge dated 11.11.2009 in S.C. No.189 of 2009.

3. Heard Sri Tata Singaiah Goud, learned legal aid counsel appearing for the appellant - accused, and the learned Public Prosecutor for the State of Telangana, and perused the judgment under challenge including the material on record.

4. We would like to advert to the submissions made by the learned counsel after narrating the prosecution case projected through the charge sheet.

(a) The marriage between the accused and the deceased took place six (6) years prior to the date of incident. Out of their wedlock, a son was born to them named as Shivudu, and he was three (3) years old on the date of incident. To eke out livelihood by doing labour work in and around Moulali, they started residing in a hut near Gayatrinagar Water Tank. For some time, they lived happily. But, in the recent past, the accused, who started suspecting her character, was beating her frequently. On 16.02.2009 at about 10.40 p.m., they had their dinner and they were about to go asleep. At that juncture, the accused picked up quarrel, abused her in filthy language casting aspersions that she developed illegal contacts, beat her with hands, took up kerosene tin, poured kerosene on her person and set her ablaze. When the flames spread all over the hut, unable to bear the burns, she raised hue and cry and ran out of the hut. The neighbours, who heard her hue and cry, extinguished the flames and got admitted her in Gandhi Hospital for treatment. When the duty medical officer from Gandhi Hospital sent a medico legal intimation, PW.11, the

Assistant Sub Inspector, was sent to Gandhi Hospital to record the statement of the victim, who having recorded the statement, was also informed by the duty doctor that already PW.8, learned Magistrate, came and recorded the statement of the victim (deceased), and handed over the same to PW.13, Inspector of Police, who registered a case in Crime No.73 of 2009 for the offences punishable under Sections 307 and 498-A of IPC and issued First Information Report (FIR) under Ex.P-12. PW.13 instructed PW.12, the Sub Inspector of Police, who visited the scene of occurrence and conducted panchanama in the presence of mediators, PW.10 and another as in Ex.P-1 and drawn a rough sketch of scene of offence as in Ex.P-2.

(b) Later, PW.13 took up investigation and held inquest over the dead body of the deceased in the presence of mediators and when the accused surrendered himself on 20.02.2009 before PW.13 at the police station, he was sent for judicial remand.

(c) When the victim was admitted in Gandhi Hospital on the intervening night of 16/17.02.2009, the duty medical officer, PW.9, sent a requisition to the learned Magistrate, who was engaged in recording dying declaration of yet another victim in the same hospital, on receipt of that requisition at 12.46 a.m., recorded the statement of the victim (deceased) as to the cause of burns she sustained and the person, who is responsible for causing the said burns on her person as in Ex.P-7.

(d) When PW.12 received intimation from Gandhi Hospital as to death of the deceased on 19.09.2009, he altered Section of Law from 307 of IPC to 302 of IPC. Charge sheet was laid alleging the offences punishable under Section 498-A and 302 of IPC against the accused.

5. The learned Sessions Judge, when examined the accused for the said charge on 25.06.2009, since he pleaded not guilty, proceeded with trial.

6. During trial, in order to prove the guilt of the accused for the aforesaid charges, the prosecution altogether examined (18) witnesses and marked Exs.P-1 to P-12 besides exhibiting material objects 1 to 3. On behalf of defence, no witnesses were examined and no contradictions were elicited to exhibit them.

7. The learned counsel for the accused would submit that the accused was not at his residence and, in fact, he went to witness a movie and when he returned home having witnessed the movie, he came to know about the occurrence and, in fact, he even handed over cinema tickets to the police which aspect was not dealt with by the learned Sessions Judge and, therefore, lacks proper appreciation of evidence on record.

8. The second submission he made is that the evidence of PWs.1 and 2 ought not to have been believed for the reason, if they really extinguished the flames and saved the victim (deceased), there

ought to be burns on their hands which the learned Sessions Judge overlooked to examine.

9. Third, recording of dying declaration by the learned Magistrate on 16/02.2009 at 1.20 a.m. is doubtful, for the reason, the statement made by the deceased as in Ex.P-9 was at 10.40 a.m. on 16.02.2009 and thus, accounts for a suspicious feature which ought to have been noted by the learned Sessions Judge and accorded benefit of doubt to the accused, and, therefore, sought to allow the appeal setting aside the conviction and sentences inflicted on the accused.

10. Per contra, the learned Public Prosecutor would submit that the plea of *alibi* raised by the accused is unsustainable as it lacks proof which burden completely rests on the accused and even the circumstance that the accused did not assert to it when he was examined under Section 313 of the Code is sufficient to reject that submission out-rightly. Concerning the second submission that PWs.1 and 2 since did not receive any burns to their hands, to disbelieve their presence at the place and time of occurrence, the learned Public Prosecutor would submit that the persons who extinguish flames need not always receive injuries and mere absence of injuries on the hands of PWs.1 and 2 is no ground to disbelieve their presence at the place and time of occurrence.

11. In regard to dying declaration, the learned Public Prosecutor would contend that there is absolutely no inconsistency in

the evidence of PW.8, the learned Magistrate, who recorded statement of the deceased, took every precaution as mandated by the relevant Rules of practice and the doctor was also present at the time when statement was made by the deceased, and, thus, the dying declaration and the evidence of PW.8 coupled with the evidence of the doctor examined as PW.9 as to sustaining burns by the deceased, would clinchingly establish the complicity of the accused and there is no reason to disbelieve the dying declaration as it is not tainted with malice.

12. Thus, the learned Public Prosecutor would support the finding recorded by the learned Sessions Judge leading to conviction of the accused and sentences inflicted on him.

13. When we look at the evidence on record in the light of the submissions made by the learned counsel for the accused and the learned Public Prosecutor, we opine that we will have to answer the following points:

1. Whether the dying declaration under Ex.P-7 recorded by PW.8 is creditworthy, implicitly reliable and can form basis for convicting the accused?
2. Whether the prosecution could prove the motive for the accused to kill the deceased?

3. Whether the findings recorded by the learned Sessions Judge and the consequent conviction for the offence of murder can be sustained?

**POINT Nos.1 to 3:**

14. A cursory glance at the evidence let in by the prosecution would unfold that there is no eyewitnesses to the actual occurrence except the dying declaration of the victim recorded by PW.8 as in Ex.P-7. The other witnesses, who are examined as PWs.1, 2, 3 and 4, are circumstantial witnesses, but, their evidence cannot be brushed aside, at least, to the extent of testimony of PW.1, PW.3 and PW.4, to whom the deceased soon after she sustained burns when she was set ablaze, made an oral statement near the hut when the flames were extinguished by PWs.1 to 3 respectively, that her husband poured kerosene and set fire to her. Thus, the statement of the deceased made to them account for dying declaration. This apart, there is yet another statement available on record recorded by PW.10 at the hospital on receipt of medico legal intimation from the duty doctor PW.9, who, on the instructions of PW.13, went to Gandhi Hospital and reduced the statement of the deceased in to writing which constitutes basis for launching criminal action against the accused. Thus, we find three (3) dying declarations on record and if no inconsistency is to be found, there cannot be any hesitation to accept and act upon the dying declaration recorded by PW.8, the learned Magistrate, and to convict the accused on the sole basis of the dying declarations. That has been

the settled law in regard to which we would like to refer to certain rulings rendered by the Hon'ble Apex Court.

15. Initially, we intend to take up the plea of *alibi* put-forth by the accused. At the outset, we would like to observe that there is no material worth the name placed by the accused to support the said plea.

16. The very fact that the accused did not adduce any evidence nor did he explain when examined under Section 313 of the Code, touching the plea of *alibi* that he has gone to witness a movie and when he returned having witnessed the movie, he learnt that the deceased sustained burns, is sufficient to repel that plea. This apart, even when suggested to the witnesses by the learned counsel, it was not clear as to which movie the accused said to have witnessed and in which theatre he witnessed the said movie. It appears, only to wriggle himself out of the impending accusation and the conviction, he has come up with an artificial and unnatural defence theory putting forth the plea of *alibi*. We, therefore, do not have any hesitation in rejecting that plea of *alibi*.

17. We now refer to the caution given by the Hon'ble Apex Court and the guidelines laid down in assessing whether the dying declaration is absolutely credible to constitute the sole basis to record conviction.

18. It is needless to mention that the law is well settled that dying declarations constitute an important piece of evidence which if found veracious and voluntary by the Court could be the sole basis for conviction. What is cautioned by the Hon'ble Apex Court in **Mukesh v. State of NCT of Delhi**<sup>1</sup> is that the Court while admitting the dying declarations, must be vigilant towards the need for 'Compos Mentis Certificate' from a doctor as well as the absence of any kind of tutoring. The Hon'ble Apex Court in **Atbir v. Government of NCT of Delhi**<sup>2</sup> laid down the following guidelines with respect to the admissibility of dying declarations:

“(i) Dying declaration can be the sole basis of conviction if it inspires the full confidence of the Court.

(ii) The Court should be satisfied that the deceased was in a fit state of mind at the time of making the statement and that it was not the result of tutoring, prompting or imagination.

(iii) Where the Court is satisfied that the declaration is true and voluntary, it can base its conviction without any further corroboration.

(iv) It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely a rule of prudence.

(v) Where dying declaration is suspicious, it should not be acted upon without corroborative evidence.

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<sup>1</sup> AIR 2017 SC 2161

<sup>2</sup> (2010) 9 SCC 1

(vi) A dying declaration which suffers from infirmity such as the deceased was unconscious and could never make any statement cannot form the basis of conviction.

(vii) Merely because a dying declaration does not contain all the details as to the occurrence, it is not to be rejected.

(viii) Even if it is a brief statement, it is not to be discarded.

(ix) When the eye-witness affirms that the deceased was not in a fit and conscious state to make the dying declaration, medical opinion cannot prevail.

(x) If after careful scrutiny, the Court is satisfied that it is true and free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.”

19. In **Vijay Pal v. State (Government of NCT of Delhi)**<sup>3</sup>, referring to its earlier decision in **Mafabhai Nagarbhai Raval v. State of Gujarat** [(1992) 4 SCC 69], it was held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration and also the decision in **State of Madhya Pradesh v. Dal Singh** [(2013) 14 SCC 159], wherein, reliance was placed on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration

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<sup>3</sup> (2015) 4 SCC 749

was found to be credible. These rulings are referred to in the context of submission made by the learned counsel for the accused that the testimony of PW.9, doctor, who conducted post-mortem examination, would show that the deceased sustained 95% burns, and, therefore, it was impossible for the deceased to make a statement to PW.8, the learned Magistrate, and also to PW.11, the Assistant Sub Inspector of Police, and, therefore, that submission is not worthy of acceptance, the reason being the percentage of burns spoken to by the medical officers in cases where the victim sustain burns would be superficial that too without there being anything in the cross-examination of the medical officer that internal organs were also affected by burns rendering the victim incapable of making oral statement.

20. What has been emphasised by the Hon'ble Apex court in **Paniben (Smt.) v. State of Gujarat**<sup>4</sup>, was referred to by the Hon'ble Apex Court in **Mukesh's Case**<sup>1</sup> and summed up the principles governing dying declarations laid down by the Hon'ble Apex Court in earlier decisions, thus:

“(i) There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (Munnu Raja v. State of M.P. (1976) 3 SCC 104)

(ii) If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (State of U.P. v. Ram Sagar

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<sup>4</sup> (1992) 2 SCC 474

Yadav (1985) 1 SCC 522; Ramawati Devi v. State of Bihar 91983) 1 SCC 211)

(iii) This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (K. Ramachandra Reddy v. Public Prosecutor (1976) 3 SCC 618)

(iv) Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (Rasheed Beg v. State of M.P. (1974) 4 SCC 264)

(v) Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (Kake Singh v. State of M.P., (1981) Supp. SCC 25)

(vi) A dying declaration which suffers from infirmity cannot form the basis of conviction. (Ram Manorath v. State of U.P. (1981) 2 SCC 654).

(vii) Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (State of Maharashtra v. Krishnamurti Laxmipati Naidu (1980) Supp. SCC 455)

(viii) Equally, merely because it is a brief statement, it is not to be discarded. On the contrary, the shortness of the statement itself guarantees truth. (Surajdeo Oza v. State of Bihar (1980) Supp. SCC 769)

(ix) Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was

in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (Nanahau Ram v. State of M.P. (1988) sup. SCC 152)

(x) Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (State of U.P. v. Madan Mohan (1989) 3 SCC 390)”

21. The Hon’ble Apex Court also ruled that even if there are minor discrepancies in the dying declarations, the Court can disregard the same as insignificant.

22. We now intend to examine the dying declaration under Ex.P-7 recorded by PW.8 keeping in view the caution, given by the Hon’ble Apex Court and the guidelines laid down thereto.

23. The evidence of PW.8 would bring out that on the intervening night of 16/17.02.2009 at about 12.46 a.m., he received a requisition from the duty doctor Dr. Jawahar of Female Burns Ward of Gandhi Hospital, Hyderabad to record dying declaration of Smt. Narsamma, wife of the accused, who was in Female Burns Ward of Gandhi Hospital, by which time, he was in the very same hospital recording the dying declaration of one Anuradha. The said Narsamma was identified by the duty doctor. He has put some preliminary questions to her and from the answers she had given, he was satisfied that she was conscious and in fit condition to give statement. He, then, recorded her dying declaration in Telugu vernacular

language. He obtained the certificate of the doctor before and after recording the statement. He exhibited Ex.P-6, the requisition he received and the dying declaration he recorded as Ex.P-7. He would assert that he has obtained right toe impression on the said statement and the statement was recorded in her own words and she stated to him that her husband set fire to her. No doubt, this witness was cross-examined by the learned defence counsel suggesting to him that he did not record the statement of the deceased, Narsamma and that she was not in a good state of mind to give the statement, that he obtained the signature of the doctor only after recording the statement, but, these suggestions were completely denied by him. Except these suggestions, nothing else was put to him to elicit that the statement made by the deceased was tainted with malice.

24. Now, turning to Ex.P-7 as such, since it assumes vital significance in assessing whether it constitutes the sole basis for convicting the accused for the charge of murder, we intend to refer to what has been stated by her therein. The questions and answers put to her preliminarily in the direction of satisfying himself that the victim (deceased) was conscious, coherent and in a fit condition to give statement, do not require advertence. Certain other questions were put later as to how long back her marriage took place, whether she has children out of wedlock, whether all were residing in the house and where her house was located. Thereafter, PW.8 put the relevant question as to how she sustained burns. We opine that it would be

appropriate to extract the answer given by the deceased in her vernacular language along with its English translation:"

"Q: ఎప్పుడు పెళ్లైంది నీకు?

A: అయిదేళ్ళయ్యింది.

Q: పిల్లలున్నారా నీకు?

A: ఒక్క కొడుకు నాలుగేళ్ళు

Q: ఎవరెవరుంటారు ఇంట్లో?

A: నేను - మా ఆయన - నా కొడుకు.

Q: ఎక్కడుంటది మీ ఇళ్ళు?

A: మౌలాలి వాటరు ట్యాంకు దగ్గర.

Q: ఎట్లా కాలింది చెప్ప?

A: నా పెళ్లైయి అయిదేళ్ళయ్యింది. ఇప్పటికి రెండు నెలల క్రిందవరకు నా మొగుడు నాతో బాగానే ఉన్నాడు. మేమిద్దరము కంకర కొట్ట బోతము. అందరితో బాటే పనిచేస్తము. అక్కడ అందరితో మాట్లాడవలసి వస్తుంది. నేను అందరితో మాట్లాడుతా. ఇప్పటి కి రెండు నెలల నుండి వానితో మాట్లాడుతున్నావు - వీనితో మాట్లాడుతున్నావు అని నన్ను అనుమానించు తుండు. రోజూ ఇంటికొచ్చినంత బయటికి పోయి బాగా తాగివస్తున్నాడు. తాగి వచ్చి ఎదోరకంగా పంచాయతీ పెట్టుకుని ఇష్టం వచ్చినట్లు తిట్టి కొట్టుతుండు. ఎంత ఓపిక పట్టి నచ్చజెప్పిన ఎక్కువేచేస్తాండు కాని అలవాటు మానుతలేదు - తిట్టడం కొట్టడం ఆపుతలేదు. ఎందుకు మానముపోతదని ఎవరికీ చెప్పతలేను. ఇవాళ్ళ సాయంత్రము అందాజా 4 - 5 గం||లకి ఇంటికి వచ్చినాము. వచ్చేరాగానే బయటకి పోయి తాగి 6 గం||లకు వచ్చిండు. వచ్చి పంచాయతీ మొదలుపెట్టిండు ఎంత ఊకున్నా ఊకోలే. పంచా యతీ నడిపిస్తున్ననే ఉన్నాడు. మధ్య మధ్యలో చావు పోవే చావు పోవే అన్నాడు. అందాజా ఓ గంటన్నర క్రింద ఇంట్లోని గ్యాసు నూనె తీసి నా మీద పోసి అంటించిండు. అంటించి పరారయ్యిండు. నేను మంటల భాదకు మొత్తుకుంటుంటే చుట్టుప్రక్కల గుడిసెలోల్లు వచ్చి బొంతేసి మంటలార్పిండు. ఒకాయన నర్సింలు మా యన్న వెంకటయ్యకు ఫోను చేస్తే మా అన్న వచ్చి నన్ను ఇక్కడకు తెచ్చిండు.

Q: వెంకటయ్య మీ స్వంత అన్ననా?

A: మా పెద్దమ్మ కొడుకు.

Q: నీకు అమ్మా నాయన-అన్నా తమ్ములు - అక్కా చెల్లెండ్రు ఉన్నారా?

A: నేను ఒక్కతినే పుట్టిన మా అమ్మా నాన్న ఎప్పుడో చనిపోయారు.

Q: రెండు నెలల నుండి కొడుకుంటే తిటుతుంటే మీ అన్నకు చెప్పినవా?

A: చెప్పలే

Q: ఎందుకు?

A: మా మానమేపోతదని - మారకపోతాడా అని.

Q: ఇవ్వాళ జరిగిన విషయం చెప్పినవా?

- A: చెప్పిన  
Q: మీ మధ్య పంచాయతీ జరుగుతుంటే నీ కొడుకు చూసిందా?  
A: వాడు పన్నడు.  
Q: నీవు చెప్పినదంతా నిజమేనా?  
A: నిజము  
Q: పొరుగువాళ్ళు గ్యాసునూనె పోసేటప్పుడు చూసినారా?  
A: అది చూడలేదు. కాని మొత్తుకుంటుంటే, నర్సింలు వచ్చి ఆర్పిండు  
మిగతావాళ్ళకూడా రావచ్చు - కాని బాధలో గమనించలే.  
Q: మీ అన్న ఎక్కడ ఉంటాడు?  
A: మౌలాలిలోనే - కాని దూరం.  
Q: ఇంకేమయినా చెప్తావా?  
A: ఏమీలేదు.”

“I got married about six years ago. My husband looked me well prior to two months. We both are doing stone crushing work with some other workers. We work with others and we shall speak with others also. I talk with everyone. My husband started insulting me by stating that I am talking with one and another from two months. After coming back to the house he is going away and coming with drunken stage and abusing me and beating me. I waited with patience, but there is no change in his attitude. He continued abusing me and beating. Today at evening about 4 to 5 hours we reached our house and started quarrel and asked me “to go and die” and “to go and die” About 1 ½ hours ago he took kerosene available in the house and poured on me and set fire to me and fled away. On hearing my hues the neighbouring inmates of huts came and set off the fire. One narsimulu informed the same to my brother Venkataiah through telephone. My brother Venkataiah came to me and brought me here.”

25. She affirms stating that what all she disclosed to PW.8 was true. The learned Magistrate then made a note of what all transpired stating that the duty doctor, PW.9 certified the fit state of mind before making statement and after making statement by the deceased to him. He has concluded recording of the said dying declaration at 1.22 a.m.

26. *Ex facie*, Ex.P-7 reflects that PW.8 strictly adhered to the procedure contemplated by the provisions of Rule 33 of Criminal Rules of Practice, 1990. In fact, all relevant details have been asked by PW.8 and elicited answers through the deceased. One of the answers, which gains significance is that the deceased stated that on hearing hues and cries, one Narsimulu came and put off fire. The said Narsimulu is examined as PW.3 before whom she made the statement that her husband poured kerosene and set her on fire and ran away. He telephoned to ambulance and she was shifted to hospital. Thus, the statement made by the deceased in explaining as to how she sustained burns is very vivid without any ambiguity pointing out the motive for the accused to kill her and pouring kerosene and setting her ablaze and fleeing away from the place of occurrence. Simultaneously, the conduct of the accused also requires consideration. The fact that he did not try to rescue her from flames and shift her to hospital cannot be lost sight off as it was suggested to the witness by the learned counsel for the defence that the deceased herself poured kerosene on her person and set fire to her to commit

suicide as the wife of one Venkatesh, who also works with them as a coolie, quarrelled with her just before the incident herein for moving closely with her husband. Therefore, even that stand taken by the accused gets falsified. Thus, even without any corroboration, the dying declaration under Ex.P-7 recorded by PW.8, in our view, is sufficient to hold that the prosecution could prove the complicity of the accused in the commission of offence since we find it absolutely credible and not tainted with malice and not made in an unfit mental state.

27. We also find clinching corroborative evidence through PWs.1, 3 and 4. They are immediate neighbours to the accused and the deceased. Soon after they heard hue and cry of the deceased, they ran out of their huts and found the deceased in flames and extinguished the flames and when they enquired her, she told them that her husband, the accused, poured kerosene on her and set fire to her and ran away. PW.4's testimony, would show that initially, she heard a galata at about 10.00 p.m. that night and 15 minutes thereafter, she heard the cries and when she peeped from the rear window of her house, she found the wife of the accused coming out of the house in flames and she had fallen on the ground behind her house. When the assertions of PWs.1, 3 and 4 definitely indicate the deceased making a statement to them that the accused poured kerosene and set fire to her, certainly, cannot be thrown out, more particularly, when nothing is brought out in their cross-examination that they were actuated by any

ill-will or false motive to swear falsehood against the accused. No doubt, PWs.1 and 3 are related to the deceased, but, on that ground, their testimony cannot be doubted. Thus, we find that the statement made by the deceased to these witnesses constituting oral dying declaration, is consistent with what had been stated by her under Ex.P-7 touching the complicity of the accused.

28. One more dying declaration occurs on record through PW.11 who was instructed by PW.13 on receipt of medico legal information from PW.9 that the victim (deceased) was admitted in Gandhi Hospital with burns, and, he rushed to the hospital and reduced the statement of the deceased as in Ex.P-9. He asserts that the medical officer attending on her told him that her statement was already recorded by a Magistrate and thereafter, he recorded her statement in which, she informed that her husband, suspected her fidelity, poured kerosene on her and set fire to her and he exhibited the said statement as Ex.P-9.

29. A perusal of the said statement would show that about six (6) years prior to the incident, their marriage took place and a child was born out of their wedlock named as Shiva. He was three years old by that time. They used to come and go to the site of Moulali to attend coolie work and they were living in huts near Water Tank of Gayathri Nagar. From recent days, her husband was beating her, suspecting her character. Concerning the incident, she made statement that on 11.06.2009 night at 10.40 hours, they both had

dinner and getting ready to sleep, that her husband Narsimha, started abusing her in filthy language and beat her with hands by stating that she had illegal relation with other persons and took kerosene available in their hut and poured on her and set fire, and as the flames were spreading, she came out of the hut by raising hue and cry, on which, the neighbours came there and put off the flames and brought her to hospital for treatment and her husband Narsimha fled away and what all she had stated was true.

30. Thus, even the said statement recorded by PW.11 does not suffer from ambiguity and it is very clear pointing out the complicity of the accused and the accused alone setting fire by pouring kerosene on the deceased. Thus, it completely corroborates the dying declaration under Ex.P-7 made by the deceased.

31. Thus, all the three dying declarations are so consistent that they completely repel the theory put forth by the defence.

32. Therefore, in our considered view, though, there are no direct witnesses to the incident, still, the dying declarations are sufficient to prove the guilt of the accused for the charge under Section 302 of IPC, beyond all reasonable doubt. Therefore, we hold that the accused committed the offence of murder suspecting the character of the deceased.

33. We have gone through the findings recorded by the learned trial Judge in arriving at the guilt of the accused. The said finding is

based on proper appreciation of evidence, more particularly, the dying declarations, and, therefore, we do not find any infirmity warranting interference with the conviction recorded and the sentences inflicted on the accused. Hence, we hold all the three points against the accused and in favour of the prosecution.

34. Thus, we find no merit in the appeal and, therefore, the present Criminal Appeal is dismissed confirming the conviction recorded and the sentences inflicted on the accused for the charge under Section 302 IPC by the judgment under challenge.

35. As a sequel thereto, Miscellaneous Applications, if any, pending in the present criminal appeal stand dismissed.

36. This Court, by the order dated 04.04.2017 in Criminal Appeal M.P. No.589 of 2017, relying on the order dated 02.11.2016 in Criminal Appeal M.P. No.1687 of 2016 in Criminal Appeal No.607 of 2011 [**Batchu Rangarao v. State of A.P.**], released the accused on bail on his furnishing a personal bond for a sum of Rs.10,000/- with two sureties for a like sum each to the satisfaction of the trial Court. Therefore, we direct the accused to surrender before the learned Additional Metropolitan Sessions Judge - cum - II Additional District and Sessions Judge, Ranga Reddy District, Cyberabad, at L.B. Nagar,

Hyderabad, by 24.04.2018 to serve out the sentence of Imprisonment for Life inflicted on him. In case, he fails to surrender as directed, the learned Sessions Judge shall secure his presence and put him in prison.

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**A. RAMALINGESWARA RAO, J**

**March 24, 2018.**

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**A. SHANKAR NARAYANA, J**

**NOTE:**

The Registry is directed to communicate a copy of the judgment to the trial Court forthwith.

**(BO) PV**

