

NOTE : The Appellant/ Accused was directed to be released on bail by the order of the High Court dated 10.01.2023 in I.A.No. 1 of 2022 in CrI.A.No.977 of 2016

[3419]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**THURSDAY ,THE FOURTEENTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI

CRIMINAL APPEAL NO: 977 OF 2016

Appeal filed under Section 374(2) of Cr.P.C., against the Judgment dated 07.08.2015 passed in S.C.No. 532 of 2013 on the file of the Court of the Special Sessions Judge-cum-VII Additional District and Sessions Judge, Mahabubnagar, FAC IX Additional District Judge at Wanaparthy.

Between:

Gaddam Ramaraju, S/o. Jammulaiah, Age: 40 years, R/o. Peddamaroor Village, Veepangandal Mandal, Mahabubnagar District.

...Appellant/Accused

AND

The State of Telangana, Rep. by its Public Prosecutor, High Court of Judicature at Hyderabad.

...Respondents/State

Counsel for the Appellant : Sri Srinivasa Srikanth, Legal Aid

Counsel for the Respondent : Public Prosecutor

The Court delivered the following: JUDGMENT

**THE HONOURABLE SRI JUSTICE K.SURENDER
AND
THE HONOURABLE SHRI JUSTICE J.ANIL KUMAR**

CRIMINAL APPEAL No.977 OF 2016

JUDGMENT: *(per Hon'ble Sri Justice K.Surender)*

1. This appeal is filed aggrieved by the judgment dated 12.08.2015 in S.C.No.532 of 2013, passed by the Special Sessions Judge-cum-VII Additional District and Sessions Judge at Mahabubnagar (FAC: IX ADJ, Wanaparthi), convicting the appellant/accused for the offences under Sections 302 and 498-A IPC.

2. The allegation against the accused is that he was married to deceased namely Radha. She was subjected to harassment and physical torture by the accused. Whenever the deceased was going to coolie work and earning amount, the accused used the same for drinking alcohol. It was informed by the village people to PW1 who is mother of the deceased that the deceased sustained burn injuries. She went to the Government Hospital, Kollapur and when she enquired with deceased, PW1 came to know that the accused poured kerosene on her and set her on fire, as she was insisting the accused to purchase Pusthelathadu (chain worn

by married women) which he had earlier sold for alcohol. PWs.2, 3 and 4 were declared hostile to the prosecution case.

3. The prosecution mainly relied on the dying declaration/Ex.P10 recorded by PW12 Sub-Inspector of Police in the hospital at 11:30 A.M. on 27.12.2012 and also dying declaration recorded by PW6 duty doctor which is Ex.P5, at 01:00 P.M. It is admitted that the deceased died at 02:00 P.M. i.e., one hour after PW6 recording dying declaration/Ex.P5.

4. The cause of death was due to burns. The only evidence regarding death of deceased placed on record are the dying declarations recorded under Exs.P5 and P10. According to PW1's evidence, when she enquired with the deceased in the hospital, deceased informed that she asked the accused to purchase Pusthelathadu, which he sold earlier for alcohol for which reason the appellant poured kerosene and set her on fire. The time when PW1 went to the hospital or when she interacted with the deceased was not stated in her examination.

5. PW12 recorded the statement of deceased at 11:30 A.M. In the said statement, the deceased stated that the accused was harassing her and beating her on regular basis in

drunken condition. He quarreled with her, took kerosene which was in the house, poured on her and lit her on fire. In the statement recorded by PW6, the deceased stated that at 08:00 A.M., the accused insisted for money and when she denied, accused poured kerosene on her and set her on fire.

6. On close examination of the statement Ex.P10 recorded by PW12 at 11:30 A.M., PW6/Doctor Shireesha had endorsed on the statement at the bottom of the page that the statement was recorded in her presence and the deceased has given statement in a conscious state. The left thumb impression of deceased was put at the bottom of the page. On the next page, PW12 endorsed that it was recorded by him.

7. In Ex.P5/Dying Declaration recorded by PW6, the thumb print was again put at the bottom of the page and PW6 Doctor Shireesha had recorded the said statement. No reason is given as to why statement was recorded by PW6 when she was already present at 11:30 A.M., while statement was being recorded by PW12. In fact, in her statement before the Court, she stated that requisition was given by the Sub-Inspector of Police to her for recording the dying declaration and then she went to the government hospital, where deceased was undergoing treatment and recorded dying

declaration. The said dying declaration was at 01:00 P.M. If at all, PW6 has received requisition on 28.07.2013 at 01:00 P.M., her endorsement in Ex.P12 which was recorded at 11:30 P.M. is doubtful. From the documents, it appears that thumb prints were taken on Exs.P5 and P12 at the bottom of the page and subsequently, filled up. If at all, PW6 was present, while statement was recorded under Ex.P10 by PW12, her statement that requisition was given to her at 01:00 P.M., is falsified. Further, the requirements under Rule - 34 of the Criminal Rules of Practice for recording a dying declaration were also not followed.

8. Learned Public Prosecutor relied on the judgment of the Hon'ble Supreme Court in **Punam Bai v. State of Chattisgarh**¹ and also CrI.A.No.1023 of 2013 of this Court, wherein, the reliability of dying declaration was discussed. The Court, on the basis of the facts, finds the dying declaration reliable, the said dying declaration can be made sole basis for conviction.

9. As already discussed, three different versions regarding the events that transpired between the deceased and appellant on the date of incident is placed on record by PW1

¹ (2019) 6 SCC 145

who is Mother of deceased, PW6 who is Doctor and PW12 who is SI. Further, the dying declarations/Exs.P5 and P10 for the reasons discussed above were fabricated. Apart from the dying declaration, there is no other evidence to connect the accused to convict him for the offence under Section 302 of IPC. Therefore, benefit of doubt has to be extended to the accused.

10. Accordingly, the Criminal Appeal is allowed and the judgment and conviction in S.C.No.532 of 2013, passed by the Special Sessions Judge-cum-VII Additional District and Sessions Judge at Mahabubnagar, is hereby set aside. The bail bonds of the accused shall stand cancelled.

Sd/- C.V. MALLIKARJUNA VARMA
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Special Sessions Judge-cum-VII Additional District and Sessions Judge, Mahabubnagar, FAC IX Additional District Judge at Wanaparthy. (with records)
2. The Judicial Magistrate of first Class, Kollapur, Mahabubnagar.
3. The Station House Officer, Veepangandla Police Station, Wanaparthy.
4. The Superintendent, Central Prison, Cherlapalli, Medchal – Malkajgiri District.
5. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. [OUT]
6. One CC to Sri Srinivasa Srikanth, Legal Aid, Advocate [OUT]
7. Two CD Copies

Njb/gh

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HIGH COURT

DATED:14/11/2024

JUDGMENT

CRLA.No.977 of 2016



ALLOWING THE CRIMINAL APPEAL

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