

APHC010111192016



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

**[3474]**

THURSDAY ,THE FOURTEENTH DAY OF MARCH  
TWO THOUSAND AND TWENTY FOUR

**PRESENT**

**THE HONOURABLE SRI JUSTICE K SURESH REDDY**

**THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI**

**CRIMINAL APPEAL NO: 297/2016**

**Between:**

Martha Yogamma

**...APPELLANT**

**AND**

State Of Andhra Pradesh

**...RESPONENT**

**Counsel for the Apellant:**

1. Dr CHALLA SRINIVASA REDDY

**Counsel for the Respondent:**

1. PUBLIC PROSECUTOR (AP)

**The Court made the following:**

APHC010742202016



**IN THE HIGH COURT OF ANDHRA PRADESH  
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**THE HONOURABLE SRI JUSTICE K SURESH REDDY**

**THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI**

**CRIMINAL APPEAL NO: 1023/2016**

**Between:**

Martha Sreenu, Guntur Dt.,

**...APPELLANT**

**AND**

The State Of Ap Rep Pp

**...RESPONDENT**

**Counsel for the Apellant:**

1. Dr CHALLA SRINIVASA REDDY

**Counsel for the Respondent:**

1. PUBLIC PROSECUTOR (AP)

**The Court made the following:**

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

**SPECIAL DIVISION BENCH**

\*\*\*\*

**CRL.A.No.297 OF 2016 & 1023 OF 2016**

**CRL.A.No.297 OF 2016**

**Between:**

Martha Yogamma,  
W/o.Srinu, Aged 37 years,  
R/o.BoggaramVillage,  
Ipur Mandal.

..... Appellant/A-1

**A N D**

The State of Andhra Pradesh,  
Rep. by its Public Prosecutor,  
High Court at Hyderabad.

..... Respondent/Complainant

**CRIMINAL APPEAL No.1023 OF 2016**

**Between:**

Martha Srinu,  
S/o.Balaiah, Aged 35 years,  
R/o.Boggaram Village,  
Ipur Mandal.

..... Appellant/A-2

**A N D**

The State of Andhra Pradesh,  
Rep. by its Public Prosecutor,  
High Court at Hyderabad.

..... Respondent/Complainant

DATE OF COMMON JUDGMENT PRONOUNCED: 14.03.2024

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE K.SURESH REDDY**

**AND**

**THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

1. Whether Reporters of Local Newspapers  
may be allowed to see the Judgment? Yes/No
2. Whether the copy of Judgment may be  
marked to Law Reporters/Journals? Yes/No
3. Whether His Lordship wish to see the  
fair copy of the Judgment? Yes/No

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**K.SURESH REDDY, J.**

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**B.V.L.N.CHAKRAVARTHI, J.**

**\* HON'BLE SRI JUSTICE K.SURESH REDDY**

**AND**

**\* HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

**+ CRL.A.No.297 OF 2016 & 1023 OF 2016**

**% 14.03.2024**

**# Between:**

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Martha Srinu,  
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..... Appellant/A-2

**A N D**

The State of Andhra Pradesh,  
Rep. by its Public Prosecutor,  
High Court at Hyderabad.

..... Respondent/Complainant

**! Counsel for the Appellants** : Dr.Sri Challa Srinivasa Reddy

**^ Counsel for the Respondent** : Sri Y.Nagi Reddy,  
Public Prosecutor.

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1. AIR 2003 SC 2859**
- 2. AIR 1984 SC 1622**
- 3. AIR 1976 SC 2199**
- 4. AIR 2011 SC 1562**
- 5. AIR 1992 SC 2186**
- 6. (2003) 6 SCC 443**
- 7. (2021) 6 SCC 213**

This Court made the following:

**IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI**

**(Special Original Jurisdiction)**

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

**SPECIAL DIVISION BENCH**

**PRESENT**

**THE HON'BLE SRI JUSTICE K.SURESH REDDY**

**AND**

**THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

**CRIMINAL APPEAL No.297 OF 2016 & 1023 OF 2016**

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**A N D**

The State of Andhra Pradesh,  
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Between:

Martha Srinu,  
S/o.Balaiah, Aged 35 years,  
R/o.Boggaram Village,  
Ipur Mandal.

..... Appellant/A-2

**A N D**

The State of Andhra Pradesh,  
Rep. by its Public Prosecutor,  
High Court at Hyderabad.

..... Respondent/Complainant

Counsel for the Appellant(s) : Sri Dr.Challa Srinivasa Reddy

Counsel for the Respondent(s) : Public Prosecutor

**COMMON JUDGMENT:**

*(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)*

1. The bail applications filed for the appellants/accused No.1 and 2 are posted to today. The learned counsel for accused No.1 and 2 and learned Public Prosecutor submitted that paper booklet is ready, and ready to submit arguments in the appeals, instead of bail petitions. Therefore, we heard the arguments in the appeal instead bail applications.

2. Heard Sri Dr.Challa Srinivasa Reddy, learned counsel for the appellants/accused No.1 and 2, and Sri Y.Nagi Reddy, learned Public Prosecutor for respondent/State.

3. The appeal vide CRL.A.No.297/2016 is filed for A-1. The appeal vide CRL.A.No.1023/2016 is filed for A-2. Both the appeals arose from the judgment dated 26.10.2015 passed in S.C.No.407/2014 on the file of the learned XIII Addl.District & Sessions Judge, Narasaraopet (hereinafter referred to as 'trial Court').

4. The accused No.1 and 2 were tried and convicted by the trial Court for the offence U/s.302 of Indian Penal Code, 1860

(for brevity 'I.P.C.'), and sentenced to suffer imprisonment for life, and also to pay fine of Rs.500/- (Rupees Five Hundred only) each, in default, to suffer simple imprisonment for one month each.

5. The case of the prosecution is that the A-2 is father of Martha Chandana (hereinafter referred to as 'deceased'). He married Smt.Venkayamma. The deceased born to A-2 and Venkayamma during their wedlock. Later, A-2 deserted Venkayamma and married A-1. They were blessed with two children. The paternal aunt of deceased gifted a portion in a terraced house to the deceased on 02.06.2009. Sri Martha Chandra Mouli, paternal uncle of deceased gifted Ac.0-50 cents of land to her on 17.08.2009. The deceased stayed with her paternal aunt. After death of paternal aunt, the deceased came to the house of her father. A-1 used to ask A-2 to send away the deceased with an intention to grab the property gifted to the deceased A-1 and A-2 were harassing the deceased. On 11.01.2014 accused No.1 and 2 picked up quarrel with the deceased. They poured kerosene on the deceased, A-1 set fire. The elder brothers of A-2 (P.W-1 & P.W-2), relatives of accused (P.Ws-3 to 5) and other villagers

(P.Ws-6 to 9) who are residing nearby, on hearing cries of the deceased, rushed to the house of deceased. They knocked the door of the house. The accused opened the door. They found the deceased in flames, put off the flames, and shifted her to the Government Hospital, Vinukonda.

(i) On receipt of intimation sent by the duty doctor (P.W-14), Head Constable, Ipur police station (P.W-13) went to the hospital. He recorded the statement of deceased (Ex.P-15) in the presence of P.W-14. Sub Inspector of Police (P.W-16) registered the FIR as case in Cr.No.02/2014 of Ipur Police Station for the offence U/s.302 r/w.34 I.P.C. basing on the statement of the deceased, and submitted copies to all concerned.

(ii) P.W-16 proceeded to the Government Hospital, Vinukonda, examined the deceased and recorded her statement (Ex.P-19). He also examined P.Ws-1 to 4, on the same day and recorded their statements. He visited the house of accused i.e., scene of offence, observed the same and prepared a rough sketch (Ex.P-11). On the same day at about 03.20 p.m., he received intimation that the deceased

succumbed to burn injuries at Government Hospital, Narasaraopet. P.W-16 altered the penal provision of law to section 302 r/w.34 I.P.C. and submitted memo before Judicial Magistrate of First Class, Vinukonda (Ex.P-20).

(iii) Further investigation was conducted by the Inspector of Police, Vinukonda Circle (P.W-15). On receipt of intimation from the Government Hospital about the death of deceased, he proceeded to Boggaram village and examined P.Ws-3 to 7 and recorded their statements. On 12.01.2014 he again visited the village and visited scene of offence in the presence of P.W-10 and another, seized M.Os-1 to 6 and prepared scene observation report (Ex.P-10), and also prepared rough sketch (Ex.P-11). P.W-11 photographed the scene of offence (Ex.P-13). Inspector of Police visited Government Hospital, Narasaraopet, and examined P.W-1, P.W-2, P.W-8 and recorded their statements. He conducted inquest in the presence of panchayatdars under Ex.P-12. Photographs were taken for the dead body of deceased (Ex.P-16). The dead body was sent for autopsy. The Civil Assistant Surgeon (P.W-12) conducted post mortem and issued Ex.P-14 post mortem report, opining that the deceased

would have died of burns. Inspector of Police (P.W-15) filed final report (charge sheet) against A-1 and A-2 for the offence U/s.302 I.P.C.

6. During trial, 16 witnesses were examined on behalf of the prosecution as P.Ws-1 to 16 respectively, 20 documents were marked as Exs.P-1 to P-20 respectively, apart from M.Os-1 to 6.

7. The accused were examined U/s.313 Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C. 1973) regarding the incriminating evidence appearing against them from the evidence for the prosecution. The accused No.1 and 2 denied the same, but did not choose to examine any witnesses for defence.

8. The learned trial Court after hearing the prosecution and defence, found the accused A-1 and A-2 guilty, convicted them for the offence U/s.302 I.P.C. and sentenced the accused as stated supra. Challenging the judgment, the appellants/accused No.1 and 2 preferred separate appeals.

9. Sri Dr.Challa Srinivasa Reddy, learned counsel for the appellants/accused No.1 and 2 submitted arguments that the

trial Court erroneously convicted the appellants, on the basis of dying declaration (Ex.P15), recorded by the Head Constable of Police (P.W-13) though it was an outcome of tutoring; He would further submit that the trial Court erroneously placed reliance on the statement recorded by the police, losing sight of the fact that there was enough time to get the statement recorded by a Magistrate; He also submitted that Ex.P-13 was not recorded as per the Rule 33 of Criminal Rules of Practice and Circular Orders of Andhra Pradesh High Court, 1980; therefore, no reliance can be placed on the statement recorded by the Had Constable; P.Ws-1 to 9 who are material witnesses in the case did not support the prosecution's case; there is no corroboration to prove the motive pleaded by the prosecution; therefore, the trial Court failed to see that it is not safe to convict the accused on the sole basis of dying declaration recorded by the Head Constable of Police, further the evidence of Head Constable and the duty doctor (P.W-14) are contradictory on the presence of the duty doctor at the time of recording statement;

10. Sri Y.Nagi Reddy, learned Public Prosecutor argued that dying declaration is a substantive piece of evidence and it can

be the sole basis for order of conviction and sentence without there being any corroboration, when the dying declaration creates a sense of confidence and trustworthiness in the mind of the Court; He relied upon the judgment of the Hon'ble Apex Court in the case of **P.V.Rama Krishna Vs. State of Karnataka**<sup>1</sup>.

11. The learned Public Prosecutor would further submit that the evidence of P.W-13 disclose that soon after receipt of intimation from the Government Hospital, Vinukonda, (Ex.P-16) at about 10.00 a.m., he visited Government Hospital, Vinukonda, and identified the deceased with the help of the duty doctor (P.W-14) who certified that patient is conscious and coherent to make statement; therefore, Head Constable of Police recorded statement of the deceased (Ex.P-15), in the presence of duty doctor; the statement was made voluntarily and it is not a result of tutoring or prompting; and the accused are none other than father and stepmother of the deceased, and therefore, there is no reason to disbelieve the dying declaration of the deceased; Merely because, it is a brief statement, it cannot be discarded on that

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<sup>1</sup> AIR 2003 SC 2859

ground as it guarantees truth; In those circumstances, the contention of the appellants that Rule 33 of Criminal Rules of Practice are not followed, will not help their case.

12. He would further submit that the contention of the accused that there was enough time to get the dying declaration recorded by a Magistrate, it was not raised by the defence in the trial of the case; the evidence on record would show that the deceased was shifted to Government Hospital, Narasaraopeta, after the statement was recorded by the Head Constable of Police, and later she succumbed to burn injuries in the Government Hospital, Narasaraopeta, soon after the admission by 03.00 p.m.

13. He would further submit that there is no material on record to probable the plea of the accused that they were falsely implicated in the case; the conduct of the accused would show that they did not make any attempt to put off the flames and save the girl, till the arrival of neighbours, and therefore, it runs against the accused.

14. The learned Public Prosecutor in support of his arguments, relied upon the following judgments of the Hon'ble Apex Court.

1. **Sharad Vs. State of Maharashtra**<sup>2</sup>
2. **Munnu Raja Vs. State of Madhyapradesh**<sup>3</sup>
3. **Om pal Singh Vs. State of Uttar Pradesh**<sup>4</sup>.

15. In the light of above rival contentions, the point that would arise for determination in both appeals is as under:-

***“Whether the prosecution proved the guilt of the accused No.1 and 2 for the offence U/s.302I.P.C. beyond all reasonable doubt?”***

16. **POINT:**

We perused the evidence of P.Ws-1 to 16. P.Ws-1 to 9 did not support the case of the prosecution. As already stated above, P.Ws-1, 2 and P.W-4 are brothers of A-2. P.W-3, P.W-8 are relatives of the accused. P.W-6, P.W-7 and P.W-9 are the neighbours of the accused.

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<sup>2</sup> AIR 1984 SC 1622

<sup>3</sup> AIR 1976 SC 2199

<sup>4</sup> AIR 2011 SC 1562

17. P.W-10 is the Village Revenue Officer. His evidence is on observation of the scene of offence, and seizure of M.Os-1 to 6 under Ex.P-10; preparation of rough sketch under Ex.P-11. He also deposed regarding inquest conducted on 13.01.2014 at Government Hospital, Narasaraopeta vide Ex.P-12.

18. P.W-11 is a photographer, deposed about taking photographs for the scene of offence vide Ex.P-13 photographs.

19. P.W-12 is a Civil Assistant Surgeon worked in Government Hospital, Narasaraopeta, at material point in time. He conducted autopsy over the dead body of deceased. His evidence would show that the deceased is a female girl, aged about 15 years; he found burn injuries over head, neck, limbs, chest, abdomen; and they are ante mortem injuries. He opined that the deceased would have died of burns. Ex.P-14 post mortem report was issued by him. In the cross-examination, he stated that in case of 100% burns also the victim will be able to speak.

20. The Hon'ble Supreme Court in the case of **Magabhai Nagarbhai Raval Vs. State of Gujarath**<sup>5</sup>, held as under:

*“A person suffering from 99% of burn injuries could be deemed capable enough for the purpose of making dying declaration; and that the doctor who conducted postmortem was a competent person to speak about the same.”*

21. The Hon'ble Apex Court in the case of **P.V. Radhakrishna Vs State of Karnataka**<sup>6</sup>, held that *‘there is no hard-and-fast rule of universal application in this regard, and much would depend upon the nature of burns, part of the body affected, impact of burns on the faculties to think and other relevant factors.’*

22. In the case on hand, P.W-13 is the Head Constable of Police worked in Ipur Police Station. He deposed that on 11.01.2014 at about 10.40 a.m. he recorded statement of Martha Chandana of Boggaram village in Government Hospital, Vinukonda under Ex.P-15, and the duty doctor was present during recording of Ex.P-15 statement. Duty doctor deposed that victim was conscious and can make statement.

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<sup>5</sup> AIR 1992 SC 2186

<sup>6</sup> (2003) 6 SCC 443

He also endorsed it on the statement at the time of recording the statement.

23. The learned counsel for appellants contended that in the chief-examination, P.W-13 deposed that the doctor gave treatment and went away, and therefore, that duty doctor was present while recording statement is not believable. We perused the evidence of P.W-13. He deposed that the doctor, who gave treatment, went away. Whereas P.W-14 was a duty doctor, gave intimation to the police and present by the side of Head Constable of Police, when the statement of deceased was recorded.

24. P.W-14 in his evidence categorically deposed that he visited the patient Chandana during statement made to Police Constable, and she was conscious and stable. He certified the condition of the patient on the statement. It was marked as Ex.P-17. Nothing was elicited in the evidence of P.W-13 or P.W-14, to probable the defence that relatives or any other person, present by the side of the deceased, so as to presume that they could influence the deceased, before arrival of head constable. Therefore, we do not find any material to opine that

the dying declaration made by the deceased is an outcome of tutoring or influence.

25. The statement vide Ex.P-15 i.e., dying declaration of deceased would show that on the fateful day at about 08.00 a.m., A-1 and A-2 picked up quarrel with the deceased, and sprinkled kerosene on her, and A-1 lit the match stick and set fire to the deceased. As a result, she suffered burn injuries.

26. No material is available on record, which would show that A-1 and A-2 made efforts to put off flames to save the girl before arrival of relatives and neighbours. A-2 is father and A-1 is stepmother. Surprisingly they did not even raise cries to call the neighbours. No father/mother ever will remain silent seeing their young child burning in flames, either due to accidental burns or self-immolation. This circumstance also would lend support to our conclusion that dying declaration is truthful and not infected by any malice.

27. In the light of foregoing discussion, and considering the circumstances surrounding in making it, we are of the opinion that when the dying declaration is truthful and voluntary, it can be made basis for conviction, without any

corroboration. It can be treated as substantive piece of evidence. The shortness of the statement would inculcate more confidence about its correctness. We are fortified by the following judgments of Hon'ble Apex Court.

28. The Hon'ble Supreme Court in the case of **Munnu Raja Vs. State of Madhya Pradesh, Shard Vs. State of Maharashtra** held that *“if the Court is satisfied that the dying declaration is true and voluntarily, it can be base conviction on it without corroboration, and merely because it is a brief statement, it is not a ground to discard the dying declaration, and on the contrary the shortness of the statement itself guarantees truth.”*

29. The Hon'ble Supreme Court in the case of **P.V.Rama Krishna Vs. State of Karnataka** held that *“dying declaration itself can be treated as a substantive piece of evidence and can be the basis of an order of conviction and sentence without there being any corroboration, provided, however, the same brings forth a sense of confidence and trustworthiness in the mind of the Court.”*

30. The contention of the learned counsel for appellants is that the dying declaration vide Ex.P-15 is not in a question and answer form as per Rule 33 of Criminal Rules of Practice and therefore, it is not reliable. Hon'ble Supreme Court in the case of **Om pal Singh Vs. State of Uttar Pradesh** held that *"merely because the dying declaration is not in question and answer form would not render the same unreliable."* In that view of the matter, we do not see any ground to reject Ex.P-15 dying declaration made by the deceased.

31. The Hon'ble' Apex Court in the case of **Jayamma and Another Vs State of Karnataka**<sup>7</sup>, held that *"law does not compulsorily require the presence of a Judicial/ Executive Magistrate to record dying declaration or that a dying declaration cannot be relied upon as solitary piece of evidence unless recorded by a Judicial/Executive Magistrate. It is only rule of prudence, and if, permitted by the facts and circumstances the dying declaration may preferably be recorded by a Judicial or Executive Magistrate so as to muster additional strength to the prosecution case."* In the case on hand, no facts and circumstances were elicited in the

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<sup>7</sup> (2021) 6 SCC 213

evidence of the head constable, duty doctor or Investigation Officer to probable that purposefully no intimation was given to the Judicial/Executive Magistrate to record dying declaration of the deceased. Likewise no circumstances elicited to establish that dying declaration recorded by the Head Constable is the outcome of tutoring or prompting. It was certified by the duty doctor who was present at the time of recording of the statement. The victim suffered 95-100% burns. After recording statement, immediately she was shifted to the Government Hospital, Narsraopeta, for better treatment, where she succumbed to burn injuries in few hours. In that view of the matter, the dying declaration of the deceased recorded by the Head Constable, can be relied upon as solitary piece of evidence to convict the accused.

32. Therefore, we do not find any reason to interfere with the findings of the learned trial Court. Accordingly, the point is answered.

33. In the light of foregoing discussion, both the appeals are liable to be dismissed.

34. In the result, the Criminal Appeal No.297/2016 filed by A-1 and Criminal Appeal No.1023/2016 filed by A-2 are dismissed, by confirming the judgment dated 26.10.2015 passed in S.C.No.407/2014 on the file of the learned XIII Additional District and Sessions Judge, Narasaraopeta.

Miscellaneous petitions pending, if any, in both the Criminal Appeals shall stand closed.

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**JUSTICE K.SURESH REDDY**

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**JUSTICE B.V.L.N.CHAKRAVARTHI**

**L.R. Copy is to be marked**

**B/o.           psk.**

Date: 14.03.2024

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**THE HON'BLE SRI JUSTICE K.SURESH REDDY**  
**AND**  
**THE HON'BLE SRI JUSTICE B.V.L.N.CHAKRAVARTHI**

**CRIMINAL APPEAL No.297 OF 2016 & 1023 OF 2016**  
*(Per Hon'ble Sri Justice B.V.L.N.Chakravarthi)*

**Note: Mark L.R. Copy**

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Date: 14.03.2024

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