

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NO.761 OF 2013

Dated: 27.02.2019

Between:

Sangapuri Jangaiah.

...APPELLANT

And

The State of A.P., Rep.by its
Public Prosecutor, High Court of A.P.,
Hyderabad.

...RESPONDENT

Counsel for the Appellant:

Mr. T.M.K.Chaitanya

Counsel for the Respondent:

Ms. Sridevi Juvvadi
Additional Public
Prosecutor

The Court made the following:

THE HONOURABLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HONOURABLE SRI JUSTICE T.AMARNATH GOUD

CRIMINAL APPEAL NO.761 OF 2013

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

The appellant, Sangapuri Jangaiah, has challenged the legality of the judgment dated 05.07.2013, passed by the Sessions Judge, Mahabubnagar, whereby the learned Judge has convicted the appellant for the offence under Section 302 of the Indian Penal Code (IPC) and sentenced him to life imprisonment, and imposed a fine of Rs.100/-.

Briefly, the facts of the case are that C.Ramaiah (P.W.1) lodged a report (Ex.P.1) on 11.03.2012, with the Sub-Inspector of Police, Kothur P.S., wherein he claimed that "*his son Chennagalla Narshimulu was married to Amrutha (L.W.8). According to him, on 10.03.2012, at around 08:00 A.M., his son, either set himself ablaze, or was burned by the relatives of his wife. He is undergoing treatment at the Osmania General Hospital for burn injuries*". On the basis of the said complaint (Ex.P.1), initially, an FIR (Ex.P.12), namely FIR.No.32 of 2012, was chalked out for "*man burns*". However, with the subsequent death of Chennagalla Narshimulu, the offence under Section 302 IPC was added. During the course of investigation, the appellant was arrested. He was put up for trial.

In order to substantiate its case, the prosecution examined sixteen witnesses, and submitted sixteen documents. After going through the evidence, the learned Judge convicted

and sentenced the appellant as aforementioned. Hence, this appeal before this Court.

Mr. T.M.K.Chaitanya, the learned counsel for the appellant, has raised the following contentions before this Court:-

Firstly, C.Ramaiah (P.W.1), happens to be the father of the deceased, C.Ashok Kumar (P.W.8), happens to be the cousin of the deceased. Since these are "*interested witnesses*", their testimonies should not have been relied on by the Trial Court for convicting the appellant.

Secondly, relying on the case **Kanchy Komuramma v. State of A.P.**¹, the learned counsel has pleaded that the prosecution has failed to examine the doctor, who had allegedly given the medical certificate, certifying that the injured was coherent and conscious for giving the dying declaration. The non-examination of the doctor is fatal to the prosecution case.

Thirdly, some of the witnesses namely, Shaik Noorjahan (P.W.2), Puram Jangaiah (P.W.3) and Shivagalla Jangaiah (P.W.4) have turned hostile thereby making the prosecution a doubtful one.

Lastly, according to the inquest report (Ex.P.5) and according to the inquest witnesses, the deceased had committed suicide by setting himself on fire. Therefore, a distinct possibility does exist that it is a case of suicide, rather than a case of homicide. Hence, the impugned judgment deserves to be set aside by this Court.

¹ 1995 Supp. (4) SCC 118

On the other hand, Ms. Sridevi Juvvadi, the learned Additional Public Prosecutor, has raised the following counter contentions:-

Firstly, even if the prosecution has examined the related witnesses, their testimonies cannot be ignored only on the ground that they happen to be “*related witnesses*”. Therefore, the prosecution is justified in relying on the testimony of C.Ramaiah, (P.W.1), the father of the deceased, and C.Ashok Kumar (P.W.8), the cousin brother of the deceased.

Secondly, the case of **Kanchy Komuramma** (1 *supra*) is distinguishable on factual matrix. For, in the said case, the Judicial Magistrate, who had recorded the dying declaration, did not observe any of the safeguards which are required to be followed while recording the dying declaration of an injured person. It is in these circumstances that the Apex Court had opined that it was imperative for the prosecution to examine the certifying doctor in order to establish that the injured was coherent, cogent, and in a fit state of mind while giving the statement. However, in the present case, Ms. M.Sudha (P.W.6), the learned Magistrate, has followed all the safeguards for recording of the dying declaration (Ex.P.7). Therefore, the non-examination of the certifying doctor is not fatal to the case of the prosecution.

Thirdly, in the dying declaration (Ex.P.7), the injured has clearly stated that while he was watching T.V. in the night, the appellant had entered into room, poured kerosene upon him and burned him. Therefore, according to the learned Additional Public Prosecutor, the dying declaration (Ex.P.7) is sufficient for

convicting the appellant. In the light of the dying declaration (Ex.P.7), the opinion expressed by the inquest witnesses pales into insignificance. For, according to the dying declaration (Ex.P.7), it is the appellant who had burned the deceased. Therefore, the defence is not justified in claiming that it is a case of suicide.

Lastly, Dr. D.Sudha (P.W.15) has carried out the autopsy. According to her, the cause of death was the burns sustained by the deceased. Thus, the prosecution has clearly established that the deceased died a homicidal death, and not a suicidal one. Hence, the learned Additional Public Prosecutor has supported the impugned judgment.

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

It is, indeed, trite to state that merely because the witnesses may be related to the deceased, they cannot be termed as “*interested witnesses*” or “*inimical witnesses*”. Therefore, their testimonies cannot be brushed aside merely on the ground that they are related to the deceased. Prudence merely requires that the Court should be on guard while assessing their testimonies. In case the Court finds that there is sufficient corroboration of their testimonies, the same shall be accepted by the Court.

C.Ramaiah (P.W.1) states in his examination-in-chief that “*I was informed about my son taking treatment in Osmania General Hospital, Hyderabad. Immediately, I rushed there and enquired my burn injured son as to how he sustained burn injuries. My son told me on my enquiries, that the accused*

poured kerosene oil on him and lit fire resulting burn injuries and neighbourers shifted him to hospital. The incident had happened at my house in Nandigama Village. The wife (L.W.8 – Amrutha) of my deceased son is the resident of my village. The accused and L.W.8, wife of the deceased, demanded my son to give gold or money for the marriage of the sister of the accused, for that the deceased denied, therefore, the accused poured kerosene oil on my son and lit fire resulting burn injuries. My son died 5 days after the incident, while undergoing treatment in Osmania General Hospital, Hyderabad”. This witness has not been shattered in the cross-examination.

Similarly, C.Ashok Kumar (P.W.8) informs the Court that *“I was informed by some body that my cousin brother sustained burn injuries. Immediately, I rushed to the house of the deceased, meanwhile 108 ambulance was brought and the injured Narsimulu was shifted to the Government Hospital, Shadnagar. I also accompanied injured Narsimulu to the Government Hospital, Shadnagar. As Narsimulu sustained 73% burn injuries, the doctors advised to take the injured to the higher centre for better treatment”. This witness further states that “on my enquiry, the injured Narsimulu told me that his in-laws and his wife (P.W.7) demanded the deceased to give two tolas of gold to perform the marriage of the sister of the accused. For that the injured Narsimulu expressed his inability and stated that he can give one almirah. In this regard his wife went to her parents’ house. The deceased further told me that the accused poured kerosene on him and lit fire resulting burn injuries in the house of the deceased while he was watching T.V. as he did not give gold”.*

Ms. M. Sudha (P.W.6) is the Special Judicial Magistrate of First Class for Excise Cases, Nampally, who had recorded the dying declaration (Ex.P.7). According to her testimony, on 11.03.2012, at 05:45 A.M., she had received a requisition (Ex.P.6) from the duty doctor of Osmania General Hospital, Hyderabad. Immediately, she rushed to the hospital, and found the injured, Narsimulu, who was undergoing treatment at the hospital. According to this witness, *“the duty doctor was present. I put simple questions to the injured C. Narsimulu to ascertain his mental condition. The burn injured Narsimulu gave proper answers to my questions. I am satisfied to record the statement of injured C. Narsimulu. The duty doctor also certified the state of the mind of the injured that the patient was conscious coherent and in fit state of mind”*. This witness went on to narrate the gist of the dying declaration (Ex.P.7) by the injured, C.Narsimulu, before the learned Trial Court. She further informs the Court that after having recorded his statement, she took his impression of the right thumb. The duty doctor also endorsed the dying declaration (Ex.P.7) that *“the injured, Narsimulu, was conscious coherent and fit state of mind throughout the recording of the statement”*.

In the dying declaration (Ex.P.7), the injured clearly stated that *“yesterday night i.e., on Saturday night at 9-00 hours a quarrel took place between me and my wife with regard to money. The marriage of my wife’s sister is fixed to be held at 15th of this month. I was advised to give 2 tulas of gold for which I stated that I can give Almirah but not gold. On that issue my wife went away to her parents house. At the galata took place, since one*

week my wife is staying at her parents' house. While I was watching T.V. at my house at 9-00 p.m., my brother-in-law Jangaiah S/o. Venkaiah came, poured kerosene on my body and lit fire. Then my wife came there. Then, I came out of the house by crying. By hearing the chit chatting of Kistamma, Yadamma, Venkaiah, my wife went to her parents' house as there is no need with me".

A bare perusal of the dying declaration (Ex.P.7) clearly reveals that the dying declaration (Ex.P.7) corroborates the testimonies of C. Ramaiah (P.W.1) and C. Ashok Kumar (P.W.8). Secondly, the dying declaration (Ex.P.7) clearly states that it is the appellant, who had poured the kerosene on the body of the injured, and had burned him.

Although the learned counsel for the appellant has relied on the case of **Kanchy Komuramma** (1 *supra*) in order to plead that in case the certifying doctor is not examined as a witness, his non-examination is fatal to the case of the prosecution. But the said case is clearly distinguishable from the present case. For, in the said case, the Magistrate had not taken any of the precautions, which are required to be taken, while recording a dying declaration. Therefore, the Apex Court was of the opinion that it was essential for the prosecution to produce and examine the certifying doctor. However, in the present case, a bare perusal of the dying declaration (Ex.P.7) clearly reveals that prior to recording the dying declaration (Ex.P.7), the learned Magistrate (P.W.6) had taken the certificate of the doctor. The doctor had clearly certified that "*patient is conscious/coherent and in fit state of mind to record D.D.*". Thereafter, the learned

Magistrate (P.W.6) had posed certain simple questions to the injured such as his name, his age, his father's name, the name of his village, his marital status, about his children, and about his profession. To these simple questions, the injured had answered coherently. When asked as to the number of children, he has clearly stated that "*there are five of them. They were born and died*". Considering the coherence of his answers, the learned Magistrate (P.W.6) was satisfied that "*patient is conscious/coherent and in fit state of mind throughout recording of the D.D.*". It is only thereafter she had recorded the substantive part of the dying declaration (Ex.P.7) with regard to the alleged occurrence. The relevant portion of the dying declaration (Ex.P.7) has already been referred to hereinabove. After having recorded the material part of the dying declaration (Ex.P.7), the learned Magistrate (P.W.6) had also asked the injured to tell the full name of his brother-in-law. The injured had clearly stated that the full name of his brother-in-law as "Sangapuri Jangaiah". Even after recording the dying declaration (Ex.P.7), she had again taken the certificate from the doctor, who had also stated that "*the injured was conscious coherent and in a fit state of mind throughout the recording the dying declaration (Ex.P.7)*". Thus, the learned Magistrate (P.W.6) had taken all the precautions which are required to be observed while recording a dying declaration of an injured person. Therefore, even if the prosecution has not examined the certifying doctor, the non-examination is not fatal to the case of the prosecution. Hence, the case of **Kanchy Komuramma** (1 *supra*) does not support the case of the defence.

Even if Shaik Noorjahan (P.W.2), Puram Jangaiah (P.W.3) and Shivagalla Jangaiah (P.W.4) have turned hostile, even then, lack of their testimonies does not dilute the veracity and authenticity of the prosecution case.

It is, indeed, trite to state that the dying declaration is treated almost as the gospel truth. For, it is presumed in criminal jurisprudence that, a person would not die with lies on his lips. At such a critical moment, the person is bound to speak the truth. Therefore, unless and until the authenticity and veracity of the dying declaration is shattered by the defence, a dying declaration can form the basis for convicting an accused. Thus, the learned Trial Court is legally justified in depending on the dying declaration (Ex.P.7) in order to convict the appellant.

In the present case, the dying declaration (Ex.P.7) is further buttressed by the testimony of Dr. Sudha (P.W.15), who conducted the autopsy. According to her, the injured had died due to the burns. Considering the testimony of Dr. Sudha (P.W.15) and considering the contents of the dying declaration (Ex.P.7), it is not a case of suicidal death, but a case of homicidal one. Therefore, even if the inquest witnesses were of the opinion, as reflected in the inquest report (Ex.P.5), that it is the deceased who had poured kerosene upon himself and committed suicide, such an opinion of the inquest witnesses would lose its relevance in the light of the dying declaration (Ex.P.7) given by the injured/deceased.

Considering the fact that the appellant had carried the kerosene from his house to the house of the deceased,

considering the fact that he had poured the kerosene on the deceased and burned him, the appellant has the intention to cause the death of the deceased. Therefore, the learned Trial Court was justified in convicting and sentencing the appellant for the offence under Section 302 IPC.

For the reasons stated above, this Court does not find any merit in the appeal; it is, hereby, dismissed. Therefore, the impugned judgment dated 05.07.2013 in S.C.No.4 of 2013 passed by the Sessions Judge, Mahabubnagar, is, hereby, confirmed.

Miscellaneous petitions, if any, pending shall stand dismissed.

(RAGHVENDRA SINGH CHAUHAN, J)

(T.AMARNATH GOUD, J)

27th February 2019
RRB