

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN  
AND  
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD**

**CRIMINAL APPEAL No.835 OF 2012**

**JUDGMENT:** (Per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Aggrieved by the judgment dated 31.07.2012, passed by the IX Additional Sessions Judge (FTC) Ranga Reddy District at L.B. Nagar, Hyderabad, whereby the appellant, Thallagudem Ravi, has been convicted for offence under Sections 354, 452 and 302 IPC, the appellant has approached this Court. For the offence under Section 354 IPC, the appellant, has been sentenced to rigorous imprisonment for five years, imposed with a fine of Rs.500/-, and further directed to undergo one month simple imprisonment in default thereof. For the offence under Section 452 IPC, the appellant, has been sentenced to rigorous imprisonment for two years, imposed with a fine of Rs.500/-, and further directed to undergo one month simple imprisonment in default thereof. For the offence under Section 302 IPC, the appellant, has been sentenced to life imprisonment, imposed with a fine of Rs.1,000/-, and further to undergo two months of simple imprisonment in default thereof.

Briefly, the facts of the case are that on 02.07.2010, the Osmania General Hospital informed the Police Station Ibrahimpatnam that they have received a woman in burnt condition. Immediately, Mr. I. Ratna Prakash (P.W-13), ASI of Police was deputed to go to the hospital and to record the statement of the victim. Accordingly, Mr. I. Ratna Prakash (P.W-13) recorded the statement of the victim (Ex.P-8). According to the

victim, she had poured kerosene on herself and burned herself, as she could not bear the fact that she could not have a child. On the basis of the said statement, the police registered a case, namely Crime No.218 of 2010, as “*woman burns case*”. The investigation was handed over to Mr. A. Sampathrao (P.W-14). The police also requested Mr. P.B.V.V. Koteswaararao (P.W-11), the II Metropolitan Magistrate, to record the statement of the victim. The said witness recorded the statement of the victim (Ex.P-7). According to the victim the appellant had tried to outrage her modesty even on earlier occasions. On the fateful day, finding the victim alone in her house, he entered her house, tried to satisfy his desire. When she resisted, he poured kerosene on her and burned her. He tried to rescue her from the burns. With the death of Smt. Thallagudem Dhanamma, the police registered the case for offences under Sections 302, 452 and 354 IPC. During the course of investigation, the appellant, was arrested; he was put up for trial.

In order to support its case, the prosecution examined sixteen witnesses, submitted eleven documents, and produced three material objects. After appreciating the evidence, the learned trial court has convicted and sentenced the appellant as aforementioned. Hence, this appeal before this court.

Mr. P. Prabhakar Reddy, the learned counsel for the appellant, has raised the following contentions before this court:-

Firstly, there is inordinate delay in recording of the FIR. The delay has not been explained by the prosecution. Thus, the delay is fatal to the case of the prosecution.

Secondly, there are two dying declarations. The first dying declaration (Ex.P-8) recorded by Mr. I. Ratna Prakash, (P.W-13) ASI of Police, and the second dying declaration (Ex.P-7) recorded by Mr. P.B.V.V. Koteswra Rao, II Metropolitan Magistrate, Railways, Secunderabad (P.W-11). In both the dying declarations, the deceased has narrated two different and contradictory statements. According to the statement recorded by the police (Ex.P-8), she had committed suicide as she was unable to bear any child. However, according to the dying declaration (Ex.P7) recorded by Mr. P.B.V.V. Koteswararao (P.W-11), she alleged that while she was alone in the house, the appellant had entered the house, had tried to satisfy his desires, when she registered his attempt, he poured kerosene on her, and burned her. Later he tried to rescue her. Since there are two contradictory dying declarations, the story narrated by the deceased in her dying declaration (Ex.P-7) cannot be believed. For, the said dying declaration was given by the deceased in the presence of her family members. Therefore, the appellant has been falsely implicated in the case.

Lastly, since the appellant had tried to rescue the deceased while she was burning, the appellant's intention was not to commit murder. Therefore, this case does not travel beyond the offence under Section 304, Part II IPC. Therefore, the sentence should be reduced from life imprisonment to 10 years of rigorous imprisonment.

On the other hand, the learned Public Prosecutor has raised the following counter arguments:-

Firstly, the FIR was registered only upon the statement made by the deceased. According to the said statement (Ex-P8), the statement was recorded on 02.07.2010, the FIR was registered on 03.07.2010.

Secondly, although the prosecution has produced two contradictory dying declarations, but considering the fact that the deceased was a married woman, she did not reveal the truth in the first statement (Ex.P-8). For, it would be too much for a married woman to claim that she had been molested by the accused and that too by one who is a distant relative of her husband. It is only subsequently that in the dying declaration (Ex.P7) given to Mr. P.B.V.V. Koteswararao (P.W-11) that she has stated the truth. For, her dying declaration (Ex.P-7) is supported by the fact and that according to Dr. P. Harikrishna (P.W-10), he had examined the accused and issued the injury certificate (Ex.P-5). According to Dr. P. Harikrishna (P.W-10), the accused had sustained not only burn injuries on both his hands and his arms, but also had scratch marks on his chest. According to the learned Public Prosecutor, the testimony of Dr. P. Harikrishna (P.W-10) and the injury certificate (Ex.P-5) clearly reveal that the accused was present at the scene of the crime at the relevant time. His burn injuries also corroborate the part of the dying declaration (Ex.P-7) wherein the deceased claimed that he tried to rescue her; his scratches also corroborate the dying declaration (Ex.P-7) where the deceased had claimed that she had resisted his attempt to outrage her modesty.

Thirdly, in his 313 Cr.P.C. statement, the appellant has not explained as to how he had received the burn injuries and the scratch marks on his body.

Lastly, Dr. B. Surender (P.W-9) and the Post-Mortem report (Ex.P-11) clearly establish the fact that the deceased had died of homicidal death - death caused by burns. Hence, the prosecution has succeeded in establishing its case beyond a reasonable doubt. Therefore, the learned Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

It is true that Mr. I. Ratna Prakash (P.W-13) had recorded the statement of the deceased on 02.07.2010, and the FIR registered on 03.07.2010. But the delay in registering of the FIR is not fatal to the prosecution case. For, the prosecution has submitted sufficient evidence to connect the appellant to the alleged crime. Therefore, the first contention raised by the learned counsel for the appellant is unacceptable.

According to Mr. I. Ratna Prakash (P.W-13), he had gone to the hospital on 02.07.2010 and recorded the statement of the victim (Ex.P-8), the deceased.

Ex.P-8 is reproduced as hereunder:-

*"I am to state that, I am a resident of Dandumailaram village and living by doing labour work. My marriage was performed 14 years back and I didn't begot any children. I adopted the daughter of Sister of my mother-in-law and maintaining her. As I am not having any*

*child. I have vexed with life due to which on 01.07.2010 at about 05:00 PM I set ablaze myself with kerosene available in the house. When I made hue and cries, my neighbour by name Galamma came and called neighbours who extinguished my flames and called 108 Ambulance on telephone in which I was shifted to OGH for treatment. Nobody is responsible for the incident and I have no suspicious against anybody for the said incident. I myself vexed with life and set myself ablaze. Hence my statement which is true.”*

According to the victim, she had set her ablaze with kerosene, as she was vexed with life, since she could not bear a child.

According to Mr. P.B.V.V. Koteswararao, II Metropolitan Magistrate (P.W-11), he placed certain preliminary questions to the patient which were duly recorded by him. From her answers he concluded that she is conscious, coherent, and in fit statement of mind to give her statement. He further asked the Medical Officer attending upon the patient, who certified that “*the patient was conscious, coherent and in fit statement of mind to give her statement*”. Thereafter he proceeded to record her dying declaration (Ex.P-7). The extract of the dying declaration (Ex.P-7) is as under:

*“Q. When and how you sustained the burns?*

*Ans: Yesterday evening at 5.00 PM, I was alone in the house and my husband was not present. Today at about 100 hours our villager by name T. Ravi came and demanded to have sex with him. When he fel me down I abused him, on which he prevented me to go out, and confined me in my house. Thereafter, he poured kerosene on my body*

*and lit fire with match stick. When I attacked with flames he removed my clothes. At that time my daughter and mother-in-law went to attend the marriage function. On earlier occasion also he tried to outrage my modesty.”*

Obviously there are two contradictory dying declarations (Ex.P-7 and P-8) present before this Court. However, the fact remains that the deceased was a married woman who had certain social reputation to protect within and without her family. Thus, it is not surprising that in her first statement to the police (Ex.P-8) she has claimed that she had committed suicide as she could not have a child. However, she also reveals the fact that she and her husband have already adopted a girl child. Since they have already an issue, it would be rather surprising that she would suffer from any sense of depression, or anxiety for her inability to have a child. Therefore, the learned trial court was justified in discarding the statement given by the victim (Ex.P-8).

It is only subsequently that in her dying declaration (Ex.P-7) she reveals the truth. It is also available on record that the appellant happens to be a distant relative of the husband of the deceased and also happens to be their neighbour. In her dying declaration, the deceased reveals the fact that even on earlier occasions, the appellant had tried to outrage her modesty. On the fateful day when the victim was all alone in the house, he entered the house, he demanded to have sex with him. When she resisted his moves, he registered, according to the deceased, he poured kerosene, and burned her. Seeing the fact that she was aflame, he tried to remove her clothes to rescue her.

Thus, according to the deceased, it is the appellant who caused the burn injuries, which eventually lead to her death.

The dying declaration is further corroborated by the fact that according to Dr. P. Harikrishna (P.W-10), he had examined the appellant on 09.07.2010, and had found the following injuries:-

*1. Multiple scratch abrasions over right side of the chest 3-5 cms in length vertically placed 3 cms above and inner to right nipple.*

*2. Four scratch abrasions present over left side of the front of chest 2.5-5 cms in length, with gap of 1.5-2 cms slightly oblique, touching the left nipple.*

*3. Erthema of the skin 10 cms size over upper half front of right arm.*

*4. Multiple superficial burns with varying sizes of 2-1.5cms & 2x0.5 cms over front of the right fore-arm with charring of the skin. Brownish black hair singed.*

*5. Superficial burns over dorsum of the right hand and also on the back of lateral four fingers with charring and peeling of epidermis with evidence of infection.*

*6. Charred skin shining brownish black.*

*7. A pattemed circular burn of 2 mm width, 1.5 cms, diameter, and patterned burn of 2.5 cms of safety pin present over middle of front of left fore-arm.*

*8. Superficial burns present over back of middle and terminal phalynx or ring middle, and little finger.*

*9. Superficial burn of 16X12 cms over right side of fore-head, right cheek right side of nose and right side of upper and lower lip, with peeling of epidems exposing underlying dermis, pink in colour*

*with vital reaction. Singeing of eyebrows, eyelashes, beards and mustache on right side of the face.*

*10. Burns along with helix of right ear*

*11. Abrasion partly covered with black scrub partly swab fallen off.*

This witness further stated that he is of the opinion that “*the above injuries are flame burns aged about one week.*” The percentage of burns is 6 to 8 percent. He has issued the injury certificate (Ex.P5).

A bare perusal of the injuries sustained by the appellant clearly reveal that he has multiple scratch abrasions over the right side of the chest and four scratches abrasions present over the left side of the front of the chest. These injuries clearly point to a struggle that had ensued between the appellant and the deceased while she had tried to resist his attempt to outrage her modesty. Injury Nos.4 to 10 further reveal that both his hands and both his arms sustained burned injuries while trying to rescue the deceased. Moreover the singeing of the eye-brow-lashes and beard also reveals that he has closed enough to the deceased while trying to rescue her. The burn injuries on the appellant clearly establish his presence at the scene of the crime, and corroborate the dying declaration given by the deceased (Ex.P-7). Therefore, the learned counsel for the appellant is unjustified in claiming that the appellant is being falsely implicated in this case. Hence, the said contention is clearly unsustainable.

The learned counsel for the appellant has vehemently contended that since the appellant had tried to rescue the deceased, and literally and figuratively burnt his fingers, his intention was not to kill the deceased. Therefore, the case would not travel beyond Section 304 Part II IPC. In order to buttress this plea, he has relied on the case of **Kalu Ram v. State of Rajasthan**<sup>1</sup>. However, in the case of **Santosh v. State of Maharashtra**<sup>2</sup>, while noticing the case of **Kalu Ram** (supra), the Supreme Court has distinguished the case of **Kalu Ram** (supra). In the case of **Santosh** (supra), the accused had not only assaulted his wife, but had also poured kerosene from a nearby lamp and set her ablaze. Subsequently, in order to save her, the accused poured water on the deceased. The contention raised by the learned counsel for the accused before the Hon'ble Supreme Court was that the accused tried to save his wife clearly pointed to the fact that he did not have the intention to kill her. Therefore, his case does not travel beyond the offence under Section 304 Part II IPC. Even in the said case, the learned counsel has relied on the case of **Kalu Ram** (supra). However, the Hon'ble Supreme Court rejected the said contention and has distinguished the case of **Kalu Ram** (supra) on factual matrix. In the case of **Kalu Ram** (supra), the accused was inebriated when he had quarrelled with his wife and when he burnt her. The Hon'ble Supreme Court has opined as under:-

*The decision in Kalu Ram's case cannot be applied in the instant case. The element of*

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<sup>1</sup> (2000) 10 SCC 324

<sup>2</sup> (2015) 7 SCC 641

*inebriation ought to be taken into consideration as it considerably alters the power of thinking. In the instant case, the accused was in his complete senses, knowing fully well the consequences of his act. The subsequent act of pouring water by the accessed on the deceased also appears to be an attempt to cloak his guilt since he did it only when the deceased screamed for help. Therefore, it cannot be considered as a mitigating factor. An act undertaken by a person in full awareness, knowing its consequences cannot be treated at par with an act committed by a person in a highly inebriated condition where his faulty of reason becomes blurred.*

The Apex Court has also opined as under:-

*This Court on various occasions has stressed the need for vigilance in cases where a woman dies of burn injuries within a short span of her marriage and that stern view needs to be adopted in all such cases. In Satya Narayan Tiwari v. State of Uttar Pradesh: (2010) 13 SCC 689, this Court in paragraphs (3) and (9) has held as under:*

*3. Indian society has become a sick society. This is evident from the large number of cases coming up in this Court (and also in almost all courts in the country) in which young women are being killed by their husbands or by their in-laws by pouring kerosene on them and setting them on fire or by hanging/strangulating them. What is the level of civilisation of a society in which a large number of women are treated in this horrendous and barbaric manner? What has our society become—this is illustrated by this case.*

*9. Crimes against women are not ordinary crimes committed in a fit of anger or for property. They are social crimes. They disrupt the entire social fabric. Hence, they call for harsh punishment.*

*Unfortunately, what is happening in our society is that out of lust for money people are often demanding dowry and after extracting as much money as they can they kill the wife and marry again and then again they commit the murder of their wife for the same purpose. This is because of total comercilisation of our society, and lust for money which induces people to commit murder of the wife. The time has come when we have to stamp out this evil from our society, which an iron hand.”*

Therefore, the learned counsel for the appellant is unjustified in relying on the case of **Kalu Ram** (supra), in order to plead that the offence does not travel beyond an offence under Section 304 Part II IPC.

In the present case, the appellant had entered the house with a clear intention of satisfying his sexual desire. Once he found that the deceased was resist his advances and his attempt, once the deceased was fighting for her life, he poured the kerosene and burnt her. It is only in order to cloak his guilt that he tried to rescue her. But an attempt to rescue would not absolve him of his liability under Section 300 IPC.

For the reasons stated above, this Court does not find any merit in the present appeal. The conviction and sentence recorded against the appellant-accused, Tallagudem Ravi, in the judgment, dated 31.07.2012, in Sessions Case No.556 of 2010, on the file of the learned IX Addl. District and Sessions Judge (FTC), Ranga Reddy District at L.B. Nagar, for the offence punishable under Sections 302, 354 and 452 IPC is hereby confirmed.

In the result, the Criminal Appeal is dismissed. The appellant's bail bonds are cancelled and the appellant shall forthwith surrender before the Superintendent, Central Prison, Cherlapalli.

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**RAGHVENDRA SINGH CHAUHAN, J**

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**T. AMARNATH GOUD, J**

Date: 23.01.2019

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