HIGH COURT OF ANDHRA PRADESH

FRIDAY ,THE FOURTH DAY OF FEBRUARY

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR

THE HONOURABLE DR JUSTICE K MANMADHA RAO

CRIMINAL APPEAL NO: 661 OF 2015

Between:

1. BONTHA RAMACHANDRADU, KURNOOL DIST. S/o Chinna Chennaiah, R/o Padmavathi Street,
   Rudravaram Village and Mandal, Kurnool District

...PETITIONER(S)

AND:

1. INSPECTOR OF POLICE, SIRVEL CIRCLE, KURNOOL DIST.
   represented by
   The Inspector of Police, Sirvel Circle,
   Kurnool District, represented by
   The Public Prosecutor, High Court of Judicature at
   Hyderabad for the state of Andhra Pradesh,
   Hyderabad

...RESPONDENTS

Counsel for the Petitioner(s): KARRI MURALI KRISHNA

Counsel for the Respondents: PUBLIC PROSECUTOR (TG)

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

Criminal Appeal No. 661 of 2015

JUDGMENT: (*Per Hon'ble Sri Justice C.Praveen Kumar)*

1) Assailing the conviction and sentences imposed for the offences punishable under Sections 498A and 302 of Indian Penal Code ['**I.P.C.**'], Accused No. 1 in Sessions Case No. 341 of 2014 on the file of III Additional Sessions Judge, Kurnool at Nandyal, the first Accused preferred the present appeal.

2) The gravamen of the charge against the accused is that, A1 along with A2 and A3 caused the death of one Bontha Sulochana ['**Deceased**'] on 19.07.2013 at Rudravaram Village, by setting her on fire.

3) The facts, which lead to filing of the appeal, are as under:

i. PW1 is the father of the deceased. A1 is the husband while A2 and A3 are parents-in-law of the deceased.

ii. The marriage of A1 with the deceased was performed about 10 years prior to the date of giving evidence. At the time of marriage, a sum of Rs.60,000/- and seven tulas of gold was given as dowry. Both of them lived happily for a period of two years and, thereafter, A1 who got addicted to alcohol, used to beat the deceased everyday. Further, A1 to A3 used to harass the deceased for additional dowry,

which acts of harassment were being informed to PW1 on phone. It is said that, PW1 used to send provisions worth Rs.3,000/- every month to the house of accused.

iii. While things stood thus, on 19.07.2013 at about 7.00 p.m., PW1 received a phone call from a neighbour of his daughter stating that A1 poured kerosene and set the deceased on fire and that A2 and A3 were also present at that time. PW1 claims to have rushed to Government Hospital, Nandyal, where he noticed the deceased with burn injuries. When enquired, the injured – daughter narrated stating that as she could not bring additional dowry, A1 to A3 poured kerosene and set her on fire. PW1 corrects himself stating that, it was A1 who poured kerosene and set her ablaze, while A2 and A3 did not make any attempt to extinguish the fire. According to the oral statement of the injured, her neighbour took her to hospital in an auto.

iv. PW12 – who was working as Assistant Sub-Inspector of Police in Government Hospital, attached to II Town Police Station, Nandyal, stated that on 19.07.2013 at 7.10 p.m., a patient, by name Sulochana, was admitted in Government Hospital. Basing on M.L.C. [Ex.P11] intimation, he proceeded to the hospital, observed the condition of the patient and found her conscious, coherent and in a fit state of mind to give a statement. He claims to

have recorded the statement of the injured, wherein, she stated that on 19.07.2013 at about 5.00 p.m., A1 came home in a drunken condition, abused her in filthy language, threatened her with dire consequences, poured kerosene and set her on fire. It is further stated that, A2 assisted A1 in the commission of offence. On hearing cries, the neighbours claim to have gathered and shifted her. The said statement is marked as Ex.P12.

v. On 20.07.2013 at about 6.00 p.m., PW14 – the Sub-Inspector of Police, Rudravaram Police Station, received M.L.C. intimation along with the complaint and statement of Sulochana/injured, from the Government Hospital, Nandyal. Basing on which, he registered a case in Crime No.87 of 2013 for the offences punishable under Sections 498A and 307 read with 34 I.P.C. and Sections 3 and 4 of Dowry Prohibition Act. Ex.P14 is the First Information Report. On the next day i.e., 21.07.2013 at about 8.00 a.m., he went to Government Hospital, Kurnool, and recorded the statement of the injured – Sulochana and others. Thereafter, he went to Rudravaram Village at 4.00 p.m., and conducted a panchanama of the scene, which is marked as Ex.P7. He also drew a rough sketch of the scene, which is marked as Ex.P15. At the scene, he seized M.O.1. After receiving the intimation of death on 27.07.2013, he altered the Section of law from 307 to 302

I.P.C. Further investigation in this case was taken up by PW15 – Inspector of Police, who on receipt of the altered F.I.R., verified the investigation done and then visited the Government Hospital, Kurnool, where, he held inquest over the dead body in the presence of PW9 to PW11. Ex.P18 is the inquest report. During inquest, he examined PW1 and others and seized M.O.2. After completing the inquest proceedings, the body was sent for post-mortem examination.

vi. PW13 – Professor, R.F.S.L., Forensic Medicine, Kurnool Medical College, conducted autopsy over the dead body of the deceased on 28.07.2013 between 12.00 noon to 1.30 p.m., and issued Ex.P13 – post-mortem certificate. According to him, the cause of death was due to septicaemia as a result of burn injuries.

vii. PW15, who continued with the investigation, arrested the accused on 23.08.2013 at Narasapuram Metta and after collecting all the documents and after completing the investigation, a charge-sheet came to be filed, which was taken on file as P.R.C. No. 19 of 2014 on the file of Judicial Magistrate of First Class, Allagadda.

4) On appearance of the accused, copies of documents as required under Section 207 Cr.P.C., came to be furnished. Since the case is triable by Court of Sessions, the matter was committed to the Sessions Court under Section 209 Cr.P.C.

Basing on the material available on record, charges as referred to above came to be framed, read over and explained to the accused, to which, the accused pleaded not guilty and claimed to be tried.

5) In support of its case, the prosecution examined PW1 to PW15 and got marked Ex.P1 to Ex.P18, beside marking M.Os. 1 and M.O.2. After completion of prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses, to which they denied and got marked Ex.D1.

6) Out of 15 witnesses examined by the prosecution, PW3, PW4, PW5, PW9, PW10 and PW11 did not support the prosecution case and were treated hostile by the prosecution. Relying on the dying declarations made by the deceased, which according to the learned Sessions Judge are consistent, the trial Court convicted A1 alone and acquitted A2 and A3. Challenging the same, the present appeal came to be filed.

7) (i) Sri. P. Veera Reddy, learned Senior Counsel appearing for the appellant submits that the entire case rests on the written dying declaration and oral dying declarations made by the deceased before the Police [PW12 and PW14] and the Magistrate, who is examined as PW2. Relying upon the judgments of the Hon'ble Supreme Court, he would contend that the said dying declarations cannot be relied upon as the

documents produced by the prosecution and the statement made by the deceased indicate that she committed suicide by pouring kerosene and setting herself on fire. He took us through the oral and documentary evidence and the judgments of the Hon'ble Supreme Court and High Court in support of his plea.

8) On the other hand, Sri. K.Srinivasa Reddy, learned Public Prosecutor, would contend that the statement of the deceased made before the Magistrate [PW2], which is consistent can be relied upon to base a conviction. He further submits that, since the involvement of A2 and A3 in the commission of offence is not consistent with the statement made by the deceased, the trial court gave benefit of doubt to A2 and A3. According to him, the said benefit cannot be extended to A1 as his role in the commission of offence is consistent in all the statements. In view of the above, he would submit that the conviction and sentence imposed on Accused No. 1 requires no interference.

9) The point that arises for consideration is, *whether the prosecution was able to bring home the guilt of the Accused No.1 beyond reasonable doubt?*

10) It is to be noted here that the entire case is based on dying declarations recorded by PW12 & PW14, the Magistrate [PW2] and the oral dying declaration made before PW1. The learned Senior Counsel also relies upon Ex.P1 – the Medico Legal Intimation [M.L.C.] and Ex.P16, the death intimation to show that it was a case of accidental death.

11) One of the first objections raised by the learned Senior Counsel is that, none of the statements recorded are in question and answer form and, as such, same has to be rejected, since, it is in violation of Criminal Rules of Practice. The issue is no more res integra. In a recent judgment, in ***Jagbir Singh V. State (NCT of Delhi)***[1], the Hon'ble Supreme Court in paragraph no. 42 observed as under:

> "42. We are not much impressed by the contention of the State that the statements made at the hospital on 24.01.2008 and to the Police Officer on 25.01.2008, are not dying declarations. Under Section 32 of the Evidence Act, any statement made by a person as to the cause of his death or to any circumstance of the transaction which resulted in his death would be relevant. Once it is proved that such statement is made by the deceased then it cannot be brushed aside on the basis that it is not elaborate or that it was not recorded in a particular fashion. We have already noted that the principle that the statement is brief, would not detract from it being reliable. Equally, when there are divergent dying declarations it is not the law that the court must invariably prefer the statement which is incriminatory and must reject the statement which does not implicate the accused. The real point is to ascertain which contains the truth."

12) From the judgment of the Hon'ble Apex Court, it is very clear that there is no particular fashion or method in which a statement is required to be recorded. Hence, the argument of the learned Senior Counsel that the statement should have been recorded in question and answer form cannot be accepted.

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[1] (2019) 8 Supreme Court Cases 779

13) The learned Senior Counsel would further contend that, merely because the involvement of A1 is common in all the declarations, he cannot be fastened with liability, ignoring the substrative of the dying declarations. In cases arising out of multiple dying declarations, the Hon'ble Supreme Court has laid down guidelines as to how the said declarations have to be assessed. Definitely, the Court cannot pick and choose statements either to convict or acquit the accused.

14) In ***Leela Srinivasa Rao Vs. State of A.P.***[2], the Hon'ble Supreme Court was dealing with a situation where the dying declaration which was recorded by a Magistrate, there was no mention about appellant having treated the deceased with cruelty or having caused harassment. His name did not figure in the declaration. Five minutes thereafter, another statement was recorded by the Head Constable, wherein allegations came to be made against the appellant. The Court found that the witnesses including the father of the deceased did not support the case of the prosecution that the deceased was treated with cruelty by the accused. Having regard to the above, the Court did not accept the second dying declaration.

15) In ***Sayarabano Alias Sultanabegum v. State of Maharashtra***[3], the Court was dealing with the case where there was a quarrel between the accused and the deceased during

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[2] (2004) 9 SCC 713

[3] (2007) 12 SCC 562

which the appellant poured kerosene from the lamp on the deceased, which resulted in the deceased catching fire and finally succumbing to death. In the first dying declaration, the deceased attributed the said act to an accident, but, however, before the Magistrate a different version is set up where-under it was mentioned that the accused threw the kerosene lamp on her. Apart from that, it was also mentioned that her husband used to beat her on instructions of his mother. When asked by the Magistrate as to why she was changing the statement, the deceased is said to have informed that she was told not to give any statement against the family members. A week thereafter, the deceased died. The Court held that in a given set of circumstances, the same can be relied upon and distinguished ***Leela Srinivasa Rao*** [cited above], more so, in the evidence of PW2 and PW3.

16) ***Amol Singh v. State of M.P.***[4] was a case where there was more than one dying declaration and on the basis that the extent of difference between the two declarations was insignificant, the Hon'ble Supeme Court 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

[4] (2008) 5 SCC 468

> 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. (***See Kundula Bala Subrahmanyam v. State of A.P.*** [(1993) 2 SCC 684 : 1993 SCC (Cri) 655]) 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."

17) In ***Heeralal v. State of M.P.***[5], the Court was dealing with the situation where two dying declarations came to be recorded by the Tahsildar and observed as under:

> "9. Undisputedly, in the first dying declaration recorded by a Naib Tahsildar, it has been clearly stated that she tried to set herself ablaze by pouring kerosene on herself, but in the subsequent declaration, recorded by another Nayab Tahsildar, a contrary statement was made. It appears that one dying declaration earlier was made before the doctor. The trial court referred to the evidence of Dr. Chaturvedi who stated that the deceased was admitted on Bed No. 8, but the father of the deceased stated that her daughter was admitted on some other bed number.
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> 10. The trial court and the High Court came to abrupt conclusions on the purported possibility that the relatives of the accused may have compelled the deceased to give a false dying declaration. No material was brought on record to justify such a conclusion. The evidence of the Nayab Tahsildar who recorded Ext. D-4 was examined as PW 8. His statement was clear to the effect that nobody else was present when he was recording the statement. That being so, in view of the

[5] (2009) 12 SCC 671

> apparent discrepancies in the two dying declarations it would be unsafe to convict the appellant."

18) In ***Sher Singh V. State of Punjab***[6], in the first dying declaration recorded by the Police Officer, she stated that the fire was accidental and it happened when she was preparing tea. On the next day her uncle met her, to whom she stated that the accused had burnt her. Thereafter an application came to be made before the Court requesting for examination of the deceased again and, accordingly, her statement was again recorded by the Police Officer, wherein, she disclosed about the involvement of her in-laws in the commission of offence. The Court found that the second statement appears to be more natural, although it does not contain the certificate of the doctor that she was in a fit state of mind to give a dying declaration but the Magistrate who recorded the statement certified that she was in a conscious state of mind and in a position to make the statement to him. The Court held that, mere fact that it was contrary to the first declaration would not make it untrue. The statement made to the uncle is found to be consistent with the second dying declaration involving the accused in the commission of offence. The third dying declaration recorded by the S.I. on the direction of his superior officer was found to be consistent with the second dying declaration and the oral dying declaration in which the doctor certified that she was in a fit state of mind to give statement.

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[6] (2008) 4 SCC 265

19) In ***Jagbir Singh*** [cited 1st supra], the Hon'ble Supreme Court after taking into consideration all the judgments on the subject, concluded as under:

> "**We would think that on a conspectus of the law as laid down by this court, when there are more than one dying declaration, and in the earlier dying declaration, the accused is not sought to be roped in but in the later dying declaration, a somersault is made by the deceased, the case must be decided on the facts of each case**. The court will not be relived of its duty to carefully examine the entirety of materials as also the circumstances surrounding the making of the different dying declarations. If the court finds that the incriminatory dying declaration brings out the truthful position particularly in conjunction with the capacity of the deceased to make such declaration, the voluntariness with which it was made which involves, no doubt, ruling out tutoring and prompting and also the other evidence which support the contents of the incriminatory dying declaration, it can be acted upon. Equally, the circumstances which render the earlier dying declaration, worthy or unworthy of acceptance, can be considered."

20) From the judgments of the Hon'ble Apex Court, referred to above, more particularly ***Jagbir Singh*** [cited 1st supra], it is very clear that where there are more than one dying declaration, the Court has to carefully examine the entirety of the material and also the circumstances surrounding the making of dying declarations. If the Court finds that incriminatory dying declaration brings out the truthful position in conjunction with the capacity of the deceased to make such declaration, the

voluntariness with which it has been made cannot be doubted and can be acted upon.

21) Keeping in view the law laid down by the Hon'ble Supreme Court in the judgments referred to above, we shall now deal with the case on hand.

22) Before dealing with the dying declaration recorded by PW2 [Magistrate] and the oral dying declaration made before PW1, it would be just and proper for us to deal with the

I. "Statement of the deceased recorded by PW12."

23) In the said statement the injured/deceased stated that her husband, who got addicted to alcohol used to abuse her in filthy language, threatened her with dire consequences and also beat her in drunken condition. The injured/deceased further stated that A1 to A3 harassed her to bring additional dowry and gold from her parent's house. On such occasions, her parents used to meet her, console her and then go away. In spite of the same, her husband and in-laws did not change their attitude and continued to harass her. On 19.07.2013 at about 5.00 P.M., her husband came home in drunken condition and along with his parents abused her in filthy language and threatened her with dire consequences. They admonished her that how she has been staying in their house without bringing additional dowry from her parents house, and for no reason, if they done away with her, who will come to her rescue. It is stated that A2 and A3 caught hold of the injured/deceased while A.1 poured

kerosene and set her on fire, unable to bear the pain due to burns, she came out of the house. On hearing her cries, the neighbours and others put off flames. Thereafter, A2 took the injured/deceased in a auto to Government Hospital, Nandyal, admitted her in the hospital and then left the place.

24) From the above statement, it can be inferred that A2 and A3 caught hold of the injured/deceased while A1 poured kerosene and set her on fire. But, PW15-Investigating Officer in his cross-examination while referring to Section 161 Cr.P.C. statement of the deceased stated that nowhere the deceased stated about A2 and A3 harassing her for additional dowry. He further admits that the injured/deceased stated before A.S.I of Police that "*as she was undergoing treatment in Government Hospital, at that time when Police questioned her, she does not know as to what she has stated before the Police due to unbearable pain due to burn injuries.*" It would be appropriate to extract the same, which is as under:-

> "It is true that nowhere it is mentioned in 161 Cr.P.C. statement of the deceased that A2 and A3 harassed her for additional dowry or they were present at the time of alleged incident. Further she stated before ASI, that as she was undergoing treatment in government hospital, at that time when police questioned her, she do not know what she has stated before the police due to the unbearable pains due to burn injuries".

25) Even PW14 – the Sub-Inspector of Police in his cross-examination admits as under:

> "It is true that as per Ex.P12 the in-laws caught hold of the deceased Sulochana and A1 poured kerosene and set fire but in 161 Cr.P.C. statement of the deceased reveals that there is no mention of harassment by A1 to A3 and at the time of incident A2 and A3 were not present at the scene of offence. She further stated that she is not aware of the facts and what she stated before the police while recording the statement by the outpost police."

26) From the statements of these two witnesses, who took up investigation from PW12, it is very much clear that the deceased categorically stated that she is not aware of what she has stated before the Police while recording the statement by the Outpost Police and 161 Cr.P.C., statement recorded during the course of investigation.

27) Having regard to the above, we feel that the statement of the deceased under Ex.P12 recorded by PW12 – Assistant Sub-Inspector of Police, cannot be given any weight. By this, it cannot be said that the entire fabric of the case collapses, as the First Information Report [Ex.P14] came to be registered basing on Ex.P12 statement. The reason being that there is no dispute with regard to injured sustaining burn injuries, pursuant to which, she was brought to the hospital. Hence, the argument that the entire case has to be rejected cannot be accepted. At the most, as held earlier, the statement under Ex.P12 has to be viewed with suspicion.

II. Oral Dying Declaration made before PW1.

28) The next declaration which requires consideration is the oral dying declaration made before PW1.

29) PW1 is the father of the deceased, who in his evidence deposed about the marriage of deceased taking place 10 years prior to giving of evidence and payment of dowry at the time of marriage. His evidence also reveals harassment in the hands of A1 to A3 for additional dowry. According to him, in the year 2013, on one day at about 7.30 p.m., he received a phone call from the neighbour of his daughter informing about A1 pouring kerosene and setting her on fire, while A2 and A3 were also present at that time. He claims to have gone to the hospital where the deceased was admitted and when enquired, the deceased disclosed about the commission of offence. At first, PW1 deposed stating that A1 to A3 poured kerosene and set her on fire, but immediately he goes back on said statement and again says that it was A1 who poured kerosene and set her on fire while A2 and A3 did not make any attempt to extinguish the fire.

30) In the cross-examination, it was suggested to him that the deceased informed the doctor that she sustained burn injuries due to gas leakage and the doctor sent intimation to that effect to the police, but the same is denied by him. He

further denies the suggestion that in Ex.D1 he stated to the police that his daughter poured kerosene on herself and set ablaze. The suggestion that A1 to A3 were not present at the time of incident and that the injuries sustained were due to gas leakage was denied by him. He further admits that, it was A1 to A3 who shifted the deceased to the hospital. To a suggestion that he influenced the deceased to state before the police that A1 to A3 poured kerosene and set ablaze was denied. He further admits that it was A1 to A3 who shifted the deceased from Government Hospital, Nandyal to Government Hospital, Kurnool, for better treatment. He further admits that, even in Kurnool Hospital, his daughter informed the doctor that she sustained burn injuries in gas leak.

31) This evidence of PW1 would disclose as under:-

1. The information from the neighbours that A1 poured kerosene and set the daughter of PW1 on fire while A2 and A3 were present at the time;

2. In Government Hospital at Nandyal, the injured informed him about the incident, wherein in one breath he stated that A1 to A3 poured kerosene and set her on fire as she did not bring additional dowry and immediately, thereafter states that it was only A1 who poured kerosene and set ablaze while A2 and A3 were present and did not make any attempt to extinguish the fire;

3. According to him, it was the neighbours who shifted the injured to hospital.

32) In the cross-examination, a total new version is given by PW1, namely, (1) he denied the suggestion that injured sustained burn injuries due to gas leakage and also denies the intimation given by the doctor to the police; (2) he also denies the suggestion that he stated before the police, under Ex.D1, that his daughter poured kerosene and set herself ablaze; (3) he admits that it was A1 to A3 who shifted the injured to Government Hospital, Nandyal and from Government Hospital, Nandyal, to Government Hospital, Kurnool, for better treatment; and (4) he states that at Kurnool Hospital, his daughter informed the doctors that she sustained burn injuries due to gas leak.

33) Therefore, as seen from the above, in one breath he deposed that A1 to A3 poured kerosene and set the deceased on fire, while in the very next statement he stated about A1 pouring kerosene and setting her on fire. Insofar as A2 and A3 are concerned, they seems to have kept quiet without extinguish the fire. The evidence of PW1 also discloses that, immediately, after the incident it was A1 to A3 who took the injured to Government Hospital at Nandyal and from there to Government Hospital, Kurnool, for better treatment.

34) Insofar as answers elicited with regard to deceased informing the hospital authorities that she sustained burn injures due to gas leakage vis-a-vis Ex.P1 and Ex.P16, it appears that the same could only be based on the entries made in the Register by the Hospital authorities at the time of admission in the Hospital. That does not mean that the deceased herself disclosed to the doctor that she sustained burn injuries due to gas leakage. The admission in the cross-examination of PW1 run contra to the entire gamut of his evidence. Therefore, having regard to the inconsistency in the oral dying declaration made before him vis-à-vis the dying declaration made before the Magistrate [PW2] by the deceased herself [which we will discuss later], coupled with her statement recorded by the Police, during the course of investigation, it may not be safe to place any reliance on the said oral dying declaration made before PW1.

III. Regarding Ex.P1 and Ex.P16.

35) At this stage, the learned Senior Counsel tried to impress upon this Court with his plea that it was an accidental death by referring to Ex.P1 [M.L.C.] and Ex.P16 [Death Intimation]. Insofar as endorsement in Ex.P1 - M.L.C intimation is concerned, the evidence on record and medical record indicates that it was A2 who admitted the deceased in the hospital. Probably on the basis of information furnished by A2, endorsement must have been made indicating the manner in which the incident took place at the time of admission in the

hospital. The contents of the endorsement in Ex.P1 must have been carried forward in Ex.P16 – the death intimation. Merely because PW1 was present by the side of the deceased till her death a week later, does not by itself mean that the endorsement made therein have to be accepted as gospel truth. PW1 may not be aware about the information furnished by one of the accused and the recording made in the Register. It was not even suggested to PW1 about the same. Therefore, the argument of the learned Senior Counsel that the entire case has to be thrown out, in view of the endorsement in Ex.P1 [M.L.C.] and Ex.P16 [Death Intimation] cannot be accepted.

IV. Dying Declaration before PW2.

36) The only other statement which requires now to be considered is the "dying declaration" made before the Magistrate [PW2].

37) When a dying declaration is recorded in accordance with law, which gives a cogent and plausible explanation of the occurrence, the Court can rely upon it as a solitary piece of evidence to convict the accused. It is for this reason that Section 32 of the Evidence Act, 1872 is said to be an exception to the general rule against the admissibility of hearsay evidence and its Clause (1) makes the statement of the deceased admissible. Such statement, classified as a "dying declaration" is made by a person as to the cause of his death or as to the injuries which culminated to his death or the circumstances under which

injuries were inflicted. A dying declaration is thus admitted in evidence on the premise that the anticipation of proving death breeds the same human feelings as that of a conscientious and guiltless person under oath. It is a statement comprising of last words of a person before his death which are presumed to be truthful, and not infected by any motive or malice. The dying declaration is therefore admissible in evidence on the principle of necessity as there is very little hope of survival of the maker, and if found reliable, it can certainly form the basis for conviction. [***Jayamma and Another V. State of Karnataka***[7]].

38) The learned Senior Counsel would contend that the dying declaration made before the Magistrate [PW2], which is placed on record as Ex.P2, cannot be relied upon as the same is not endorsed by a doctor, with regard to the mental condition of the deceased. He placed reliance on the judgment of the Hon'ble Supreme Court in ***Paparambaka Rosamma and Others V. State of A.P.***[8] and also a judgment of ***Nallapati Sivaiah V. Sub-Divisional Officer, Guntur, Andhra Pradesh***[9], in support of his proposition that the doctor should certify not only with regard to consciousness of the injured at the time of making the statement but also as to the fitness of mind of the deceased that existed before recording dying declaration. In

[7] (2021) 6 Supreme Court Cases 213

[8] (1999) 7 Supreme Court Cases 695

[9] (2007) 15 Supreme Court Cases 465

Sham Shankar Kankaria V. State Of Maharashtra[10], the Hon'ble Apex Court after referring to the judgments on the issue observed, that the dying declarations is only a piece of untested evidence and most like any other evidence to satisfy the Court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it. Relying upon the decision in ***Paniben V. State of Gujarat***[11], wherein, the Hon'ble Apex Court after referring to several previous judgments governing the dying declaration held as under:

i. "There is neither rule of law nor of prudence that dying declaration cannot be acted upon without corroboration. (***Munnu Raja*** **v.** ***State of M.P.*** [(1976) 3 SCC 104: 1976 SCC (Cri) 376 : (1976) 2 SCR 764]).

ii. If the Court is satisfied that the dying declaration is true and voluntary it can base conviction on it, without corroboration. (***State of U.P.*** **v.** ***Ram Sagar Yadav*** [(1985) 1 SCC 552 : 1985 SCC (Cri) 127 : AIR 1985 SC 416]; ***Ramawati Devi*** **v.** ***State of Bihar*** [(1983) 1 SCC 211 : 1983 SCC (Cri) 169 : AIR 1983 SC 164]).

iii. This Court has to scrutinise the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination. The deceased had opportunity to observe and identify the assailants and was in a fit state to make the declaration. (***K. Ramachandra Reddy*** **v.** ***Public Prosecutor*** [(1976) 3 SCC 618 : 1976 SCC (Cri) 473 : AIR 1976 SC 1994]).

iv. Where dying declaration is suspicious it should not be acted upon without corroborative evidence. (***Rasheed Beg*** **v.** ***State of M.P.*** [(1974) 4 SCC 264 : 1974 SCC (Cri) 426]).

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[10] (2006) 13 Supreme Court Cases 165

[11] (1992) 2 Supreme Court Cases 474

v. Where the deceased was unconscious and could never make any dying declaration the evidence with regard to it is to be rejected. (***Kake Singh* v. *State of M.P.*** [1981 Supp SCC 25 : 1981 SCC (Cri) 645 : AIR 1982 SC 1021]).

vi. A dying declaration which suffers from infirmity cannot form the basis of conviction. (***Ram Manorath* v. *State of U.P.*** [(1981) 2 SCC 654 : 1981 SCC (Cri) 581]).

vii. Merely because a dying declaration does not contain the details as to the occurrence, it is not to be rejected. (***State of Maharashtra* v. *Krishnamurti Laxmipati Naidu*** [1980 Supp SCC 455 : 1981 SCC (Cri) 364 : AIR 1981 SC 617]).

viii. Equally, merely because it is a brief statement, it is not be discarded. On the contrary, the shortness of the statement itself guarantees truth. ***Surajdeo Oza* v. *State of Bihar*** [1980 Supp SCC 769 : 1979 SCC (Cri) 519 : AIR 1979 SC 1505]).

ix. Normally the court in order to satisfy whether deceased was in a fit mental condition to make the dying declaration look up to the medical opinion. But where the eye witness has said that the deceased was in a fit and conscious state to make this dying declaration, the medical opinion cannot prevail. (***Nanahau Ram* v. *State of M.P.*** [1988 Supp SCC 152 : 1988 SCC (Cri) 342 : AIR 1988 SC 912]).

x. Where the prosecution version differs from the version as given in the dying declaration, the said declaration cannot be acted upon. (***State of U.P. v. Madan Mohan*** [(1989) 3 SCC 390 : 1989 SCC (Cri) 585 : AIR 1989 SC 1519]).

xi. Where there are more than one statement in the nature of dying declaration, one first in point of time must be preferred. Of course, if the plurality of dying declaration could be held to be trustworthy and reliable, it has to be accepted. [See ***Mohanlal Gangaram Gehani v. State of Maharashtra*** (AIR 1982 SC 839)]"

39) The ratio laid down in the above judgment was also referred to by the Hon'ble Supreme Court in ***Jayamma and Another*** [cited 7th supra). From the judgments referred above, it is clear that, merely because the endorsement of the doctor is not there with regard to the fitness of the mind, it does not make the dying declaration invalid, when the Magistrate who went there to record the dying declaration, made an endorsement with regard to the fitness of the mind of the deceased after putting her some preliminary questions. The Magistrate, [if reliable] has to be treated as eye witness with regard to assessing the mental state of the mind of the deceased. ***(Nanahau Ram v. State of M.P.)[12].***

40) In the instant case, the dying declaration which is recorded by the Magistrate contains an endorsement of the doctor prior to recording the statement, which shows that the patient was conscious and coherent. Thereafter, the Magistrate put some preliminary questions and on being satisfied with regard to her consciousness, coherence and fit mental condition to give the statement, proceeded to record the statement. After completing the statement, he again took the endorsement of the doctor, who says that the patient is conscious and coherent at the time of recording of the statement. Therefore, the argument of the learned Senior Counsel that there is no evidence with

[12] 1988 Supp SCC 769

regard to the mental fitness of the deceased at the time of recording the statement, cannot be accepted.

V. Whether the statement of the deceased made before PW2 can be accepted?

41) Coming to the statement made by the deceased before the Magistrate under Ex.P2 [Dying Declaration]; she in her statement categorically stated that her husband used to harass her daily in a drunken condition and also used to beat her and harass her on the ground that she is having extra-marital affairs with others. According to her, her husband came home in a drunken condition and suspecting her fidelity, harassed her and then forced her to die. In the evening, she poured kerosene on herself and set fire to her saree. At that time, her husband [A1] set fire to her blouse. Unable to bear the same, she came out of the house and removed her saree. Though, the Magistrate was cross-examined, his evidence remained unshattered. The only thing which was elicited in the cross-examination of the Magistrate was that the deceased did not state anything about dowry or harassment by A2 and A3. Probably, for this reason, the learned Sessions Judge acquitted A2 and A3 for the offence punishable under Section 498A I.P.C. and Sections 3 and 4 of Dowry Prohibition Act, while convicting A1 for the offence punishable under Section 302 I.P.C.

42) This statement of deceased gets support from the evidence of PW14 – Sub-Inspector of Police, who investigated the case before it was handed over to PW15 – the Inspector of Police. In the cross-examination by the Counsel for the accused, it was categorically elicited, that as per 161 Cr.P.C., statement, the deceased – Sulochana herself poured kerosene and set herself on fire on saree then A1 set fire to her blouse. It would be appropriate to extract the same, which is as under:

> "It is true that as per 161 Cr.P.C. statement the deceased Sulochana, she herself poured kerosene on her body and set fire to her saree. A1 set fire to her blouse".

43) Therefore, the answers elicited in the cross-examination of PW14 by the counsel for the accused, coupled with the contents of dying declaration recorded by PW2, establish the presence and participation of the accused, more so, when the statement made before PW2 gets corroboration from the evidence of PW14 and as it inspires confidence in the mind of the Court, the same can be accepted. Further, there is no motive for PW2 to speak falsehood implicating the accused in the crime. Hence, the statement made before PW2 and marked as Ex.P2 can be believed to establish the involvement of the accused in the offence.

VI. Nature of offence.

44) Coming to the nature of offence, the learned Senior Counsel would contend that the statement made before PW2 do

not establish that accused had any intention to cause death of the deceased. As stated above, the deceased first poured kerosene on herself and then set her saree on fire. Immediately thereafter, Accused No. 1 is said to have lit a match stick and set fire to the blouse of the deceased. Unable to bear the same, she came out of the house and removed the saree. At this stage, it would be appropriate to refer to the evidence of the Doctor [PW13], who conducted post-mortem examination. His evidence shows that, he conducted post-mortem examination on 28.07.2013 i.e., nearly a week after the incident and according to him, the death was due to septicaemia as a result of burn injuries. The infected ante mortem mixed degree burn injuries are as under:

> "1) Front and back of neck.
> 2) Front and back of chest.
> 3) Front and back of upper part of abdomen.
> 4) Both upper limbs excluding hands."

45) From the above, it is clear that there were four burn injuries on the body. Two of them were on front and back of the neck and front and back of the chest; while other two burn injuries were around the upper part of abdomen and both limbs excluding hands. Though the degree of burns on the body were only 52%, but they were spread on the upper as well as middle-lower portion of the body. Nothing has been elicited by the prosecution from the Doctor [PW13] to show that septicaemia, which is a cause of death, was only because of burn injuries caused due to act of accused in setting fire to the blouse, as the

burn injuries were not only on the upper part of the body, but were also in the lower middle portion of the body. Therefore, the prosecution has not come forward with any positive evidence that the burn injuries on the body of the deceased were only due to act of the deceased in setting fire on the blouse and the septicaemia burns were only because of the act of accused No.1. Possibility of deceased sustaining burn injuries, as she also set herself on fire, though came out and removed the saree a little later, cannot be ruled out.

46) At this stage, the conduct of the accused also requires to be noticed.

47) As reflected in the evidence of PW1, it was A1 to A3 who took the injured to Government Hospital at Nandyal and from there to Government Hospital, Kurnool, for better treatment. He was not treated hostile by the prosecution. If really there was any intention on the part of the accused to cause death of the deceased, the accused would have poured kerosene and set the deceased on fire, which they have not done. On the other hand, it was the deceased who herself poured kerosene and set herself on fire and then A1 is said to have set fire her blouse. Thereafter, as stated by PW1, the accused took the deceased to the hospital. If really, they wanted the deceased to die, they would not have made any effort to take the deceased to the hospital. Initially they took her to Government Hospital, Nandyal and then to Government Hospital, Kurnool, for better treatment.

Not only the evidence of PW1 but also Ex.P16 – the death intimation issued by the hospital, coupled with dying declaration made by the deceased before the Sub-Inspector of Police reflect the name of A2 as the person who took the deceased to the hospital.

48) Taking into consideration the manner in which the incident in question took place, we are of the opinion that the conviction of the Appellant/Accused No.1 has to be scaled down to one under Section 304 Part-II of IPC. Hence, the conviction under Section 302 IPC is set-aside and the Appellant/Accused No.1 is convicted under Section 304 Part-II IPC and sentenced to undergo rigorous imprisonment for a period of seven years. However, the conviction under Section 498A I.P.C., and the sentence for the said offence is sustained having regard to the contents in Ex.P2. The period of sentence undergone by the Appellant/Accused No.1 as remand prisoner shall be given set off under Section 428 Cr.P.C. Consequently, the Appellant/Accused No.1 shall be set at liberty forthwith on completion of above mentioned imprisonment, if not required in connection with any other case or crime.

49) Accordingly, the appeal is ***allowed*** partly. Consequently, miscellaneous petitions, if any, pending shall stand closed.

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JUSTICE C.PRAVEEN KUMAR

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DR. JUSTICE K. MANMADHA RAO

Date: 04.02.2022
Note: LR copy to be marked.
B/o. S.M.../

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND

THE HON'BLE DR. JUSTICE K. MANMADHA RAO

Criminal Appeal No. 661 of 2015

(*Per Hon'ble Sri Justice C.Praveen Kumar)*

Date: 04.02.2022

S.M.