



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

[3528]

THURSDAY ,THE TWENTY FOURTH DAY OF APRIL  
TWO THOUSAND AND TWENTY FIVE

**PRESENT**

**THE HONOURABLE SRI JUSTICE K SURESH REDDY**

**THE HONOURABLE SMT JUSTICE V.SUJATHA**

**CRIMINAL APPEAL NO: 1345/2017**

**Between:**

Banjaru Vamshi Krishna @ Mangali Vamsi, Kurool Dt.,

**...APPELLANT**

**AND**

The State Of Andhra Pradesh Rep Pp

**...RESPONDENT**

**Counsel for the Appellant:**

1.SODUM ANVESHA

**Counsel for the Respondent:**

1.PUBLIC PROSECUTOR (AP)

**The Court made the following:**

**JUDGMENT:** *(Per Hon'ble Smt. Justice V. Sujatha)*

Accused No.1 in S.C.No.151 of 2015 on the file of Court of learned I Additional Sessions Judge, Kurnool, is the appellant. He along with A2 were tried by the learned Additional Sessions Judge under two charges.

The first charge was under Section 302 IPC against A1.

The second charge was under Section 323 IPC against A2 for causing injuries to P.W.2.

2. Substance of the charge is that on 16.01.2014 at about 09.30 p.m., the appellant poured diesel on Mangali Nallagatla Ram Pullaiah (hereinafter referred to as the deceased) and set fire to him causing his death and in the same process, A2 beat P.W.2 with hands and legs, thereby committed offences punishable under Sections 302 and 323 IPC.

(a) After completion of trial, the learned Additional Sessions Judge convicted A1 under Section 302 IPC and sentenced him to suffer imprisonment for Life and also to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for a period of 3 months. The learned Additional Sessions Judge acquitted A2 under Section 323 IPC.

3. Case of the prosecution, briefly is as follows:

(i) Both the accused are residents of Bethamcherla town. The material prosecution witnesses also are the residents of Bethamcherla town. The deceased was also resident of the same town. A1 and the deceased used to reside in the same lane. There were ill-feelings in between the families of accused and the deceased and they are not in talking terms. P.W.1 is mother of the deceased. P.W.2 is the daughter of P.W.1. The accused and the deceased used to eke out their livelihood by doing coolie work. On 16.01.2014

at about 08.15 p.m., A1 went to the medical shop of P.W.5 to purchase tablets, there A1 and deceased quarreled with each other and were intervened by P.W.5 who separated and pacified them. On the same day night at about 09.30 p.m., the deceased went to the house of A1, questioned him for taking up quarrel with him at the medical shop and then A2, who is the mother of A1, along with the Juvenile in-conflict-with-law, beat the deceased with hands and legs. A1, with an intention to get rid of the deceased, went inside his house, brought diesel in a bottle, poured on the body of the deceased and lit fire; due to which the deceased received severe burn injuries over his body and raised hue and cries. On hearing the same, P.Ws. 3 and 4, whose houses are located near by the scene of offence rushed to the spot and extinguished the flames with the help of blankets. P.W. 1- mother of the deceased, upon hearing the cries of the deceased rushed to the scene, enquired the deceased about the incident and was informed about the incident. Immediately the injured was shifted to Government hospital, Kurnool for treatment. On 16.01.2014, in the mid-night P.W.12 - S.I. of Police, Bethamcherla Police Station has received an intimation from GGH, Kurnool. Ex.P.7 is the said medical intimation. On the morning of 17.01.2014, at about 09.30 a.m., P.W.12- S.I. of Police went to GGH, Kurnool, and recorded statement of the deceased which is marked as Ex.P.8 which was endorsed by the duty doctor vide Ex.P.9. On the same day, at about 12.20 a.m., P.W.15 –

Special JMFC, Kurnool, having received intimation (Ex.P.8) from the hospital went and recorded the statement from the injured which is marked as Ex.P.19. Later, P.W.12 went back to Bethamcherla Police Station and basing on Ex.P.8, he registered a case in Cr.No.12 of 2014 under Section 307 read with 34 of IPC and submitted copy of FIRs to all the concerned. Ex.P.10 is the original FIR. On the same day, he went to the scene of offence, which is a small street running in front of the houses of the accused, seized green colour plastic bottle (M.O.1) and half burnt black shirt with white stripes (M.O.2) in the presence of P.Ws.7 and 8 – Mediators under the cover of panchanama vide Ex.P.11. Ex.P.12 is the rough sketch of the scene of offence. On 19.01.2014, P.W.12- S.I. of Police received death intimation of the deceased from the hospital vide Ex.P.13. Thereafter, he altered the FIR by altering Section 302 IPC and issued express FIRs to all concerned. Ex.P.14 is the altered FIR. Further investigation was conducted by P.W.16 – Circle Inspector, Banaganpalle circle. On 19.01.2014, P.W.16 – Circle Inspector took up investigation in the case and held inquest over the dead body of the deceased in the presence of P.W.10, L.Ws.11, 12 and other blood relatives i.e. P.Ws. 1, 2 and 9. The inquest report is marked as Ex.P.5. During the course of investigation, P.W.16 – Circle Inspector examined P.Ws.1, 2 and 9 and recorded their statements. During the inquest, he seized black waist thread of

the deceased and the same is marked as M.O.3. Subsequently, he sent the dead body for postmortem examination.

(ii) P.W.13 – Assistant Professor, Kurnool Medical College, Kurnool conducted autopsy over the dead body of the deceased and opined that the cause of death of the deceased was due to burns and its complications. He issued postmortem certificate vide Ex.P.15.

(iii) On 05.02.2014, P.W.14 – Inspector of Police took up further investigation and sent M.Os.1 and 2 to RFSL, Kurnool vide Ex.P.16. RFSL report is marked as Ex.P.24. On 10.03.2014, vide Ex.P.22 the Superintendent of Police, Kurnool has transferred the C.D. file of the case from Bethamcherla Police Station to P.W.17 – C.I. of Police, Panyam. Accordingly, P.W.17 took up further investigation. On 09.04.2014, P.W.17 – C.I. of Police, Panyam, upon credible information that the accused are moving to Thammarajupalli bus stop, secured the panchayatdars, L.W.13, P.W.11 and proceeded to Thammarajupalli along with his staff and caught hold of two persons and interrogated them separately in the presence of mediators. During the course of investigation, they admitted about the commission of offence. Then P.W.17 – C.I. of Police, Panyam arrested the accused in the presence of mediators under Ex.P.23. After receiving all the reports and after completion of investigation, P.W.17 – C.I. of Police, Panyam filed the charge sheet.

4. In support of its case, the prosecution examined P.Ws. 1 to 17, marked exhibits P1 to P24 and exhibited M.Os.1 to 3. When the accused was examined under Section 313 Cr.P.C., he denied the incriminating evidence appearing against him. On behalf of the defence, no oral evidence was adduced, but, Ex.D.1 to 7 were marked on their behalf.

5. Relying on two dying declarations marked as Ex.P.8 and Ex.P.19, the learned Additional Sessions Judge convicted A1 as aforesaid.

6. Heard Sri. P. Veera Reddy, learned Senior Counsel assisted by Sodum Anvesha and Ch. Bhargav, learned counsel for the appellant; and Sri. Marri Venkata Ramana, learned Additional Public Prosecutor representing the State. We have carefully analyzed the entire evidence on record.

7. Sri. P. Veera Reddy, learned Senior Counsel contends that the material prosecution witnesses in the case P.Ws.3 to 7 and 11 did not support the prosecution and they were declared as hostile. So far as P.Ws.1 and 2 are concerned, who are mother and sister of the deceased, admittedly, they are not eye-witnesses to the said attack. Learned Senior Counsel further contends that the two dying declarations marked as Ex.P.8 and Ex.P.19 cannot be relied on as both of them are contradicting to each other. He further contends that Ex.P.19 was recorded at about 00.20 hours on 17.01.2014 by P.W.15 – Magistrate, wherein the deceased has stated that at about 08.30 p.m., on the

previous night, a quarrel took place between him and A1 in front of the house of A1 at Bethamcherla, during which the deceased beat A1 as A1 threatened the father of the deceased. In the meanwhile, A1 brought diesel, poured on the body of the deceased and set fire. The learned Senior Counsel further contends that in Ex.P.8 – dying declaration recorded by P.W.12, it is stated that at about 08.15 p.m., while he was passing through the medical shop, A1, keeping in mind the quarrel that took place previously between the deceased and the younger brother of A1, took up quarrel with the deceased. Some time thereafter, the deceased went to the house of A1 to enquire as to why he quarreled with him. Then, A1 and his mother came and beat the deceased with hands and legs and when he tried to get out of their house, A1 poured diesel over the body of the deceased and set fire. As such, the learned Senior Counsel contends that there are inconsistencies between both the dying declarations i.e., Ex.P.8 and Ex.P.19.

8. The learned Senior Counsel relied on a judgment of the Hon'ble Supreme Court in ***Amol Singh V. State of Madhya Pradesh***<sup>1</sup>. It is contended by learned Senior Counsel that if there are more than one dying declarations, they should be consistent and if there are any inconsistencies between both the dying declarations, the Court has to examine the nature of the inconsistencies, whether they are material or not and the Court has to

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<sup>1</sup> (2008) 5 SCC 468

examine the same in the light of various surrounding facts and circumstances. He also relied on other two judgments of the Hon'ble Supreme Court in ***Uttam V. State of Maharashtra***<sup>2</sup> and ***State of Punjab V. Parveen Kumar***<sup>3</sup>. The learned Senior Counsel further contended that while appreciating the dying declarations, the Court has to look whether those inconsistencies are material or not. The learned Senior Counsel further contends that in the instant case, when the material for the quarrel between the deceased and the accused is contradicting in both the dying declarations (Ex.P.8 and Ex.P.19), they cannot be treated as stellar enough to hold the appellant guilty for the offence of murder of the deceased. The learned Senior Counsel further contends that the doctor, who made endorsement on the dying declarations marked as Ex.P.9 and Ex.P.21, was not examined by the prosecution. He further contends that P.W.1 has admitted in her evidence stating that she was present in the hospital while P.W.15 was recording dying declaration under Ex.P.19. As such, he states that the deceased was tutored by P.W.1 and her relatives. The learned Senior Counsel further contends that P.W.9 – Sister of the deceased, in her 161 Cr.P.C., statement has stated that the deceased, mistakenly revealed the name of A1 as the person who poured diesel on him and set fire to him, instead of name of 'Ashok'. The said portion of 161 Cr.P.C., statement of P.W.9 was marked by the defence under Ex.D.5. He further contends that

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<sup>2</sup> (2022) 8 SCC 576

<sup>3</sup> (2005) 9 SCC 769

in the inquest report (Ex.P.5), the name of 'Ashok' was mentioned as the person who quarreled with the deceased on the previous night near the medical shop. As such, he contends that it was 'Ashok' who poured diesel on the deceased and set fire to him. The learned Senior Counsel further contends that as the deceased sustained 50% of burns, he would not be in a position to give dying declarations. As such, the learned Senior Counsel requests this Court to allow the appeal by setting aside the conviction and sentence recorded by the learned Additional Sessions Judge.

9. On the other hand, learned Additional Public Prosecutor opposed, contending that though there are inconsistencies in Ex.P.8 and Ex.P.19, they are not material in nature and the fact remains that in both the dying declarations, the deceased has specifically stated that A1 poured diesel on his body and set fire to him. Pouring of diesel by A1 and setting fire to the deceased is consistent in both the dying declarations. He further contends that if really 'Ashok' has poured diesel and set fire to the deceased, there is no reason for the deceased to falsely implicate A1 instead of 'Ashok', who is the brother of A1. So far as the inquest report (Ex.P.5) is concerned, it is only an opinion expressed by the panchs and the same cannot be given much importance, except using for the sake of knowing the cause of death of the deceased. In support of his contentions, learned Additional Public Prosecutor relied on a judgment of the Hon'ble Supreme Court in ***Pedda Narayana V.***

**State of A.P.,<sup>4</sup> and P.V. Radhakrishna Vs. State of Karnataka<sup>5</sup>**. The learned Additional Public Prosecutor further contends that P.W.1 has stated that she was present in the hospital while P.W.15 was recording dying declaration (Ex.P.19), but, she did not state that she was by the side of the deceased at the relevant point of time. P.W.15, who recorded Ex.P.19, in his evidence categorically stated that except himself and Chief Medical Officer, no other person was present while recording the statement. He relied on judgment of the Hon'ble Supreme Court in **Uttam V. State of Maharashtra** (2<sup>nd</sup> supra), wherein the Hon'ble Supreme Court held that Magistrate, being an uninterested witness and a respected officer and there being no circumstances or material to suspect that he would have any animus against the accused or in any way interested for fabricating a dying declaration, such a dying declaration recorded by the Magistrate ought not to be doubted. As such, he sought for dismissal of the appeal, by confirming the conviction and sentence recorded by the learned Additional Sessions Judge.

10. We have carefully analyzed the entire evidence on record. P.W.1 is the mother of the deceased and P.W.2 is the sister of the deceased. P.W.3 is neighbor to accused and the deceased who put off the flames. P.W.4 is also a neighbor who turned hostile. P.W.5 is the owner of the medical shop where quarrel took place in between the deceased and A1. P.W.6 is the cousin of the

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<sup>4</sup> AIR 1975 SC 1252

<sup>5</sup> AIR 2003 SC 2859

deceased. P.W.7 and P.W.8 are the panch witnesses who turned hostile. P.W.9 is the elder sister of the deceased and P.W.10 is the husband of P.W.9 and also witness for the inquest. P.W.11 is the VRO who turned hostile. P.W.12 is the police official who recorded the dying declaration of the deceased vide Ex.P.8. P.Ws.14, 16 and 17 are the investigating officers. P.W.13 is the assistant professor who conducted postmortem over the body of the deceased. P.W.15 is the Special Judicial Magistrate of First Class, Kurnool who recorded dying declaration of the deceased vide Ex.P.19.

11. The core issue that needs to be decided in the instant case is as to how far the dying declarations of the deceased recorded vide Ex.P.8 and Ex.P.19 are reliable. Ex.P.19 is the dying declaration recorded by P.W.15 at 12.20 a.m., on 17.01.2014. Having established that the deceased was in conscious, coherent and in a fit state of mind to make a statement, P.W.15 recorded the dying declaration. It is categorically stated that on the previous night, at about 08.30 p.m., a quarrel took place between him and A1 in front of the house of A1 at Bethamcherla, during which the deceased beat A1 as A1 threatened his father and that in the said process, A1 brought diesel, poured on his body and set fire to him. Ex.P.8 is the dying declaration recorded by P.W.12 at 09.30 a.m., on 17.01.2014. In the said dying declaration, the deceased stated that when he was passing through a medical shop, A1, keeping in mind the earlier quarrel that took place between him and 'Ashok' (younger brother of A1), A1

questioned him as to why he quarreled with 'Ashok'; subsequently, deceased went to the house of the A1 and enquired as to why he took up quarrel with him, at that juncture both the accused (A1 and A2) beat the deceased with hands and legs, when the deceased tried to come out of their house, A1 poured diesel over his body and set him to fire.

12. Under similar circumstances, the Hon'ble Supreme Court in ***Amol Singh V. State of Madhya Pradesh*** (1<sup>st</sup> Supra), while dealing with the law relating to appreciation of evidence in the form of more than one dying declaration, held as under:

“13. Law relating to appreciation of evidence in the form of more than one dying declaration is well settled. Accordingly, it is not the plurality of the dying declarations but the reliability thereof that adds weight to the prosecution case. If a dying declaration is found to be voluntary, reliable and made in fit mental condition, it can be relied upon without any corroboration. The statement should be consistent throughout. If the deceased had several opportunities of making such dying declarations, that is to say, if there are more than one dying declaration they should be consistent. However, if some inconsistencies are noticed between one dying declaration and the other, the court has to examine the nature of the inconsistencies, namely, whether they are material or not. While scrutinising the contents of various dying declarations, in such a situation, the court has to examine the same in the light of the various surrounding facts and circumstances.”

13. If inconsistencies are found between two dying declarations, the court has to assess the nature and significance of those inconsistencies as to

whether they are material in nature. If a material inconsistency is found, it creates a doubt on the reliability of the dying declarations and much weight need not be given.

14. In the instant case, the discrepancy in both the dying declarations is with regard to the reasons that lead to the attack on the deceased, whether it is due to a quarrel that took place at the medical shop of P.W.5 or whether it is due to the fact that A1 threatened the father of the deceased. However, both the dying declarations are consistent with regard to the cause of death as the deceased consistently stated in both the dying declarations that A1 poured diesel over his body on the date of incident and set fire to him. As the discrepancies pointed by learned Senior Counsel for the appellant are minor and immaterial, they do not affect the reliability of the statements made in both the dying declarations and can be said that the dying declarations are consistent.

15. Relying upon a statement made by P.W.1 that she was present in the hospital at the time Ex.P.19 was recorded by P.W.15 - Magistrate, learned Senior Counsel contended that she has tutored the deceased while he was deposing the entire incident. But, during the course of cross-examination by prosecution, P.W.15 deposed that apart from himself and Chief Medical Officer, no others were present at the time of recording the statement of the deceased. It can be seen that P.W.1 stated that she was present at the

hospital at the time Ex.P.19 was being recorded, but, it was not stated that she was present at the place where it was recorded. Mere presence of P.W.1 at the hospital does not mean that she has tutored the deceased in deposing his declaration.

16. When credibility of dying declaration recorded by the Magistrate came up for consideration before the Hon'ble Supreme Court in ***Uttam V. State of Maharashtra*** (2<sup>nd</sup> supra), it held as under:

“25. The credibility of a dying declaration recorded by the Magistrate has also come up for consideration in several cases and it has been held that a Magistrate being an uninterested witness and a respected officer and there being no circumstances or material to suspect that he would have any animus against the accused or would in any way be interested for fabricating a dying declaration, such a declaration recorded by the Magistrate, ought not to be doubted...”

17. In the instant case, we find no material to suspect P.W.15 that he has animus against the accused and that he had fabricated the dying declaration of the deceased in order to arraign A1. In view of the above, we do not hesitate to conclude that both the dying declarations of the deceased i.e. Ex.P.8 and Ex.P.19 inspire confidence of this Court.

18. Further, Ex.D.5 is the relevant portion in Section 161 Cr.P.C., statement of P.W.9 – Elder sister of the deceased, however, the same can be ignored as it was recorded during the course of investigation by the police.

Insofar as the contention of learned Senior Counsel that the material prosecution witnesses i.e., P.Ws.3 to 7 and 11 turned hostile is concerned, the same does not affect the case in any manner.

19. Having carefully analyzed the entire evidence on record, we have no hesitation to come to a conclusion that A1 has committed murder of the deceased herein by pouring diesel over his body and put fire to him, causing his death. The prosecution could able to prove the guilt of A1 beyond reasonable doubt. After conglomeration of the entire evidence available on record and in view of the above facts and circumstances, the conviction and sentence recorded by learned Additional Sessions Judge needs no interference.

20. In the result, Criminal Appeal is dismissed, confirming the conviction and sentence recorded by learned I Additional Sessions Judge, Kurnool in S.C.No.151 of 2015, dated 26.09.2017 under Section 302 IPC. As the appellant has been released on bail by this Court *vide* order dated 15.11.2022 in terms of the order dated 02.11.2016 passed by a Division Bench of the Composite High Court for the State of Telangana and the State of Andhra Pradesh in ***Batchu Rangarao and others v. State of Andhra Pradesh***<sup>6</sup>, he is directed to surrender before the Superintendent, Central Prison, Kadapa to

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<sup>6</sup> 2016 (3) Alt (Crl.) 505 (DB) (A.P.)

serve the remaining part of sentence, failing which learned I Additional Sessions Judge, Kurnool shall take necessary steps to secure his presence.

Pending miscellaneous applications, if any, shall stand dismissed in consequence.

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**K.SURESH REDDY, J**

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**V.SUJATHA, J**

Date:24.04.2025.  
Gss