

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NO.834 OF 2014

JUDGMENT: {Per the Hon'ble Sri Justice Raghvendra Singh Chauhan}

The appellants, Gangadhari Sathaiah (Accused No.1) and Gangadhari Rajamani (Accused No.2) have challenged the legality of the judgment 03.07.2014, passed by the II Additional Sessions Judge, Karimnagar at Jagityal, whereby the learned Trial Court has convicted both the appellants for offence under Section 302 r/w 34 of the Indian Penal Code ('IPC'), has sentenced them to life imprisonment, imposed a fine of Rs.10,000/-, and directed them to further undergo a simple imprisonment for one month in default thereof.

Briefly the facts of the case are that on 26.07.2013, at 11:45 a.m., Durgam Srinivas (P. W. 1) lodged a complaint (Ex. P. 33) before the Police Station, Dharmapuri, wherein he claimed that "*I am from Arepally village. I am working as Field Assistant. Yesterday i.e. on 25/07/2013 at about 4:30 p.m., when I was at home, our villager one Kampalli Lachavva, W/o. Ashalu, Caste: Washerwoman, came to my house stating that my sister, namely Kasthuri Lingavva was burning in the house of Gangadari Sathaiah, S/o. Lacham. On such information, I and along with my mother Bhumakka went to the house of Gangadari Sqathaiah, where my sister was burning in the fire by raising huge cries. Soon after, extinguished fire, and got information from my sister was that one Gangadari Sathaiah borrowed an amount of Rs.20,000/- from my sister two months ago. Later, my sister went to the house of*

G.Sathaiah, S/o. Lacha Goud for collecting the given amount, where his wife Rajamani, who caught hold my sister, and her husband poured kerosene and set ablaze, narrated the same before us; then, I rang up to one Koduri Mallesh, who took his auto b/No. A.P.15/TB/9930, in which my sister was shifted to Govt. Hospital, Jagtial, where the doctors advised us to shift my sister to Warangal Hospital, while they were shifting to Warangal, when they reached near Karimnagar, on 25/07/2013 & 26/07/2013 between night approximately 12:30 p.m., my sister Kasthuri Lingavva, W/o. Srinivas, 30 years, SC Nethakani, R/o. Arepally was died since the above said two persons namely Gangadari Sathaiah and his wife Rajamani set ablaze my sister after pouring kerosene. Therefore, I request you for taking necessary action against the above said culprits.”

Prior to the said complaint, on 25.07.2013, at 8:00 p.m., Dr. Ananda Ram T (P. W. 14), the duty doctor, sent an intimation to the Station House Officer, Police Station, Jagtial Town about admission of the injured, Kasthuri Lingavva in Government Area Hospital, Jagtial with burn injuries, and to make arrangements for recording her statement. Mr. A. Srinivas, Police Constable (P. W. 21), on receipt of said information, filed a requisition before Ms. D.B. Sheetal (P. W. 19), Principal Junior Civil Judge, Jagtial to record the dying declaration of the injured. On the said requisition, Ms. D.B. Sheetal (P. W. 19) along with P. W. 21, visited the Government Area Hospital, and recorded the dying declaration of the deceased (Ex. P. 31) in the presence of Dr. Ananda Ram T (P. W. 14). After recording the statement of the deceased, Dr. Ananda Ram T (P. W. 14) referred the deceased to MGM Hospital, Warangal for better treatment. But, on the way,

the deceased succumbed to the burn injuries. On the basis of the complaint (Ex. P. 33), the police chalked out a formal FIR (Ex. P. 32), namely FIR No. 155 of 2013, for offence under Sections 392, 201 and 302 r/w 34 IPC.

During the course of investigation, A. 1 and A. 2 were arrested by the police. Both of them were put up for trial.

In order to substantiate its case, the prosecution examined twenty-two witnesses, submitted thirty-eight documents, and produced three material objects. The defense neither examined any witness, nor submitted any documents. The court below convicted and sentenced the accused as aforementioned, on the sole dying declaration (Ex. P. 31) of the deceased, which was recorded by Ms. D.B. Sheetal (P. W. 19), Judicial Magistrate of First Class, Jagtial, as all the star witnesses turned hostile. Hence, this appeal before this Court.

Mr. P. Veera Reddy, the learned Senior Counsel for the appellants, has raised the following contentions before this Court:-

Firstly, although the prosecution has based its entire case for convicting the appellants on the alleged dying declaration of the deceased, Kasthuri Lingavva, the dying declaration (Ex. P. 31) is not above suspect. For, both according to Dr. Ananda Ram T (P. W. 14), and according to Dr. B. Sathish (P. W. 18), the deceased had suffered above 90% of burns. Therefore, it is highly unlikely that the deceased would be fit enough to give a dying declaration.

Secondly, Ms. D.B. Sheetal (P. W. 19), who had recorded the dying declaration of the deceased, admits in her cross-examination that prior to recording the dying declaration (Ex. P. 31), she did not ascertain about the sedation medication that might have been administered to the deceased by the doctors. Hence, there is a

grave possibility that the deceased gave a dying declaration while she was under the influence of sedatives.

Thirdly, according to Ms. D.B. Sheetal (P. W. 19), during recording of the dying declaration, her attender was present. However, the prosecution has not examined the attender as a witness. Therefore, the prosecution has withheld a material witness from the court. Hence, an adverse inference should be drawn that, had the attender been produced as a witness, he would have testified that no dying declaration was made by the deceased. Hence, he would have knocked off the bottom of the prosecution case.

Fourthly, Dr. Ananda Ram T (P. W. 14) admits in his cross-examination that in the dying declaration (Ex. P. 31), the corrections were made with regard to the time, when the dying declaration was recorded. Hence, there is a grave possibility that the dying declaration (Ex. P. 31) was tampered with by this witness in order to create the impression that the dying declaration (Ex. P. 31) was recorded while the deceased was still alive. Therefore, the learned trial court was not justified in relying on the dying declaration (Ex. P. 31) for convicting the appellants.

Fifthly, according to Durgam Srinivas (P. W. 1), the elder brother of the deceased, Durgam Bhumakka (P. W. 2), the mother of the deceased, D. Ramesh (P. W. 3), the younger brother of the deceased, K. Lachavva (P. W. 7), G. Rajavva (P. W.8), all of them claim that, in fact, the deceased committed suicide by pouring kerosene on her body, and burning herself. Hence, these witnesses, who have turned hostile, contradict the dying declaration (Ex. P. 31) given by the deceased. Moreover, while the prosecution claims that the deceased died inside the house of the

accused persons, all these witnesses claim that she died on the road.

Lastly, according to the prosecution, the motive for committing the alleged murder is that the appellants had borrowed Rs.1,00,000/- from the deceased. Since the deceased was demanding the said amount, the appellants decided to get rid of her. However, the prosecution has failed to prove that the deceased, being a widow, had ample means to give a loan of Rs.1,00,000/-. Moreover, according to some of the witnesses, the deceased had given a loan of merely Rs.20,000/-. Thus, it is highly unlikely that merely for Rs.20,000/-, the appellants would commit the alleged murder. Hence, the prosecution has miserably failed to establish its case against the appellants. Hence, they deserve to be acquitted by this court.

On the other hand, Ms. J. Sridevi, the learned Public Prosecutor, has raised the following counter-arguments:-

Firstly, the criminal law presumes that a person on the edge of death, when he is about to meet his/her creator, would not die with lies on his/her lips. Therefore, at such a critical juncture, the person is likely to reveal the truth with regard to the cause of injury. Therefore, a dying declaration is treated almost as the gospel truth. Hence, the learned trial court was justified on relying on the dying declaration (Ex. P. 31).

Secondly, since Durgam Srinivas (P. W. 1), the elder brother of the deceased, Durgam Bhumakka (P. W. 2), the mother of the deceased, D. Ramesh (P. W. 3), the younger brother of the deceased, K. Lachavva (P. W. 7), G. Rajavva (P. W.8), have turned hostile, they have invented a story in favour of the appellants that

she committed suicide. However, both the accused have not even taken the said defense in their statements given under Section 313 of Cr.P.C.

Thirdly, although the witnesses may claim that the body of the deceased was found lying on the road, according to the site plan (Ex. P. 36), the body of the deceased was found just outside the house of the accused persons and well within the compound of their house. Therefore, under Section 106 of the Indian Evidence Act, it is for the accused persons to explain as to how the deceased received burn injuries within the compound of their house. However, no such explanation has been offered by the appellants. Instead, they have merely denied the occurrence. The denial and non-explanation unerringly point towards their guilt. Therefore, the denial is a strong link evidence in the chain of events which would point towards their guilt. Moreover, it is from the place of the occurrence, well within the compound of the house of the appellants, that burnt pieces of saree were recovered by the police. This clearly proves the fact that the deceased did not die on the road. In fact, she died within the compound of the house owned by the appellants.

Fourthly, both Dr. Ananda Ram T (P. W. 14) and Ms. D.B. Sheetal (P. W. 19) have clearly stated that the deceased was “coherent and conscious” and was in “fit state of mind” to give statement to the Magistrate. Even in his cross-examination, Dr. Ananda Ram T (P. W. 14) has denied the suggestion that she was “unconscious or unfit” during her stay in the hospital. Since both these witnesses are independent witnesses, who bear no grudge or animosity towards the appellants, their statements have to be accepted. Moreover, a bare perusal of dying declaration (Ex. P.

31) clearly reveals that Ms. D.B. Sheetal (P. W. 19) had posed certain simple but relevant questions to the deceased prior to recording of the crux of the dying declaration (Ex. P. 31). The deceased had answered these questions forthrightly. This also indicates the ability of the deceased to speak and to coherently answer questions. Furthermore, the dying declaration (Ex. P. 31) clearly bears the certificate issued by Dr. Ananda Ram T (P. W. 14). Therefore, the genuineness and the veracity of the dying declaration (Ex. P. 31) cannot be doubted.

Fifthly, in the dying declaration (Ex. P. 31), the deceased has clearly stated that on the fateful day, at 3:00 p.m. she had gone to the house of the appellants along with a paper when she was promised that the money borrowed by the appellants would be duly returned to her. But they snatched the paper away from her, poured kerosene on her, and set her ablaze. Therefore, the culprits for causing the death are the appellants.

Sixthly, according to Dr. B. Sathish (P. W. 18), the deceased had suffered "*superficial and deep burns all over body above 90%*". The cause of her death was "hypovolemic shock, due to deep third degree burns". Thus, the prosecution has succeeded in proving that deceased had suffered a homicidal death, and not a suicidal one.

Seventhly, it is not the quantity of witnesses, but the quality of witnesses, which is material in a trial. Since the prosecution has established its case beyond a reasonable doubt by producing Dr. Ananda Ram T (P. W. 14) and D.B. Sheetal (P. W. 19) in order to prove the dying declaration (Ex. P. 31), there was no need for the prosecution to produce the alleged attender who was with Ms. D.B.

Sheetal (P. W. 19). Therefore, no adverse inference could be drawn against the prosecution.

Lastly, the prosecution has established the existence of a motive for A. 1, as he had borrowed money from the deceased, but did not wish to return the same. And for A. 2, as the deceased and A. 1 had illicit relationship, a fact not liked by any wife. A. 2 happens to be the wife of A. 1. Therefore, even A. 2 would want to get rid of the deceased. Therefore, the prosecution has established a complete chain of circumstances, which unerringly point towards the guilt of the appellants. Hence, the learned Public Prosecutor has supported the impugned judgment.

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

It is, indeed, a settled position that a dying declaration, although cannot be subjected to a cross-examination, but nonetheless, is accepted as the gospel truth. It is only when certain infirmities or contradictions are proven by the defense that a dying declaration becomes suspect. If the defense fails to reveal the inherent defects or contradictions, a dying declaration should be accepted by the court. After all, it is presumed by law that a person who is about to die, would not like to die with lies on his/her lips. Moreover, there is no reason why a person on the verge of his/her death would want to leave the real culprits out of the picture, and would falsely implicate a person. Furthermore, a conviction can be recorded solely on the basis of a dying declaration, if found reliable. (Ref. to **Bhaju v. State of M. P.** [(2012) 4 SCC 327])

In the present case, while the deceased has clearly stated in her dying declaration (Ex. P. 31) that she was burnt by the

appellants, the witnesses, who have turned hostile, have claimed that it is a case of suicide. However, in their statements under Section 313 Cr.P.C., the appellants have not taken the defense that it is a case of suicidal death. Therefore, obviously, these witnesses have created a story as an afterthought, in order to protect the skin of the appellants.

Both Dr. Ananda Ram T (P. W. 14) and Ms. D.B. Sheetal (P. W. 19) clearly state that prior to and during the recording of the dying declaration (Ex. P. 31), the deceased was in a “fit state of mind”, was “conscious and coherent”. Both these witnesses are independent witnesses. Therefore, there is no reason for these witnesses to falsely implicate the appellants. There is no presumption in law that a patient with 90% or more than 90% burns is unable to give a statement. Even in the cross-examination of Dr. Ananda Ram T (P. W. 14), no such suggestion has been made by the defense. In fact, he has not been confronted with any medical literature on this point. Therefore, the contention raised by the learned Senior Counsel that it is impossible for a person with such a high degree of burns to give a statement is clearly unsustainable.

Merely because Ms. D.B. Sheetal (P. W. 19) has not enquired from the doctors as to the level of sedation given to the deceased, such an omission on her part is not fatal to the prosecution case. For, there is no requirement that she should have enquired about the level of sedation from the treating doctors. Since the treating doctor had given a fitness certificate, there was no need for her to make such an enquiry with the treating doctor. Since Dr. Ananda Ram T (P. W. 14) clearly states, both in his examination and in his cross-examination, that the deceased was in a fit state of mind,

there is no evidence on record to show that the deceased was on a high dosage of sedatives. Therefore, the possibility suggested by the learned Senior Counsel that the deceased may be under the influence of sedation, cannot be accepted.

It is, indeed, trite to state that it is the quality of a witness and not a quantity of a witness that is germane to a case. Since the prosecution has succeeded in establishing its case against the appellants with the production of Dr. Ananda Ram T (P. W. 14) and Ms. D. B. Sheetal (P. W. 19), there was no need for the prosecution to produce the attender who had allegedly accompanied Ms. D.B. Sheetal (P. W. 19). Hence, the non-production of the attender does not lead to an adverse inference against the prosecution case.

Another presumption of the criminal law is that “while men may lie, contemporaneous documents and circumstances do not”. Although the witnesses may claim that the body of the deceased was found on the road in a burnt condition, the site plan (Ex. P. 36) clearly reveals that the deceased was burnt just outside the house of the appellants, and well within the compound wall of the house. Moreover, according to the prosecution, pieces of burnt saree were also recovered from the scene of the crime. Thus, obviously, the deceased was burnt within the compound of the house of the appellants.

Section 106 of the Indian Evidence Act clearly states that any information, specially in the knowledge of the accused, has to be revealed by the accused. For, it is not possible for the prosecution to reveal all the facts of the case. This is especially true in a case where the injuries to the deceased are caused within the privacy of a house where the accused persons are the inmates of the house. Therefore, a burden to reveal the cause of the

injuries and the circumstances in which the injuries were caused is on the shoulders of the accused. In case, the accused fails to explain, or denies the cause of the injuries found on the body of the deceased, such silence on his/her part speaks volumes about his/her guilt. Admittedly, according to the site plan (Ex. P. 36), the deceased was burned within the compound of the house of the appellants. Therefore, it was for the appellants to explain as to how the deceased had gotten burned. However, both of the appellants have merely denied the occurrence in their statement given under Section 313 Cr.P.C. Such a bald denial is a strong link in the chain of events which unerringly point toward the guilt of the appellants.

Usually, in a case of circumstantial evidence, "motive" is a strong piece of evidence against the accused persons. In the present case, the deceased herself has stated that she had taken document to the house of the appellants as she was told that A. 1 is about to return the money borrowed by him. Thus, the prosecution has established the fact that there was a financial transaction between the deceased and the appellants. Since the appellants had borrowed money from the deceased, which they did not wish to return, it seems, they thought it better to get rid of her. Hence, the strong motive does exist for the appellants to kill the deceased. Therefore, the prosecution has established the existence of a strong motive for the commission of the crime.

A holistic appreciation of the evidence clearly reveals that the prosecution has strung a complete chain of circumstances, which unerringly point towards the guilt of the appellants. There is the existence of the motive, the existence of the dying declaration (Ex. P. 31), the testimony of Dr. Ananda Ram T (P. W. 14), Dr. B.

Sathish (P. W. 18), and D.B. Sheetal (P. W. 19), and the existence of the site plan (Ex. P. 36). Hence, the prosecution has succeeded in establishing the case against the appellants.

For the reasons stated above, this court does not find any merit in the present appeal; it is, hereby dismissed. The conviction and sentences recorded by the learned trial court for offences under Sections 302 r/w 34 IPC by judgment dated 03.07.2014, are hereby confirmed.

Miscellaneous petitions, if any, pending shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

03rd April 2019
TSR

