HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

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CRIMINAL APPEAL No.1046 OF 2010

Between:

Gunda @ Perumalla Dhanalakshmi,
W/o Sambasivarao, aged 25 years,
R/o Gurazala, near Poleramma Temple,
18th Ward, Vaddavalli, Sattenapalli,
Guntur District. …. Appellant/Accused.

Versus

The State of Andhra Pradesh, through Police,
Sattenapalli, represented by Public Prosecutor,
High Court of Andhra Pradesh. ... Respondent/complainant.

DATE OF ORDER PRONOUNCED : 22.02.2023

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE A.V.RAVINDRA BABU

1. Whether Reporters of Local Newspapers may be allowed to see the Order? Yes/No

2. Whether the copy of Order may be marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to see the Fair copy of the order? Yes/No

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A.V.RAVINDRA BABU, J

*** HON'BLE SRI JUSTICE A.V.RAVINDRA BABU**

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High Court of Andhra Pradesh. ... Respondent/complainant.

! Counsel for the Petitioner : Sri P.S.P. Suresh Kumar

^ Counsel for the Respondent : Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

(2002) 6 Supreme Court Cases 470

2022 SCC OnLine SC 1000

(2004) 13 Supreme Court Cases 314

AIR 2009 SC 1487

AIR 2009 SC 1626

AIR 2009, 1725

This Court made the following:

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRIMINAL APPEAL NO.1046 OF 2010

JUDGMENT:-

This Criminal Appeal is filed by the appellant, who was the Accused in Sessions Case No.185 of 2010, on the file of Sessions Judge, Guntur, challenging the judgment, dated 02.08.2010, where under the learned Sessions Judge, Guntur, found the accused guilty of the offence under Section 304 part I of Indian Penal Code ("I.P.C." for short) i.e., culpable homicide not amounting to murder, as against the original charge under Section 302 of I.P.C. and accordingly, convicted the appellant under Section 235(2) of Code of Criminal Procedure ("Cr.P.C." for short) for the offence under Section 304 part I of I.P.C. and after questioning her about the quantum of sentence, sentenced her to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for six months.

2) The parties to this Criminal Appeal will hereinafter be referred as described before the trial Court for the sake of convenience.

3) The Sessions Case No.185 of 2010 arose out of a committal order in P.R.C.No.6 of 2010, on the file of Judicial

Magistrate of First Class-cum-I Additional Junior Civil Judge, Sattenapalli, pertaining to Crime No.110 of 2009 of Sattenapalli Town Police Station.

4) The case of the prosecution, in brief, according to the contents of the charge sheet filed by the State, represented by Inspector of Police, Sattenapalli in the above said crime number is as follows:

(i) The accused married Perumalla Sambasiva Rao (hereinafter will be referred to as "deceased") on 27.11.2008 and thereafter the marriage was consummated. Prior to the marriage, deceased Perumalla Sambasiva Rao i.e., the husband of the accused accepted to take his share of the properties and agreed to come down to Gurazala to live with the accused. After the marriage, the deceased was claiming that as he is the youngest son of L.W.1-Perumalla Guravamma, it is his responsibility to take care of the welfare of his aged mother, who is living with the deceased, in their own house at Vaddavalli, Sattenapalli. Accused used to demand the deceased to take share of his property and to come down to Gurazala so as to live with her there. L.W.2-L. Padma, L.W.5-Perumalla Srinivasa Rao and L.W.6-Perumalla Naga Raju, had knowledge of these facts. Thus, differences arose among the accused and the deceased over this issue. Quarrels used to take place in

normal practice in their house. The reprimands of L.W.5 and L.W.6 failed to bring the required change in the attitude of the accused.

(ii) While so, on 21.06.2009 at about 10-00 A.M., while the deceased and the accused were in the house, accused picked up quarrel with the deceased finding fault with him for his inability to get his share of property and to come and live with her in Gurazala. In the said quarrel, the deceased slapped the accused and then in a fit of anger, the accused poured kerosene on the deceased, who was sitting in the verandah of the house and lit fire, resulting causing burn injuries to the deceased. L.W.1, L.W.2, L.W.3-Attaluri Anil Kumar and L.W.4-Sunkara Malleswara Chary extinguished flames and shifted the deceased to Community Health Center, where the deceased gave a statement to the police.

(iii) L.W.13-I. Venkateswarlu, S.I. of Police, registered the statement of deceased as a case in Crime No.110 of 2009 under Section 307 of I.P.C. of Sattenapalli Town Police Station and investigated the case. He visited the scene of offence, inspected it under the cover of mahazar attested by L.W.7-Perumalla Satyanarayana and L.W.8-Shaik Moulali. He seized the kerosene tin with half liter of kerosene in it. He also seized a khaki colour saree with snuff colour design which was emanated with

kerosene smell and the burnt red waist thread, chameli match box and two burnt match sticks and the maroon and black dotted burnt lungi from the scene of offence in the presence of L.W.7 and L.W.8. L.W.13 prepared rough sketch of the same. He examined L.W.1, L.W.2 and L.W.5 and recorded their statements. In the meantime, the deceased gave Dying Declaration before L.W.11-B. Sandhu Babu, the then Judicial Magistrate of First Class, Sattenapalli. The deceased was shifted to Government General Hospital, Guntur, for better treatment where he succumbed to injuries at 4-30 P.M., on 22.06.2009 while undergoing treatment.

(iv) On receipt of death intimation, L.W.13 re-registered the case under Section 302 of I.P.C. and L.W.14 Inspector of Police continued the investigation. During further investigation, the Inspector of Police, inspected the scene of offence and found it tallied. He re-examined L.W.1, L.W.2 and L.W.5 and recorded their statements. He further examined L.W.3, L.W.4 and L.W.6. He held inquest over the dead body of the deceased in the presence of L.W.7, L.W.9-Shaik Baji and L.W.10-Shaik Sydulu and forwarded the body of the deceased for postmortem examination.

(v) On 25.06.2009 on prior information and after proper identification, he arrested the accused in the presence of L.W.7

and L.W.9 in front of Poleramma temple in Vaddavalli, Sattenapalli, under the cover of mahazar attested by the said mediators. He forwarded the accused for remand. L.W.12, who conducted autopsy over the dead body of the deceased, opined that cause of death is due to shock due to burns. L.W.15, the successor of L.W.14, filed charge sheet on receipt of postmortem report.

5) The learned Judicial Magistrate of First Class, Sattenapalli, took cognizance for the offence under Section 302 of I.P.C. and after complying necessary formalities under Section 207 of Cr.P.C. and exercising the powers under Section 209 of Cr.P.C., committed the case to the Court of Sessions as the case was exclusively triable by the Court of Sessions.

6) Before the learned Sessions Judge, Guntur, on appearance of the accused, a charge under Section 302 of I.P.C. was framed and explained to her in Telugu for which she denied the same, pleaded not guilty and claimed to be tried.

7) To bring home the guilt of the accused, during the course of trial, on behalf of the prosecution, P.W.1 to P.W.8 were examined and Ex.P.1 to Ex.P.15 were marked and further M.O.1 to M.O.6 were marked. After closure of evidence of the prosecution, accused was examined under Section 313 of Cr.P.C. with reference to the incriminating circumstances

appearing in the evidence let in, for which she denied the same and stated that she has nothing to say and she has no defence witnesses.

8) The learned Sessions Judge, Guntur, on hearing both sides and on considering the oral as well as documentary evidence, found the accused guilty of the offence under Section 304 Part I of I.P.C. i.e., culpable homicide not amounting to murder as against the original charge under Section 302 of I.P.C. and accordingly convicted her under Section 235(2) of Cr.P.C. and after questioning her about the quantum of sentence, sentenced her to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for a period of six months. Felt aggrieved of the same, the unsuccessful accused, filed the present Criminal Appeal, challenging the judgment, dated 02.08.2010 of the learned Sessions Judge, Guntur.

9) Now, in deciding this Criminal Appeal, the point that arises for consideration is whether the prosecution before the Court below proved that on 21.06.2009 at 10-00 A.M., the accused poured kerosene over her husband i.e., Perumalla Sambasiva Rao (deceased) and lit fire and caused the death of her husband in the manner as alleged by the prosecution?

POINT:-

10) Sri P.S.P. Suresh Kumar, learned counsel appearing for the appellant, would contend that P.W.1, the mother of the deceased, did not support the case of the prosecution and she claimed that she was having bath in the bathroom by then. Except the Dying Declaration two in number, one was recorded by the police and another was recorded by the concerned Judicial Magistrate of First Class, there remained nothing on record to prove the offence in question against the accused. The learned Magistrate did not take proper care in recording the dying declaration and he claimed that simply he posed four questions which are common in nature. He did not ascertain as to whether the deceased with serious burn injuries was in fit state of mind to give statement in writing. Even according to the case of the prosecution, he received 80% of the burn injuries. So, there is every doubt as to whether he was in fit state of mind to give his statement properly. The learned Magistrate did not disclose to the deponent on his own accord that he is a Magistrate. On the other hand, he claimed that when he posed a question as to whether he (deceased) know him, he replied that he is a Judge. So, the deceased was tutored that a Judge is coming, as such, he gave a statement in a particular fashion. Even otherwise, there were discrepancies in

the so-called statement recorded by the learned Magistrate and the statement of the deceased recorded by S.I. of Police on the demand alleged to be made by the accused for separate residence. The so-called demand made by the accused for separate residence was not there in the statement recorded by the police, but, it was there in the statement recorded by the Magistrate. So, there were discrepancies which were crucial in nature. Even according to the learned Magistrate, some persons were present physically when he went to the hospital to record the statement. Even it is also evident from the evidence of P.W.8. So, when some persons were present along with the deceased by the time, the S.I. of Police and Magistrate went there at their respective times, naturally, supposition is that the deceased was tutored as to how to give a statement before the S.I. of Police and the Magistrate. So, there was every possibility for tutoring. The leaned Sessions Judge, Guntur, basing on the injuries on the scalp in part and other things made observations that the injuries were of homicidal but not suicidal. The reasoning given by the learned Sessions Judge, Guntur, is not sustainable under facts. There is no hard and fast rule that when there was pouring of kerosene by the deceased on himself, it would not fell upon other particulars of the body. Both the dying declarations relied upon by the prosecution suffers with

discrepancies and there was ample time for tutoring. When the prosecution has alleged the time of offence as 10-00 A.M. or 10-30 A.M., there was a delay in recording the statement of the deceased and on account of delay there was every possibility for tutoring the deceased. Accused was brought one week prior to the incident. But the allegations in the statement recorded by the police from the deceased are such that since the date of marriage, there were disputes demanding share of property from the father of the deceased.

11) He would further strenuously contend that the deceased was taller and stronger than the accused. There was no possibility for the accused to pour kerosene on the head of the deceased, who was a taller person. The prosecution did not prove the utter ill-feelings between the deceased and the accused except the allegation that the accused was insisting to get the property of the deceased from the family so as to put up a separate residence. The reasons set forth by the prosecution were trivial in nature. It is rather improbable that for such a small reason, the accused would pour kerosene on her husband and set fire. Though it was alleged that the kerosene was poured on the deceased, no kerosene could be found either on the wall or on the ground and it shows that even the scene of offence was deliberately shifted. When the prosecution has

relied upon two dying declarations, both of them should be consistent so as to inspire confidence in the mind of the Court. The Court should test it on the basis of consistency and the probability, because of discrepancies in both the dying declarations prudence requires corroboration from independent source. There is no corroboration to the contents of both the dying declarations. There are two views possible in the light of the facts and circumstances and the view that the deceased poured kerosene on himself and set fire to see that the accused will be sent back to her house cannot be ruled out. The defence of the accused is that the deceased to see that the accused will be sent back to her house, made an attempt and accordingly it lead to his death. The learned Sessions Judge, Guntur, did not look into the ground realities and did not look into the facts and circumstances of the case properly and erroneously believed both the dying declarations, which are with discrepancies, as such, the Criminal Appeal is liable to be allowed.

12) He would further contend that the defence of the accused before the Court below was also that she was mentally unsound, as such, she was unable to commit offence.

13) The learned counsel for the appellant would rely upon the decisions in (1) **Harijana Thirupala and others vs.**

Public Prosecutor, High Court of A.P., Hyderabad [1] (2) **Sultan vs. State of Karnataka** [2] and (3) **State of Maharashtra vs. Sanjay S/o Digambarrao Rajhans**[3].

14) Sri Y. Jagadeeswara Rao, learned counsel, representing the learned Public Prosecutor, would contend that there was no delay in recording the dying declaration of the deceased by the police on receipt of medical intimation from the hospital and further there was also no delay in recording the dying declaration of the deceased by the learned Magistrate. The hospital authorities firstly sent intimation to the police, as such, P.W.8 rushed to the hospital and recorded the statement of the deceased which was a basis for registration of F.I.R. under Section 307 of I.P.C. Immediately, after recording the statement of deceased by the police, the hospital authorities sent intimation to the learned Magistrate and the learned Magistrate rushed to the hospital and recorded the dying declaration of the deceased. Both the dying declarations are consistent and they did not run contra with each other as contended. Though there is no corroboration to the dying declarations, but both the dying declarations are convincing. As the offence was occurred in the house of the deceased, there

[1] (2002) 6 Supreme Court Cases 470
[2] 2022 SCC OnLine SC 1000
[3] (2004) 13 Supreme Court Cases 314

was no possibility for the outsiders to witness the actual occurrence. The learned Sessions Judge thoroughly discussed the evidence on record and recorded cogent reasons in upholding the case of the prosecution and he rightly believed the case of the prosecution, as such, the Criminal Appeal is liable to be dismissed.

15) To bring home the guilt of the accused, the prosecution examined as many as 8 witnesses. P.W.1 is no other than the mother of deceased. As evident from the deposition, the witness was a deaf woman and even she was not in a position to hear the questions posed to her properly and did not give answers properly.

16) However, it is a case where she claimed that at the time of incident, she was having bath. The substance of her evidence is that she gave birth to three male and one female children. She performed the marriages of her children Naga Raju, Srinivasa Rao and Sambasiva Rao. Her female child Padma is no more. Sambasiva Rao married the accused. She does not know where the accused and her son Sambasiva Rao resided after the marriage. She deposed that she, deceased Sambasiva Rao, accused and Pamda used to reside together in a house. In November, 2009 her son died. She does not know the cause of death of Sambasiva Rao. She was not present in the house at

the time of death. She went to bathroom to have bath leaving the deceased and the accused in the house. Neighbours came and informed her about the death of her son. She learnt that her son died due to burn injuries by pouring kerosene on his body. She does not know who poured the kerosene on the body of her son. He died while taking treatment at Government General Hospital. Prosecution got declared her as hostile and during the course of cross examination, she denied that she stated as in Ex.P.1. It is a fact that the hostility of P.W.1 to support the case of the prosecution in tune with Ex.P.1 is proved as P.W.7, the Inspector of Police, who deposed that P.W.1 stated before him as in Ex.P.1.

17) According to P.W.2, he is a neighbor and his house is on the western side of the deceased. The deceased, his wife, P.W.1, the mother of the deceased and his sister used to reside together. Sambasiva Rao died about one year ago. At about 8-00 A.M. or 9-00 A.M., while he was watching TV, he heard some cries from outside the house of Sambasiva Rao. Immediately, he came out and observed a gathering in front of the house of the deceased. By the time he came out, the deceased was sitting on the pial with burn injuries on his body. Immediately, the injured (deceased) was shifted in a Rickshaw to the hospital.

18) P.W.3 is a witness, who testified that his house and house of the deceased were intervened by four houses. He does not know the deceased. Prosecution declared him as hostile and in the cross examination he denied that he stated as in Ex.P.2. Prosecution proved his hostile attitude from the mouth of P.W.7, who deposed that P.W.3 stated before him as in Ex.P.2.

19) P.W.4, the mediator to the observation report, to the inquest report and further to the arrest mahazar, did not support the case of the prosecution. According to him, Ex.P.3 is his signature on the observation report. He was not called by the police at the time of observation of the scene of offence. He signed on inquest report on 23.06.2009 at 8-00 A.M. and he attended the inquest over the dead body. Ex.P.4 is his signature. Inquest was held in his presence and other mediators. Actually, he signed Ex.P.4 when the police requested him on the pretext that his signature is required to shift the dead body from the hospital. He was not present at the time of arrest of the accused. Ex.P.5 is his signature on the arrest mediators report. The prosecution got declared him as hostile and during the cross examination, he denied that he acted as mediator at the time of observation of the scene of offence, inquest over the dead body of the deceased and at the time of arrest of the accused. Even the hostility of this witness is also

spoken to by P.W.7, the investigating officer, who testified that P.W.4 was present at the time of observation of the scene of offence, inquest over the dead body of the deceased and further at the time of the arrest of the accused. In fact, P.W.4 had no necessity whatsoever to simply put his signatures on observation report, inquest report and arrest mahazar.

20) Though P.W.4 did not support the case of the prosecution, but, there remained the evidence of P.W.7 to prove the fact that observation of scene of offence was done in the presence of mediators and further inquest was conducted in the presence of mediators and arrest was made in the presence of mediators. However, the fact that the police after investigation, observed the scene of offence and conducted inquest over the dead body of the deceased was not in dispute. Further the arrest of the accused was also not disputed during the cross examination of the investigating officer. So, the hostility of P.W.4 in supporting the case of the prosecution as regards the observation of the scene of offence, conducting inquest over the dead body of the deceased and arresting the accused will come in no way to affect the case of the prosecution, in the light of the categorical evidence of P.W.7, the investigating officer, on these aspects.

21) Admittedly, even according to the case of the prosecution, P.W.2 and P.W.3 were not the witnesses to the occurrence. The prosecution cited them to speak to the fact that on hearing the cries, they proceeded to the house of the deceased where they found the deceased with burn injuries. Even the hostility exhibited by P.W.3 is no way affects the case of the prosecution. There is no dispute about the fact that the deceased received burn injuries in the varanadh of the house of the deceased. So, as to how the deceased received injuries were not within the knowledge of the outsiders. At best, the outsiders like P.W.2 and P.W.3 could only notice the presence of the injuries on the injured soon after they rushed to the scene of offence. Having regard to the above, it is a case where there was no probability or possibility for the prosecution to examine any independent witnesses to prove the case against the accused.

22) There is evidence of P.W.6, the Medical Officer, to prove the nature of injuries received by the deceased. P.W.6 is Associate Professor, Department of Forensic, Guntur Medical College. His evidence is that on 23.06.2009 at about 10-30 a.m., he received requisition from Sub-Inspector of Police, Sattenapalli Town Police Station to conduct Postmortem examination over the dead body of Perumalla Sambasiva Rao,

aged 37 years and on the same day he conducted Postmortem examination over the dead body of Perumalla Sambasiva Rao, from 10-40 a.m. to 11-40 a.m, and found the following injuries:

Rigor mortis present all over the body and ante-mortem injuries mixed flame burns present over the dead body.

Burs involving:

1. Part of scalp, face and neck.
2. Both upper limbs.
3. Front and back of the chest.
4. Front and back of the abdomen and pelvic walls.
5. Front and back of both thighs with patches of right upper legs.

About 80% of burns body surface area is burnt. All over burns are mixed degree in nature showing vital reaction.

Stomach contains -60 ml of dark brown fluid with no suspicious smell. Mucosa is normal. All other visceral organs are congested.

According to his knowledge and belief he is of the opinion that the cause of death was shock due to burns. Accordingly, he issued Postmortem certificate. Ex.P.7 is Postmortem certificate issued by him. The deceased died in Government General Hospital, Guntur on 22.06.2009 at about 4-30 a.m.

23) The important aspect in the case of the prosecution to prove the guilt against the accused is two dying declarations. According to the case of the prosecution, on receipt of the

medical intimation to police as to the admission of the injured with burn injuries, the hospital authorities sent an intimation to the police, as such, P.W.8, the then S.I. of Police rushed to the hospital and recorded the statement of injured.

24) The evidence of P.W.8, in brief, is that on 21.06.2009 while he was present at Police Station, at about 11-00 a.m., he received hospital intimation about admission of Perumalla Sambasiva Rao with burn injuries. Immediately, he rushed to Community Health Centre, Sattenapalli and he recorded the statement of injured Sambasiva Rao in the presence of Doctor. Ex.P.11 is the hospital intimation. Ex.P.12 is the statement of Sambasiva Rao recorded by him. After recording the statement of injured, the Doctor certified the condition of the injured. He obtained the said endorsement on the statement itself. After recording his statement Ex.P.12, he returned to police station and registered a case in Cr.No.110 of 2009 for the offence punishable under Section 307 of I.P.C. and issued FIR and submitted the original FIR to the concerned Magistrate and copies of the same to his superiors. Ex.P.13 is the FIR.

25) The evidence of P.W.5, the then Judicial Magistrate of First Class, is that on 21.06.2009 he received requisition from Community Health Center, Sattenapalli at about 12-00 noon to

record statement of Perumalla Sambasiva Rao, S/o Narayana. Immediately, he rushed to the Community Health Center, Sattenapalli. He reached the hospital within 2 minutes, since the hospital is at a distance of 200 meters to the Court. He put questions to the injured Sambasiva Rao to find out his fit state of mind and consciousness. After satisfying himself, he obtained the endorsement certificate of Civil Assistant Surgeon, Community Health Center, Sattenapalli and thereafter recorded his statement. The injured Perumalla Samabsiva Rao stated that his wife has been insisting him to separate from his joint family by taking his respective share from joint family, and to go away to her maternal house to lead matrimonial life, but the injured refused for the same, thereupon his wife poured kerosene and set fire to his body. He reduced the same into writing. Thereafter, he obtained certificate about fit state of mind, conscious and coherent state of the declarant and obtained endorsement from the Doctor. He obtained the impression of left big toe on the declaration as his hands were totally burnt. Except himself, duty Doctor and his Attender, no others were present during recording the statement of Sambasiva Rao. Ex.P.6 is the statement of Sambasiva Rao along with requisition.

26) The allegation of the prosecution is that on 21.06.2009 at about 10-30 a.m., when the deceased and the

accused were in the house, accused picked up a quarrel with the deceased finding fault with him for his inability to get share of the property, to come and live with her in Gurazala and when the deceased slapped the accused, then the accused in a fit of anger poured kerosene on the deceased and set fire and the neighbourers rushed to the scene and shifted the injured to the hospital. As the medical officer sent intimation to the S.I. of Police, he proceeded to the hospital and recorded the statement of the injured under Ex.P.12.

27) As seen from Ex.P.11, it was intimation sent by the medical officer. It was dated 21.06.2009 and the endorsement of the medical officer runs that at 11-00 a.m., it was sent to the S.I. of Police (P.W.8). P.W.8, the S.I. of Police, testified that on 21.06.2009 while he was present at the police station, at about 11-00 a.m., he received hospital intimation about the admission of Perumalla Sambasiva Rao with burn injuries. Immediately, he rushed to the Community Health Center, Sattenapalli and recorded the statement of the injured Sambasiva Rao in the presence of Doctor. Ex.P.11 is the hospital intimation and Ex.P.12 is the statement of Sambasiva Rao.

28) As seen from Ex.P.12, the S.I. of Police made a mention that starting of statement was on 21.06.2009 at 11-15 a.m., and at the end he concluded that the statement was

concluded on 21.06.2009 at 11-40 a.m. It is the evidence of P.W.5, the then Judicial Magistrate of First Class, Sattenapalli that on 21.06.2009, he received requisition from the Community Health Center, Sattenapalli at about 12-00 noon to record the statement of Perumalla Samabsiva Rao. Immediately, he rushed to the Community Health Center, Sattenapalli. He reached the hospital within two minutes time since the hospital is at a distance of 200 meters to the Court. As seen from Ex.P.6, the dying declaration of the deceased recorded by P.W.5, it is enclosed with the medical intimation which reveals that the medical officer sent the said intimation to the Magistrate on 21.06.2009 at 11-40 a.m. So, it shows that immediately after recording of the statement of the injured by P.W.8, the S.I. of Police, the medical officer thought of to send the information to Magistrate, as such, he sent the information to the Magistrate. Ex.P.12 contained the purported right toe impression of the injured, as the injured was not able to put his thumb impression on account of burn injuries. The learned Magistrate obtained left toe impression of the injured on Ex.P.6. So, both the statements as above, would come under the purview of the dying declarations and the said fact is not at all in dispute.

29) It is the contention of the learned counsel for the appellant that there was much delay between the time of

occurrence and recording of statement by the S.I. of Police and the learned Magistrate, as such, there was a probability for tutoring. This Court would like to make it clear that according to Ex.P.12, the offence was occurred on 21.06.2009 at 10-30 a.m. On hearing the cries of the deceased, the neighbourers gathered there and shifted the injured to the hospital. According to Ex.P.11, the injured was brought to the hospital, as such at 11-00 a.m, the medical officer sent the information to P.W.8. Then, P.W.8 immediately proceeded to the hospital and started recording the statement at 11-15 a.m. and concluded at 11-40 a.m. The completion of the dying declaration by the learned Magistrate was at 12-00 noon. So, the time lag between the time of offence and recording of ultimate dying declaration i.e., Ex.P.6 by P.W.5 was only 1 ½ hour. Injured could be shifted to hospital by 11-00 a.m.

30) Having regard to the above, this Court is of the considered view that the shifting of the injured to the hospital, sending of medical intimation by the medical officer to the S.I. of Police and consequent recording of the statement of the injured by P.W.8 and further recording the statement of the injured by P.W.5 were all happened in quick succession. So, it cannot be held that there was much time lag between the time of offence and recording of the dying declaration of the

deceased by P.W.5. To this extent, I am of the considered view that both Exs.P.12 and P.6 have to be construed as dying declarations. It is altogether a different aspect that whether both the dying declarations of the deceased are liable to be able to consider or not is a matter of consideration by appreciating the contentions advanced by the learned counsel for the appellant and the prosecution.

31) Before going to appreciate the contentions of both sides, this Court would like to make it clear that the settled legal position with regard to dying declarations. In **Varikuppal Srinivas vs. State of A.P.**[4] the Hon'ble Supreme Court held that if the Dying Declaration is found to be true and voluntary, conviction can be based on it without further corroboration.

32) Further the Hon'ble Supreme Court in **Satish Ambanna Bansode vs. State of Maharashtra**[5] held that Dying Declaration can form sole basis of conviction and rule of requiring corroboration is merely a rule of prudence.

33) Further the Hon'ble Supreme Court in **S.P. Devaraji vs. State of Karnataka**[6] held that if dying declaration found to be true and voluntary, dying declaration can be made basis for conviction without any further corroboration.

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[4] AIR 2009 SC 1487
[5] AIR 2009 SC 1626
[6] AIR 2009, 1725

34) Keeping the same in view, now, I proceed to appreciate the contentions. Admittedly, it is a case where P.W.5, the then Judicial Magistrate of First Class, Sattenapalli, who recorded Ex.P.6, deposed that after putting certain questions to the injured to find out his fit statement of mind and consciousness and after satisfying himself by obtaining the endorsement of the Civil Assistant Surgeon, he proceeded to record the statement. The contention of the learned counsel for the appellant in this regard is that P.W.5 did not intimate to the deceased voluntarily that he is the Magistrate and he is going to record the dying declaration of him, but, on the other hand, when P.W.5 asked the injured as to whether he (injured) know him (P.W.5), he replied that he is a Judge. So, the injured (deceased) had knowledge beforehand that his statement is going to be recorded by a Judicial Officer. So, it shows that there was a possibility for tutoring.

35) A perusal of Ex.P.6 reveals that the learned Magistrate asked the deceased to state his name and as to whether he married and the name of his wife and whether they have any children and after obtaining answers to the said questions, he asked him whether he (injured) know him (P.W.5) and then the injured told him that he learnt that he is a Judge. It goes to show that P.W.5 made an attempt to introduce

himself with the injured by asking him whether he know him and then he (injured) told that he (P.W.5) is the Judge. Admittedly, P.W.5 instead of straight away disclosing to injured that he is a Judicial Officer, but asked him whether he know him. I am of the considered view that this is not going to affect the case of the prosecution in any way.

36) The contention of the appellant is that as the injured had already knowledge that a Judge is coming to record his statement, there was a possibility for tutoring. As seen from the cross examination of P.W.8, S.I. of Police, at the time of recording of Ex.P.12, brother of the deceased by name Sambasiva Rao, his mother P.W.1 and his sister L.W.2-Padma (died) and about 10 to 15 persons, who were visiting hospital, were there. It was also deposed by P.W.5 during the cross examination that about 4 or 5 persons were present when he reached the hospital, but, he did not enquire about the names and identity of those persons. His Attender asked the persons, who were present there to go out. The declarent responded immediately to all his questions. He did not enquire the names of the parents of the declarent. He did not enquire anything about previous relationship with the accused, marriage date, etc. As per Ex.P.6, he did not mention about reading over the

contents to the declarent. He volunteers that he read over the contents to the declarent.

37) Looking into the cross examination part as above, this Court would like to make it clear that P.W.5 when he was requested to record the dying declaration of the injured, he was supposed to ask the injured as to the manner in which he received injuries only. So, he was not expected to enquire the names of the persons present at the hospital and further he was not expected to probe about the parents of the declarent and about previous relationship with the accused and marriage date, etc. Leave apart all these things, now the fact remained is that according to the appellant, as there were persons present at the hospital when the S.I. of Police reached there and further P.W.5 reached there, there was a possibility for tutoring.

38) It is to be noticed that already the injured had knowledge that his statement was recorded by S.I. of Police under Ex.P.12. Apart from this, as seen from Ex.P.11, even at the time of admission of the injured at 11-00 a.m. in the hospital medical officer made a mention that the mode of receipt of injuries by the injured were said to be pouring kerosene and the litting fire by his wife. It is a case where there was a duty cast upon the medical officer in a Medico Legal Case before admitting an injured like deceased to get information as to the

mode of receipt of injuries and in that process, it came to light that the wife of the accused poured kerosene and caused burn injuries. When that is the situation that by 11-00 a.m. itself, there were entries in the medical intimation that accused caused injuries to the injured, absolutely, there was no possibility for tutoring by the time P.W.8 and P.W.5 proceeded to the hospital to record the statement of the injured.

39) To show that there was a possibility or probability of tutoring, it is the duty of the appellant to throw light as to how the deceased gone to the extent of implicating his wife for no fault and as to whether the deceased had any strong motive to implicate the accused. During the cross examination of P.W.7, the investigating officer, accused got suggested to him that as Sambasiva Rao did not bring back the accused to her matrimonial house after the marriage, she gave a complaint to Gurazala S.H.O. and the S.I. insisted the deceased to take her back as she was alone. P.W.7 denied the said suggestion. Except that bald suggestion which was denied by P.W.7, absolutely, there was nothing to prove that the deceased developed any hatred and ill-well hardly within a period of seven months after the marriage to go to the extent of roping accused in a false case. So, there were no probabilities elicited for the false implication. According to the case of the prosecution, on

hearing the cries of the injured, the neighbourers gathered there and shifted him to the hospital. It was all happened in quick succession. If that be the situation, the presence of neighbourers and the kith and kin of the injured was inevitable at the hospital. In the circumstances, their presence at the hospital would not make the dying declarations as suspicious.

40) The contention of the appellant is that when there were two dying declarations, they must be decided on the basis of consistency and the probability and in support of such a contention, the appellant relied upon the decision in *Sanjay's case (3 supra)*. It is a case where admittedly there were two dying declarations. In that particular case, the woman sustained 95% burn injuries. In her dying declaration she alleged that the accused i.e., her fiancé had poured petrol on her body and set her on fire with a matchstick when she was going with him on scooter. There was an entry in the hospital register made by the Doctor in the presence of police constable on duty when the injured was brought to the hospital containing her statement as to how she got burn injuries. Subsequently, another statement was recorded by Executive Magistrate. She put forth a version before the Executive Magistrate that the place of occurrence as that of the house. So, both the statements of the declarent on crucial aspects runs contra to each other. In such circumstances,

the Hon'ble Supreme Court disbelieved the case of the prosecution.

41) Coming to the case on hand, it is pertinent to refer here the substance of Ex.P.12 and Ex.P.6 for better appreciation in the first form. Ex.P.12 the statement recorded by the S.I. of Police runs in substance as follows:

> "I belonged to 18th ward, Sattenapalli and live by doing business. We, four issues to my parents. Three are male and one is female. All are married. I am younger among the male issues. My marriage took place about 7 months ago. Since the date of marriage, I, my wife Dhana Lakshmi and Maguramma used to reside together. Since two months my wife demanded me to get the property from the joint family and to come to her house and I told her that it will be done after *ashadam.* Today i.e., on 21.06.2009 morning at 10-30 a.m., my mother went for bath, my wife made a quarrel with me demanding to get the property and to come along with her and poured kerosene from the kerosene tin on me and lit fire with matchstick and thrown it on me. Then, I received burn injuries. For the purpose of property my wife poured kerosene on me. I was brought to the hospital in 108 Ambulance."

42) Coming to the contents of Ex.P.6, when the learned Magistrate (P.W.5) asked the injured as to how he received burn injuries, his answer in the first form is as follows:

> "My wife demanded me to separate from my parents and to bring the property so as to reside along with her in her

parental house, for which I did not agree, as such, today my wife poured kerosene on me and set fire."

43) During the course of cross examination, P.W.1 deposed that the accused was brought back to the house about one week prior to the date of incident. Basing on this, the contention of the appellant is that as P.W.1 stated that the accused was brought back to the house one week prior to the incident, the question of the accused demanding the deceased to get the property separated and to come and to reside along with her since two months does not arise.

44) It is to be noticed that the marriage was happened 7 months prior to the date of incident. Simply because the accused was brought to the deceased house one week prior to the incident, it does mean that there was no communication between the deceased and the accused. The above aspect is not going to affect the case of the prosecution in any way, in my considered view. Apart from this, it is also the contention of the appellant that while the statement recorded by the S.I. of Police did not disclose that accused insisted for separate residence, but the statement recorded by the Magistrate whispers that the accused insisted for separate residence.

45) It is to be noticed that to understand the substance of Ex.P.12 and Ex.P.6, the whole contents are to be looked into.

A plain reading of Ex.P.12 discloses that accused demanded the deceased to get the property separated from his parents and to come along with her to her parental house to reside there. It is nothing but demanding a separate residence in my considered view. So, if Ex.P.12 and Ex.P.6 are considered, absolutely, they would not run contra with each other on crucial aspects. In my considered view, there is consistency between Ex.P.12 and Ex.P.6. The factual aspects in *Sanjay's case (3 supra),* obviously, stands in a different footing where the place of offence was different in both the declarations. Hence, the above said decision is of no use to the appellant.

46) Turning to the decision in *Sultan's case (2 supra)*, admittedly, it is a case where the Hon'ble Supreme Court held that when the Court was in doubt as to the veracity or correctness, it can and should seek corroboration, keeping in mind the fact that the accused have no chance of cross-examination. Further it is necessary to guard and ensure that the statement made by the deceased is not a result of tutoring, prompting or imagination.

47) Coming to the case on hand, there was no possibility for tutoring, etc. Both the statements of the deceased does reconcile with each other on crucial allegations. So, the case on hand, does not throw any suspicious circumstances so as to

ensure that there should be corroboration to the dying declarations.

48) Turning to the decision in *Harijana Thirupala's case (1 supra*), the contention of the appellant is that when there were two views favourable, one in favour of the accused and another in favour of the prosecution, the view favourable to the accused has to be taken into consideration to extend benefit of doubt.

49) By relying on the above, the contention of the appellant is that it is the deceased, who poured kerosene on himself and set fire so as to see that the accused would be sent back to her house and such an act on the part of the deceased ultimately lead to his death. So, the theory projected by the accused is that of suicidal theory. The theory projected by the prosecution is that of homicidal theory. To support the homicidal theory, the prosecution has two dying declarations recorded by P.W.8 and P.W.5 i.e., Ex.P.12 and Ex.P.6.

50) Now, I would like to deal with the suicidal theory alleged by the accused looking into the medical evidence. As seen from the evidence of P.W.6, the medical officer, he found the part of scalp, face and neck, both upper limbs, front and back of the chest, front and back of the abdomen and pelvic walls and front and back of both thighs with patches of right

upper legs were burnt. It is elicited from the mouth of P.W.1 during the cross examination that the weight of the deceased Sambasiva Rao was about 70 or 80 kgs. and he was taller than the accused. The contention of the appellant is that when the deceased was taller than the accused and he was a stout personality, absolutely, there was no possibility for the accused to pour kerosene on the head of the deceased, as such, it was the deceased, who poured kerosene on his head and set fire so as to see that the accused would be sent back to her parental house.

51) I have carefully looked into the above said contention. It is to be noticed that the first injury was part of scalp, face and neck was burnt and secondly both upper limbs were burnt. If really the deceased lifted the kerosene tin containing kerosene with his both hands and poured kerosene on his head, there was little possibility that both upper limbs would be drenched with kerosene. In such case the entire scalp, face and neck would have been burnt. When both hands were raised by the deceased to pour kerosene on the head, there would be no possibility that kerosene would fall upon both the hands. In such an event, there would be no occasion that both the hands will be burnt. On the other hand, if somebody poured kerosene on the head, especially, a short person than the

deceased like the accused, there would be possibility that the kerosene may fell on the part of scalp, face and neck. So, looking into the fact that the scalp, face and neck were burnt partly, it is clear that as the accused was shorter than the deceased, she was not able to pour kerosene fully on the scalp, face and neck. Apart from this, the burning of both upper limbs could only be possible if a third party poured kerosene on the head. Though, as the versions in both dying declarations were consistent with each other and though the case on hand does not require a corroboration as a rule of action, but the nature of the injuries and the site of the injuries over the dead body of the deceased would further lends an assurance to the case of the prosecution by way of corroboration.

52) As seen from another crucial aspect in the case of the prosecution is that the prosecution got marked M.O.1 to M.O.6 through P.W.8, who taken part in the investigation. M.O.1 is five liters plastic can, M.O.2 is saree pieces, M.O.3 is match box, M.O.4 is two burnt matchsticks, M.O.5 is half-burnt Red colour waist thread and M.O.6 is half-burnt gray and black colour lungi pieces. They were said to be seized under the cover of observation report. Observation report is marked as Ex.P.14. The investigating officer during the observation of scene of offence seized the coffee colour silk saree apart from other

items. As seen from Ex.P.10, item No.2 is the Khaki colour saree which was found with kerosene a mixture of flammable hydrocarbons. It is quiet unfortunate that the investigating officer did not spell out that item No.2 was wear by the accused at the time of offence. Even otherwise, as elicited from the mouth of P.W.1 that the deceased and the accused were alone present in the house at the time of offence. The defence of the accused was suicidal theory. So, if really the deceased poured kerosene on his body and set fire, naturally, reaction of the accused would have been different. It is not a case where she made any attempt to prevent the deceased from committing suicide. If really the suicidal theory was true, there would have been a possibility for the accused to come into contact with minor burn injuries. So, the suicidal theory projected by the accused can absolutely be ruled out. So, it is not a case where the evidence adduced by the prosecution is presenting suicidal theory as well as the homicidal theory. The above circumstances referred to by this Court are further strengthening the case of the prosecution to any extent by negativing the suicidal theory.

53) It is quietly evident from the evidence of P.W.5 coupled with endorsements of the medical officer two in number in Ex.P.6 that there was a certification by the medical officer as to the fit statement of mind by the injured at the time of giving

Ex.P.6 dying declaration. Apart from this, P.W.6, the medical officer, who conducted autopsy over the dead body of the deceased, denied a suggestion that when a person received 80% injuries the condition of the injured will become semi-conscious. In fact, he also explained that in the case of burn injuries, question of loosing conscious till the death does not arise. Hence, the condition of the injured at the time of recording of Ex.P.6 by P.W.5 was totally fit. Hence, the contention of the appellant that the learned Magistrate did not obtain a certification as to the fitness of the injured deserves no merits.

54) It is also the contention of the learned counsel for the appellant that there were no stains of kerosene either on ground or walls according to the evidence of investigating officer and it shows that the case of the prosecution is false. It is very difficult to accept such a contention. The cause of death was not in dispute. The place of incident was in the house of the accused and by then the presence of the accused and the deceased in the verandah was not in dispute. Simply because there were no stains on ground or the walls about the kerosene it would not throw any doubtful circumstances in the case of the prosecution. The above said contention in my considered view deserves no merits.

55) It is also contended by the learned counsel for the appellant that accused was mentally disturbed, as such, there was no possibility for her to commit the offence. During cross examination of P.W.7, he denied that accused is not mentally sound and she never made any attempt to do away with the life of her husband, Sambasiva Rao. It is not a case where the accused filed any proof whatsoever to show the so-called mental illness. It is not a case where the accused took a plea of defence of insanity. It is not known as to how the accused got suggested to P.W.7 during the cross examination about the so-called contention that the accused is not mentally sound. Viewing from any angle, this Court is of the considered view that both the dying declarations i.e., Ex.P.12 and Ex.P.6 recorded by P.W.8 and P.W.5 respectively are free from blemish and there was no possibility for tutoring and they can be a basis to sustain a conviction against the accused. The contention of the appellant that the reasons set forth by the prosecution for the allegation that accused poured kerosene on her husband and set fire was flimsy is not acceptable, as it is not a case where the prosecution sought to prove the guilt basing on circumstantial evidence. In case of circumstantial evidence only, the prosecution is expected to prove motive for the offence. Even

otherwise, the reasons set forth as motive for the offence cannot be taken as flimsy.

56) Having regard to the above, I am of the considered view that as both the dying declarations are found to be reliable, there are no grounds whatsoever to interfere with the judgment of the learned Sessions Judge, Guntur. The learned Sessions Judge, Guntur looked into the evidence and appreciated the evidence properly and he met with all the contentions raised by the learned defence counsel before the Court below. In my considered view, the prosecution before the Court below proved beyond reasonable doubt that on the date of incident accused poured kerosene on her husband and set fire. Looking into the evidence of P.W.7 and P.W.8 and the case of the prosecution, he made a finding that as the incident was occurred in a spur of movement, as the deceased slapped the accused, the case would not fall under Section 302 of I.P.C., but it would fall under Section 304 Part I of I.P.C. i.e., culpable homicide not amounting to murder. The said findings of the learned Sessions Judge are not under challenge by the prosecution before this Court.

57) Having regard to the above, this Court is of the considered view that absolutely, there are no reasons to interfere with the judgment of the Court below.

58) In the result, the Criminal Appeal is dismissed.

59) The Registry is directed to take steps immediately under Section 388 Cr.P.C. to certify the order of this Court to the trial Court on or before 01.03.2023 and on such certification, the trial Court shall take necessary steps to carry out the sentence imposed against the appellant and to report compliance to this Court.

Consequently, miscellaneous applications pending, if any, shall stand closed.

JUSTICE A.V. RAVINDRA BABU

Dt. 22.02.2023.
Note: L.R. copy be marked.
PGR

THE HON'BLE SRI JUSTICE A.V. RAVINDRA BABU

CRL. APPEAL NO.1046 OF 2010

Date: 22.02.2023

PGR