

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

TUESDAY ,THE SIXTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY FOUR



PRESENT

HONOURABLE SRI JUSTICE K SURESH REDDY

AND

HONOURABLE SRI JUSTICE K SREENIVASA REDDY

CRIMINAL APPEAL NO: 5 OF 2016

Between:

Ponnuru Dariya Bee, Martur, W/o.Late Masthan Vali, aged 36 years, Occ:
Coolie Work, Peerlachavidi Bazar, Gannavaram Road, Martur.

...APPELLANT/ACCUSED

AND

The State of Andhra Pradesh rep. by the Public Prosecutor High Court of
Judicature at amaravathi

...RESPONDENT/COMPLAINANT

Appeal under Section 374 (2) of Cr.P.C against the judgment of I
Additional Sessions Judge, Ongole, Prakasam District in S.C.No.513 of
2010 dated 5th day of September, 2011.

Counsel for the Appellant : SRI C VASUNDHARA REDDY

Counsel for the Respondents : ASSISTANT PUBLIC PROSECUTOR

The Court made the following JUDGEMENT :

APHC010329182016



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3486]

TUESDAY, THE SIXTEENTH DAY OF JULY.
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE K SURESH REDDY

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CRIMINAL APPEAL NO: 5/2016

Between:

Ponnuru Dariya Bee, Martur

...APPELLANT

AND

P P Hyd

...RESPONDENT

Counsel for the Appellant:

1. C VASUNDHARA REDDY

Counsel for the Respondent:

1. PUBLIC PROSECUTOR (AP)

The Court made the following:

JUDGMENT: *(Per Hon'ble Sri Justice K. Sreenivasa Reddy)*

The sole accused in Sessions Case No.513 of 2010, on the file of the I Additional Sessions Judge, Ongole, (hereinafter referred to, as 'the Sessions Judge') is the appellant in the present Criminal Appeal. She was tried by the learned Sessions Judge for the offence punishable under Section 302 of the Indian Penal Code, 1860 (for brevity 'IPC').

2. *Vide* Judgment, dated 05.09.2011, the learned Sessions Judge convicted the accused of the offence punishable under Section 302 IPC and sentenced her to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/-, in default of payment, to suffer simple imprisonment for a period of three (03) months.

3. The substance of the charge against the accused is that on 04.08.2009 at about 3.00 AM in the verandah of the house of one Ponnuru Ramjan Bee (hereinafter referred to, as 'the deceased'), the accused caused death of the deceased by pouring kerosene and setting her on fire.

4 Case of prosecution, in brief, is as follows:

All the material prosecution witnesses and the accused are residents of Martur village. P.W.1 is the husband of the deceased;

P.W.2 is the daughter and P.W.3 is the son-in-law (husband of P.W.2) of the deceased. Accused is the daughter-in-law of the deceased and P.W.1. P.W.9 is the son of the accused.

About five years prior to the date of the incident, accused had filed a case *i.e.* Crime No.156 of 2009 against the deceased and P.W.2, for the offences punishable under Sections 498A read with 34 IPC and they were arrested in that case.

On 03.08.2009, P.W.10, the then Police Constable of Martur PS, was on night beat duty, moving in and around Martur village. At about 3.30 AM at Gannavaram Centre, he found the deceased with burnt injuries along with P.W.2 and P.W.3. On his enquiry, the deceased informed him that accused poured kerosene and set her fire. He called for 108 ambulance and got the deceased shifted to the hospital *i.e.* Community Health Centre, Chilakaluripet. P.W.18, Civil Assistant Surgeon examined P.W.2 and found superficial burns on her right hand and opined that P.W.2 received simple injuries due to burns. P.W.18 issued Wound Certificate and the same was marked as Ex.P.28. Further, P.W.18 referred the deceased to the Government General Hospital, Guntur.

On 04.08.2009, on receipt of hospital intimation under Ex.P.22, P.W.20, the Head Constable of Chilakaluripet Town PS,

rushed to the hospital and at about 7.15 AM, recorded the statement of the deceased, which is marked as Ex.P.21. P.W.20 forwarded statement of the deceased *vide* Ex.P.21, under Memo, to the Station House Officer, Martur Police Station, on point of jurisdiction.

On receiving Ex.P.21 and Ex.P.22 at about 11.30 AM, P.W.14, Police Constable, Martur Police Station registered the same as a case in Crime No.189 of 2009 for the offence punishable under Section 307 IPC and issued FIR, which is marked as Ex.P.23. P.W.15, Assistant Sub-Inspector of Police took up investigation, visited the scene of offence, prepared Observation Report in the presence of P.W.12, which is marked as Ex.P.19. Ex.P.24 is the rough sketch of scene of offence.

On 04.08.2009 at about 2.30 PM the deceased was admitted in the Government General Hospital, Guntur. P.W.21, Casualty Medical Officer gave intimation to P.W.17/V Additional Junior Civil Judge, Guntur for recording Dying Declaration of the deceased. On receipt of the same, P.W.17/V Additional Junior Civil Judge, Guntur rushed to the hospital and recorded the statement of the deceased. Ex.P.27 is the statement recorded by P.W.17, at about 4.50 PM.

On receipt of death intimation, P.W.15, Assistant Sub-Inspector of Police, Martur PS altered the section of law from Section 307 IPC to Section 302 IPC and issued altered FIR. On receipt of the altered FIR, P.W.19, Inspector of Police, Inkollu, took up investigation. He conducted inquest over the dead body of the deceased in the presence of P.W.13 and others. Ex.P.20 is the Inquest Report.

On 13.08.2009, on requisition, the Assistant Professor, Forensic Medicine conducted autopsy over the dead body of the deceased. Ex.P.25 is the Post Mortem Certificate. According to him, cause of death is about 65% infected dermo-epidermal burns present over face and other parts of the body.

On 16.08.2009, P.W.19, Inspector of Police arrested the accused and got her remanded to judicial custody. After receiving all the relevant documents and on completion of investigation, P.W.19 filed the charge sheet.

5. In support of its case, prosecution examined P.Ws 1 to 21 and got marked Ex.P.1 to Ex.P.30 and M.Os.1 and 2. Ex.D1 was marked on behalf of defence. The case of accused is one of denial.

6. Learned counsel appearing on behalf of the appellant submits that, all the prosecution witnesses did not support the

prosecution case and they turned hostile. The entire case rests on the dying declarations *i.e.* Ex.P.21 and Ex.P.27. According to the learned counsel for the appellant, there are number of discrepancies and inconsistencies in the dying declarations. In the absence of any material to support the inconsistent dying declarations, it is not safe to convict the accused.

7. On the contrary, learned Assistant Public Prosecutor appearing on behalf of the State submitted that the dying declarations Ex.P.21 and Ex.P.27 are proved by examining P.W.20 and P.W.17, respectively, though there are some minor discrepancies in the dying declarations, deceased in one voice stated that it is the accused, who was responsible for pouring kerosene on her and lighting fire. According to him, in both the dying declarations, it has been consistently stated by the deceased that it is the accused, who caused death of the deceased and there cannot be any dispute that dying declaration can be the sole basis for recording conviction. When such is the case, there is no ground for this Court to call for any interference in the said case.

8. Now the point for determination:

Whether the prosecution is able to bring home the guilt of the accused for the charge levelled against her, beyond all reasonable doubt?

POINT:-

9. Admittedly, the prosecution witnesses *i.e.* P.W.1, P.W.2, P.W.3 and P.W.9, who are closely related to the deceased and the accused, did not support the prosecution case and they were treated as hostile by the prosecution. P.W.4 to P.W.8, who are neighbours and who reside opposite to the house, too did not support the prosecution case and they were treated as hostile.

10. Admittedly, the entire case rests on two dying declarations made by the deceased under Ex.P.21 and Ex.P.27. Ex.P.21 is the dying declaration that was made to P.W.20, the Head Constable. In Ex.P.21, the deceased stated that she had two issues *i.e.* one son and one daughter *viz.* Shaik Mastanvali and Fathima, respectively. Her son Shaik Mastanvali married one Dariyabi, daughter of Khadar Masthan of Kommaliapadu village, about fourteen years back. Her son Shaik Masthanvali died five years back. The accused, who is the daughter-in-law of the deceased, was residing at Martur village along with her three children. P.W.2 was given in marriage to P.W.3, son of Shaik Adambude of Daggubadu village, about seven years back. P.W.2 and P.W.3 were living in the house of the deceased at Martur, for five years. The accused developed grudge as P.W.2 and P.W.3 were residing with the deceased and spending

her income. On the intervening night of 03/04.08.2009, in the early hours, while the deceased was sleeping in the verandah, P.W.2 and P.W.3 were sleeping inside the house; at about 3.00 AM, accused poured kerosene on her and lit fire with a match stick. As the body of the deceased was burnt, she raised cries, upon which, P.W.2 and P.W.3, who were sleeping inside the house, came out of the house. On seeing them, the accused ran away from that place. The deceased received burn injuries to her hands, stomach, chest, and both legs. While P.W.2 tried to put off the flames, she received burn injury to her right hand. When they raised cries, the neighbours assembled there. They informed 108 ambulance and the deceased was taken to the Community Health Centre, Chilakaluripet, where she was treated.

11. Ex.P.27 contemplates that the aforesaid dying declaration was recorded by P.W.17/V Additional Junior Civil Judge, Guntur on 04.08.2009 at about 4.50 PM. P.W.17 was examined to substantiate the same. A perusal of the said statement goes to show that the deceased revealed that while she was sleeping, at about 2.30 AM, she woke up and found accused pouring kerosene on her and lit fire to her body. Due to severe flames, the deceased raised cries and ran out. Thereafter, P.W.3, who is the son-in-law of

the deceased, came out and tried to put off flames by pouring water. According to Ex.P.27, there were disputes between the deceased and the accused. Because of the same, she had done so. The Doctor certified that the patient was conscious, cogent and in fit state of mind during recording of statement. Ex.P.29 is the said endorsement.

12. A perusal of two dying declarations made by the deceased, on the face of it, there are discrepancies and inconsistent to each other. In respect of motive, in the first dying declaration *i.e.* Ex.P.21 is concerned, the deceased states that since P.W.2 and P.W.3 were living in the house of the deceased for five years and taking of money from the deceased. In connection with that, the accused developed grudge and because of the same, she resorted in pouring kerosene and lit fire to the deceased. Whereas, in the dying declaration made before P.W.17, she stated that there were disputes between her and the accused and due to which, the accused had done the said act.

13. In respect of motive part is concerned, there is discrepancy with regard to the same in Ex.P.21 and Ex.P.27. Merely because there are disputes between the accused and the deceased. By virtue of the disputes, one can suspect the accused. But, however,

strong the suspicion is, suspicion cannot take the place of truth. Apart from the same, in the first dying declaration made before the Head Constable-P.W.20, under Ex.P.21, it is stated that, it is P.W.2, who tried to put off the flames and it discloses that she received burns to her right hand. Thereafter, on raising cries, the neighbours assembled and the deceased was shifted to the Community Health Centre, Chilakaluripet in 108 ambulance. There is a glaring discrepancy in respect of the same in Ex.P.27. In Ex.P.27, the deceased had categorically stated that she raised cries and rushed outside and it is P.W.3, who tried to put off the flames by pouring water on her. This glaring fact is inconsistent in between two dying declarations.

14. It is further observed by this Court in the said statements that the deceased had categorically stated, it is P.W.1, who took her to the Government General Hospital. The said aspect had not been stated by her in Ex.P.21. When there is inconsistency in the said dying declaration in the absence of any corroborative evidence, it has to be seen whether it is safe to convict the appellant herein/ accused.

15. Learned counsel appearing on behalf of the appellant has placed reliance on the proposition of law laid down in **Irfan @ Naka**

Vs. The State of Uttar Pradesh¹, wherein the Hon'ble Apex Court, in paragraph Nos.51, 62, 63 and 64 held as thus:

"51. It is significant to note the observations made by Taylor that "Though these declarations, when deliberately made under a solemn sense of impending death, and concerning circumstances wherein the deceased is not likely to be mistaken, are entitled to great weight, if precisely identified, it should always be recollected that the accused has not the power of cross examination, a power quite as essential to the eliciting of the truth as the obligation of an oath can be, and that, where a witness has not a deep sense of accountability to his Maker, feelings of anger or revenge, or, in the case of mutual conflict, the natural desire of screening his own misconduct, may affect the accuracy of his statements and give a false colouring to the whole transaction. ...". [See: Taylor on "Treatise on the Law of Evidence", 1931, 12th Edition Pg. 462]

62. There is no hard and fast rule for determining when a dying declaration should be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:-

- (i) Whether the person making the statement was in expectation of death?
- (ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity?"
- (iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

¹ 2023 AIR (Supreme Court) 4129.

(iv) *Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?*

(v) *Whether the statement was not recorded properly?*

(vi) *Whether, the dying declarant had opportunity to clearly observe the incident?*

(vii) *Whether, the dying declaration has been consistent throughout?*

(viii) *Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?*

(ix) *Whether, the dying declaration was itself voluntary?*

(x) *In case of multiple dying declarations, whether, the first one inspired truth and consistent with the other dying declaration?*

(xi) *Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?*

63. *It is the duty of the prosecution to establish the charge against the accused beyond the reasonable doubt. The benefit of doubt must always go in favour of the accused. It is true that dying declaration is a substantive piece of evidence to be relied on provided it is proved that the same was voluntary and truthful and the victim was in a fit state of mind. It is just not enough for the court to say that the dying declaration is reliable as the accused is named in the dying declaration as the assailant.*

64. *It is unsafe to record the conviction on the basis of a dying declaration alone in the cases where suspicion, like the case on hand is raised, as regards the correctness of the dying*

declaration. In such cases, the Court may have to look for some corroborative evidence by treating the dying declaration only as a piece of evidence. The evidence and material available on record must be properly weighed in each case to arrive at an appropriate conclusion. The reason why we say so is that in the case on hand, although the appellant-convict has been named in the two dying declarations as a person who set the room on fire yet the surrounding circumstances render such statement of the declarants very doubtful."

16. There cannot be any dispute that if a dying declaration is made by the deceased under a solemn sense of impending death and under the circumstances wherein the deceased is not likely to be mistaken, the same carries great weight. It should always be recollected that if the declarant meets the maker, the accused has no opportunity to cross-examine, which is a power essential to eliciting of the truth as an oath can be. It is apparent on the record that the deceased, in the state of imbroglia, gave two inconsistent versions. There is any amount of ambiguity with regard to the veracity of the dying declarations. There are number of discrepancies in both the statements. In those circumstances, it is essential, the Court has to look for some corroborative evidence by treating the dying declaration as only a piece of evidence. In the absence of the same, keeping in view of the aforesaid principle, this Court feels that the dying declarations cannot be relied upon.

17. In the present of case on hand, except the said two inconsistent dying declarations, there is no other corroborative evidence, for the reason that, all the witnesses who were stated to be present at the scene of offence and who tried to put off the flames, did not support the prosecution case and they were treated hostile by the prosecution. There is any amount of ambiguity with regard to the genesis of the attack by the accused in the absence of any oral evidence, apart from the dying declarations. In view of the of the aforesaid principle laid down in **Irfan @ Naka** case (supra), this Court is of the opinion that it is not safe to convict the accused by relying upon inconsistent dying declarations. In those circumstances, we are of the considered opinion that there is no trustworthy and reliable material evidence on record to prove the charge, for the offence punishable under Section 302 IPC against the appellant herein/accused. Accordingly, the point is answered.

18. In the result, the Criminal Appeal No.5 of 2016 is allowed. The conviction and sentence recorded by the learned I Additional District and Sessions Judge, Ongole, *vide* Judgment dated 05.09.2011 in Sessions Case No.513 of 2010 against the appellant herein/accused for the offence punishable under Section 302 IPC is set-aside. The appellant/accused is acquitted under Section 235 (1)

CrPC. The fine amount, if any, paid by the appellant herein/accused, shall be refunded.

19. The appellant herein/accused was released on bail as per the Order of this Court dated 19.12.2016, in view of the Judgment of the combined High Court in **Batchu Ranga Rao Vs. State of Andhra Pradesh**². Hence, the appellant herein/accused is directed to appear before the Superintendent, Central Prison, Cuddapah, for completing necessary legal formalities.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

SD/- S.V.S.R. MURTHY
JOINT REGISTRAR
NB
SECTION OFFICER

//TRUE COPY//

To,

1. The I Additional Sessions Judge, Ongole, Prakasam District (**if any records**)
2. The Additional Judicial Magistrate Of First Class, Addanki
3. The Superintendent, Central Prison, Kadapa
4. The Station House Officer, Inkollu, Prakasam District
5. One CC to SRI. C VASUNDHARA REDDY Advocate [OPUC]
6. The Section Officer, ER Section, High Court Of Andhra Pradesh at Amaravathi (for sending LC records)
7. Two CCs to the Public Prosecutor, High Court of Andhra Pradesh at Amaravathi [OUT]
8. THREE CD COPIES

TAC

HIGH COURT

DATED:16/07/2024

ORDER

CRLA.No.5 of 2016



ALLOWING THE CRLA