

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

CRIMINAL APPEAL NO.1278 OF 2012

JUDGMENT: (per Hon'ble Sri Justice T.Amarnath Goud)

The Principal Sessions Judge, Medak at Sangareddy, by its judgment dated 13.08.2012, in S.C.No.116 of 2012, has convicted accused No.1 (appellant herein), K.Barlolla Yadaiah Goud, for offences under Sections 498-A and 302 read with Section 34 of the Indian Penal Code (IPC), for allegedly causing the death of his own wife, while acquitting accused No.2. For the offence under Section 302 IPC, the accused No.1 has been sentenced to life imprisonment, and imposed with a fine of Rs.10,000/-, and in default, to undergo a simple imprisonment for six months; for the offence under Section 498-A IPC, he has been sentenced to rigorous imprisonment for six months, imposed with a fine of Rs.1,000/-, and in default, to undergo a simple imprisonment for two months. It was further ordered that both the sentences and default sentences shall run concurrently. The accused No.1 has challenged the said conviction and sentence before this Court.

2. Briefly stated, the facts of the case are that on 09.08.2011 at 14:00 hours, Sri M.Vishwanatham Goud (PW.1), the father of the deceased, Smt.Nirmala, lodged a complaint (Ex.P.1) before the Police Station, Sadasivpet, wherein he stated that he had performed the marriage of his third daughter, Nirmala (hereinafter, referred to as the deceased), with accused No.1. Accused Nos.1

and 2, who are the husband and mother-in-law of the deceased, respectively, were suspecting the chastity of the deceased; they used to harass her both physically and mentally. Earlier, when the disputes had arisen, the accused persons were pacified in the presence of elders, before whom, the accused assured to look after the deceased well. The deceased and accused No.1 were blessed with two sons. But even thereafter, the attitude of the accused remained unchanged. On 09.08.2011, at about 9:00 am., both the accused persons poured kerosene on the body of the deceased, and burned her. The villagers shifted the deceased to the Government Hospital, Sangareddy. While undergoing treatment, she succumbed to the injuries at 12:45 pm.

3. On the strength of the complaint (Ex.P.1), the Inspector of Police, Sadasivpet (PW.17), registered a case as Crime No.195 of 2011 for the offences punishable under Sections 498-A and 302 read with Section 34 IPC. During the course of investigation, PW.17 recorded the statements of the witnesses. The Additional Judicial First Class Magistrate, Sangareddy, Medak District (PW.15), after obtaining the certification of the duty doctor with regard to the fitness of the deceased, recorded the dying declaration (Ex.P.7). He held inquest over the dead body of the deceased, and sent the dead body for post-mortem examination. The Civil Assistant Surgeon, Government Hospital, Sangareddy (PW.16), held autopsy over the dead body of the deceased; he opined that the cause of the death of the deceased was due to 'burns cardio

pulmonary arrest (multiple organs failure). PW.17 arrested the accused on 17.08.2011. And after completion of investigation, he filed the charge-sheet for the offences under Sections 498-A and 302 read with Section 34 IPC.

4. In order to support its case, the prosecution examined seventeen witnesses, submitted nine documents, and produced two material objects. After closure of the prosecution evidence, the accused persons were examined under Section 313 Cr.P.C., with regard to the incriminating material appearing against them in the evidence of prosecution witnesses, which they denied. After appreciating the evidence brought on record, the learned trial Court found the appellant/accused No.1 guilty, while acquitting accused No.2. Accordingly, the learned trial Court convicted and sentenced the appellant as aforementioned. Challenging the same, the present appeal came to be filed by accused No.1.

5. Sri Palle Sri Harinath, the learned counsel for the appellant, contended that there is not an iota of evidence to show that the deceased was subjected to harassment and cruelty which resulted in her death to attract the provisions of Sections 498-A and 302 IPC. He further contended that though PW.15 stated that before recording the statement she obtained certificate of the doctor regarding consciousness and fitness of the deceased, a reasonable doubt arises as to whether the deceased, with 90% burns, could give a coherent statement before her death. For, the body was totally burnt and skin was peeled off. Therefore, affixing the thumb

impression on the statement by deceased appears to be doubtful. He further contended that PW.15 claims that she was requested to record the dying declaration by the Police, Sadasivpet, and she got recorded the dying declaration (Ex.P.7) at 11:15 am, whereas PW.17 deposed that he received the complaint at 2:00 pm. Hence, the recording of dying declaration (Ex.P.7) is doubtful. He further contended that the prosecution did not examine the doctor, who treated the deceased, in order to establish the contents of post-mortem examination report (Ex.P.8). The omission is fatal to the case of the prosecution. He further contended that in the present case, except the dying declaration (Ex.P.7), there is not an iota of evidence to establish the guilt of the accused. Thus, the accused is entitled to the benefit of doubt, as the dying declaration, (Ex.P.7), cannot form the sole basis of conviction unless it is corroborated. In support of his contentions, the learned counsel has relied upon the judgments of the Apex Court in **Thurukanni Pompiah and another Vs. State of Mysore**¹, **K.Ramachandra Reddy Vs. The Public Prosecutor**², and **State of Gujarat Vs. Jayrajbhai Punjabhai Varu**³.

6. On the other hand, the learned Public Prosecutor for the State, contended that PW.15, after being satisfied that the patient was in a conscious, coherent and fit state of mind for making the statement, has recorded the dying declaration (Ex.P.7), wherein the deceased stated that both the accused used to quarrel with her;

¹ AIR 1965 SC 939

² (1976) 3 SCC 618

³ AIR 2016 SC 3218

they also used to suspect her chastity and beat her. They quarreled with her on the fateful day at about 9:00 hours, and poured kerosene on her and burned her. He further contended that there is no reason to disbelieve the dying declaration (Ex.P.7) as the same was recorded in accordance with the legal procedure. He further contended that the intention of the appellant was to commit murder of his wife. For, he had poured the kerosene on her body, and burned her. According to the Post-mortem Report (Ex.P.8), the deceased had suffered anti-mortem burn injuries on the total body and skin peeled off; she had suffered 90% burn injuries. According to the testimony of PW.16, the cause of the death was “due to the burn injuries”. Hence, the case clearly falls within Section 302 IPC. Hence, the learned Public Prosecutor has supported the impugned judgment.

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

8. The learned trial Court, by relying on catena of decisions of the Apex Court, observed that *‘there may be some interest to the witnesses to testify falsely, but the Magistrate cannot be attributed with any such motive. Hence, with that reason the dying declaration is taken into consideration and is believed by considering the trustworthiness of it, tested on the touch stone of the other supporting evidence. The evidence of the doctor with regard to a person dying instantaneously with such burn injuries, is only a possibility and not a universal rule. Nevertheless the deceased*

survived for some time after sustaining the injuries, which is evidenced from the fact of her statement being recorded’. Accordingly, the learned trial Court believed the dying declaration (Ex.P.7) and convicted accused No.1, as aforestated, but acquitted accused No.2 by extending the benefit of doubt as she was living separately, and was not present at the scene of offence.

9. Coming to the evidence of prosecution witnesses, PWs.1 to 3, who are father, mother and sister-in-law of the deceased, respectively, stated that the accused used to harass the deceased. They tried to resolve the differences between the accused, and the deceased. On the fateful day, they received the information about the incident. PWs.4 to 8, who are the neighbours and independent witnesses, deposed that they knew that there were disputes between the accused and the deceased. On seeing the deceased with burns, they shifted her to the hospital.

10. In the present case, the evidence of M.Indira Priya Darshini (PW.15) is crucial. She deposed that *“on 09.08.2011 at about 11:15 am., she received a requisition from Police, Sadasivpet to record the statement of D.Nirmala who was admitted in the burns ward of Government Hospital, Sangareddy. As such, she proceeded to the hospital by 11:20 am., and identified the victim through the duty doctor. Before recording the statement, she obtained the certification of the doctor regarding coherence, consciousness and fitness of the patient. She also put some preliminary questions to assess the same. After satisfying herself about the fitness of the patient, she*

recorded the statement of the victim, in which she stated that her mother-in-law used to quarrel with her and harass her. Due to the said harassment, her father gave some money by hard labour. They used to attribute illicit relation between the deceased and anyone who came to the house and they used to beat her. On the previous day, from morning till night, they quarreled with her and between 9:00 and 10:00 am., they poured kerosene on her and set fire. After recording the statement, I obtained the right toe impression of the patient. Ex.P.7 is the statement of the deceased". The dying declaration (Ex.P.7) has to be believed in toto. It cannot be considered in piece meal. There is no reason to disbelieve the testimony of the Magistrate who is an independent witness, and has no vested interest in the matter and no reason as to why Magistrate would record the statement against the accused. The testimony of PWs.1 to 4 supports the case of the prosecution, as they confirmed the harassment meted out to the deceased. Therefore, if their testimony is read with the dying declaration, the present case falls under the homicidal death, but not suicidal. In the statement of the accused under Section 313 Cr.P.C. also, the accused has not stated that the death is a suicidal one eath.

11. As seen from the record, it is clear that there was no eyewitness to the incident. The only evidence relied on by the prosecution against the appellant is the dying declaration (Ex.P.7). In such a situation, the Court has to examine the dying declaration scrupulously with a microscopic eye to find out whether the dying

declaration is voluntary, truthful, made in a conscious state of mind and without being influenced by the relatives present or by the investigating agency who may be interested in the success of investigation, or which may be negligent while recording the dying declaration. In the present case, PW.15, after obtaining the certification of the duty doctor with regard to the fitness of the deceased, got recorded the dying declaration, wherein the deceased stated that both the accused used to quarrel with her; that they also used to suspect her chastity, and beat her, and that they quarreled with her on the fateful day at about 9:00 hours and poured kerosene on her and set fire. There is no reason to disbelieve the dying declaration (Ex.P.7) recorded by PW.15 and her deposition. Apart from the same, it is not the case of the appellant that the deceased poured kerosene on herself and set fire.

12. Coming to the decisions cited by the learned counsel for the appellant, in **Thurukanni Pompiah and another** (supra), declarations recorded in Exs.P.2 and P.1(a) were made almost simultaneously and the declaration recorded in Ex.P.9 was made shortly thereafter. In Ex.P.2, Eranna i.e., the deceased therein, named Pompiah and Hussaini only as his assailants, whereas in Exs.P.1(a) and P.9, he named not only Pompiah and Hussaini, but also Siddaiah and Rudramuni as his assailants. In these circumstances, the Apex Court disbelieved the dying declaration.

13. In **K.Ramachandra Reddy's** case (supra), the deceased therein did not mention the names of assailants on three occasions

earlier to making the declaration, and the Magistrate failed to confirm fitness of state of mind of the injured. In such circumstances, the Apex Court disbelieved the dying declaration. In **Jayrajbhai Punjabhai Varu** (supra), the Apex Court held that '*oral dying declaration implicating respondent accused made to father of deceased is not reliable and such a declaration can be a result of afterthought and cannot be made basis for conviction of accused*'. The facts in the present case can easily be distinguished from the facts of these cases.

14. Having regard to the facts and circumstances of this case, this Court is satisfied by the manner in which the dying declaration was recorded. Thus, there is no reason to disbelieve the same. Therefore, we do not find any infirmity in the judgment of the trial Court in convicting the accused.

15. For the reasons stated above, the conviction and sentence awarded by the learned trial Court in S.C.No.116 of 2012, by Judgment dated 13.08.2012, is hereby confirmed. The bail granted during the pendency of the criminal appeal shall stand cancelled. The appellant/accused No.1 shall surrender forthwith before the Superintendent, Central Prison, Cherlapally, and suffer the rest of the sentence, as confirmed by this Court. In the event the appellant fails to do so, the learned trial Court shall initiate steps, in accordance with law, to apprehend and incarcerate him for the balance period as per the confirmed sentence.

16. The appeal is, accordingly, dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

RAGHVENDRA SINGH CHAUHAN, J

T.AMARNATH GOUD, J

Date: 11.02.2019
TJMR