

PETITIONER:
CHARIPALLI SHANKARARAO

Vs.

RESPONDENT:
PUBLIC PROSECUTOR HIGH COURT OF ANDHRA PRADESH, HYDERABAD

DATE OF JUDGMENT 13/01/1995

BENCH:
FAIZAN UDDIN (J)
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FAIZAN UDDIN (J)
RAY, G.N. (J)

CITATION:
1995 AIR 777 1995 SCC Supl. (4) 24
JT 1995 (1) 364 1995 SCALE (1) 192

ACT:

HEADNOTE:

JUDGMENT:

1. This Criminal Appeal under Section 2-A of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 has been directed against the reversing judgment of the High Court of Andhra Pradesh passed in Criminal Appeal No. 324/1985 setting aside the order of acquittal of the appellant dated 31.10.84 for an offence under Section 302 of the I.P.C., recorded by the Session Judge, East Godavari Division at Rajahmundry in Session Case No. 50/1984. By the said judgment the High Court convicted the appellant under Section 302 of the Penal Code and sentenced him to undergo life imprisonment.

2. The prosecution case was that the deceased girl Seelam Nageswari aged about 16 years was residing with her parents in the eastern portion of the house situated in Kondawari Lane belonging to Smt. Mathineni Guramma, the mother-in-law of the accused appellant. The said portion of the house was obtained by the parents of the deceased girl on a monthly rent of Rs. 120/- about four months prior to the occurrence and the land lady was demanding higher rent at the rate of Rs. 150/- per month. It is said that in the morning of 4.2.1984 Smt. Seelam Narasayamma, PW 1 W/o Venkateshwarlu, PW 9, the mother of the deceased girl sent Rs. 120/- towards the house-rent for the month of January, 1984 through her son Srinivasarao, PW 3 to the (land lady), the mother-in-law of the appellant but she declined to receive the same saying that the rent was enhanced to Rs. 150/- and, therefore, Rs. 30/- more should be paid. In the afternoon when Venkateswarlu, PW 9, the husband of PW 1 came home he was informed that the land-lady had not accepted Rs. 120/- as rent for January, 1984 and was demanding enhanced rent at the rate of Rs. 150/- per month. The same day at about 8.00 PM the land-lady Guramma and her daughter Sitalakshmi, the wife of the accused appellant came to the house of PW 1 and demanded the rent at the rate of Rs. 150/- and both of them are said to have abused the family members of PW 1, Seelam

Narasayamma who requested them not to abuse and wait till the return of her husband to the house as she was not having the money to pay. At that point of time the deceased Nageswari was stitching fall to a saree sitting in the backyard of the tenanted house. In the mean-while the appellant also arrived there and started showering abuses in raised voice and demanded the immediate payment of rent at Rs. 150/- even without waiting the return of the husband of Seelam Narasayamma, PW 1. The appellant also threatened to remove their household articles and threw them in the Bazar and remove the tiles of the portion of the house occupied by him. Saying so the appellant went to the backyard of the house through the eastern lane while the land-lady and her daughter-inlaw continued to abuse PW 1 and her family members standing in front of the house. PW 1 heard the cries of her deceased daughter, Nageswari from the backyard. On hearing her cries, PW 1, Seelam Narasayamma, PW 2 Venkateswari, another daughter elder to the deceased as well as her son Srinivasarao, PW 3 rushed to the backyard through eastern lane which is said to be more convenient to reach to the backyard and found the deceased in flames. In the mean-while the appellant rushed back and pushing them aside and 366

went away. They poured water on Nageswari and extinguished the fire. They questioned Nageswari who was conscious as to what had happened, to which she stated that the appellant came there abusing and when he was about to remove the articles to throw them away, she obstructed him to do so and then the appellant went into the kitchen, brought a kerosene tin, and poured it on her body and set fire to her with a match-stick. Venkateshwarlu PW 2 the elder sister of the deceased and her brother Srinivasarao, PW 3 went to the Police Station to report the incident. On receiving the information, Head Constable, G.V. Raman PW 16 came to the place of occurrence and recorded the statement Ext P 5 of injured Nageswari. As Nageswari was not in a position to sign due to bum injuries the Head Constable, PW 16 obtained her thumb impression on Ext.P 5 which was attested by Seelam Apparao, PW 7 and Palika Apparao, PW 8 who were present there at the time of recording the statement Ext. P 5. The Head Constable, PW 16 then sent the injured Nageswari to the Government Hospital Rajahmundry for treatment and registering the crime against the appellant.

3.Dr. K. Ramalingeswara Rao, PW 13 admitted the injured Nageswari in the hospital and gave the treatment for her burn injuries. Dr. Ramalingeswara Rao, PW 13 is also said to have recorded the state0ment of Nageswari which was marked as Ext. P 11. On receiving the First Information Report the Assistant Sub-Inspector, M.Koteswararao, PW 17 also reached the hospital where he recorded the Statement Ext. P 16 of the injured Nageswarl under Section 161 of the Cr.P.C. He also examined Seelam Narasayamma, PW 1 Venkateswari, PW 2 and Srinivasarao, PW 3 as well as PWs 4 to 9 under Section 161, Cr.P.C. The injured Nageswari died in the hospital next day in the morning.

4.Satnibabu, PW 18, the Sub-Inspector held inquest over the dead body and sent the dead body for postmortem examination. Dr. B.N. Sastry, PW 15, the Deputy Civil Surgeon performed autopsy over the dead body of Nageswasri and as per his post mortem report, Ext. P 16 the doctor found 90 per cent bum injuries all over the body. In the opinion of doctor B.N. Sastry, Nageswari died of circulatory failure and shock due to burns.

5. At the trial the appellant pleaded to be innocent and stated that he was falsely implicated. He took plea that he

had learnt that the deceased had become pregnant and her parents, PW1 and PW 9 managed her abortion secretly and when her mother-in-law learnt about it she asked them to vacate the portion of the house occupied by them as a result of which there was an altercation between his mother-in-law and the deceased regarding the bad character of the deceased. He stated that when he went to the house of PW 1 and 9 he found that PW 1 was abusing his wife and mother-in-law and the deceased was in flames and, therefore he returned back to his house. He stated that he had learnt that Nageswari had set fire to herself but in order to save themselves from the penal consequences for the offence of attempt to commit suicide by the deceased and with a view to conceal the family scandal PW 1 to 3 as well as PW 7 to 9 after mutual deliberations implicated the appellant falsely. After evaluation of the entire prosecution evidence the learned Trial Judge rejected all the dying declarations made by the deceased and also rejected the oral

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evidence adduced by the prosecution and recorded the finding that the appellant was innocent and, therefore, passed the order of acquittal. However, the High Court on analysing the entire prosecution evidence and on overall consideration of the facts of the case accepted the evidence on record of PW 1 to 9 as well as the declaration, Ext. P 5 recorded by the Head Constable, PW 16 and on that basis recorded the finding that there was sufficient reliable evidence establishing the guilt of the accused appellant, and, therefore, set aside the order of acquittal and convicted the appellant under Section 302, I.P.C. and sentenced him to undergo life imprisonment against which this appeal has been preferred.

6. Learned counsel for the appellant assailed the findings of the High Court with regard to the dying declaration Ext. P. 5 recorded by the Head Constable, PW 16. It was urged by him that in fact the deceased was an unmarried girl but became pregnant and her parents PW1 and 9 arranged her abortion secretly which became known to the mother-in-law of the appellant and, therefore, she asked them to vacate the portion for which there was an exchange of hot words between them by reason of which the deceased made a bid to end her life by committing suicide by setting fire to herself to avoid the family scandal and to save themselves from penal consequences, the family members of the deceased foisted the blame falsely on the appellant after due deliberations. Learned counsel for the appellant submitted that the alleged dying declaration Ext. P 5 was not worthy of reliance as the same was made after deliberations and tutoring the deceased. It was submitted that the dying declaration Ext. P 5 said to have been recorded by the Head Constable, PW 16 is neither recorded by a doctor nor any Magistrate was requisitioned to record the same nor it is in the question answer form. He Submitted that in the dying declaration there is no mention that the deceased had obstructed the appellant from throwing the articles and removing the tiles of the house before she was set on fire and the dying declaration is against the natural conduct in-as-much as the deceased would have escaped by running away when kerosene was poured on her and before the match stick was lit to set fire on her. After giving a serious consideration to the submissions made above and on a close analysis of the evidence on record concerning the dying declaration Ext. P 5 we find that the reasons given by the High Court in accepting the evidence with regard to the dying declaration Ext. P 5 are quite reasonable and weighty as compared to

the conclusions recorded by the learned Trial Judge which is totally against the weight of the evidence.

7. Km. Seelam Venkateswari, PW 2 is the elder sister of the deceased. She stated that soon after the occurrence she went to the police-station and informed about the incident and immediately thereafter police came to the house and recorded the statement of the deceased Nageswari in the presence of family members and others and that the injured Nageswari had put her thumb impression on her statement recorded by the police. G.V. Raman, PW 16 police Head Constable deposed that he was present in the police station when Venkateswari, PW 2 came on 4.2.1984 at about 11.30 PM and informed about the incident. He then proceeded to the place of occurrence and recorded the statement Ext. P 5 of injured Nageswari and obtained

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her thumb impression on the same which was attested by the witnesses present there. He stated that he had recorded the statement Ext. P 5 as was stated by the injured girl Nageswari which was read over to her and thereafter obtained her thumb impression. K. Pullarao, PW 4 is also a tenant of the same land lady in the eastern portion of the same house who though turned hostile yet admitted that the police had recorded the statement of the deceased girl to the effect that the appellant had poured kerosene on her and lit her clothes. He admitted that injured Nageswari was lying on a cot and talking in a low voice. Seelam Apparao, PW 7 also deposed that the police had recorded the statement of injured Nageswari in his presence which was attested by him. He stated that after recording the statement it was read over to the injured girl who had affixed her thumb impression on the same. Similar is the statement of Balika Apparao, PW 8 who had also attested the statement of the deceased recorded by the Head Constable, PW 16. There is nothing in their statements which may discredit their testimony. None of these witnesses were cross examined on behalf of the appellant on the allegations that the injured Nageswari was tutored at any point of time by any one before her statement Ext. P 5 was recorded by the Head Constable, PW 16. No question was put to any of these witnesses in cross examination in this behalf. K. Pullarao, PW 4 and Palika Apparao, PW 8 are independent witnesses and PW 4 to some extent had become hostile and, therefore, it could not be expected that in case the deceased was tutored by the family members or the close relatives these persons would not have raised their voice and protested the same. Had there been any tutoring of the injured Nageswari, these independent witnesses would not have allowed any false implication. Head Constable, G.V. Raman, PW 16 who recorded the dying declaration deposed that he recorded Ext. P 5 according to the narration of facts as stated by the injured girl Nageswari.

8. Further a perusal of the statement of Dr. K. Ramalingeshwara Rao, PW 13 will go to show that he has sent intimation to the local Judicial Magistrate to record the dying declaration of the victim but the Magistrate was not available in the head-quarters. This shows that an attempt was also made that the dying declaration may be recorded by the Magistrate but the said effort could not be materialised as the Magistrate was not available. It may usefully be pointed out here that in the case of Ramawati Devi v. State of Bihar AIR 1983 SC 164 it was observed by this Court that there is no requirement of law that a dying declaration must necessarily be made to a Magistrate. What evidentiary value or weight has to be attached to such

statement must necessarily depend on the facts and circumstances of each particular case. As discussed by us above, in the present case an attempt was made to procure the services of a Magistrate for recording the dying declaration but the Magistrate was not available and the dying declaration Ext. P 5 had to be recorded by the Head Constable which fact finds support from several witnesses including independent witnesses. We have, therefore, no hesitation in accepting the same. The High Court was, fully justified in accepting the said dying declaration.

9. The contention that the deceased had become pregnant and had suffered secret abortion is a fabricated story without

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any foundation as there is no evidence whatsoever to support the said submission. Similarly the assertion that the appellant was falsely implicated is equally without any merit. Neither the parents of the injured nor any of the prosecution witnesses had any animosity with the appellant who may be interested in his false implication and if at all they wanted to falsely implicate anyone they would have implicated the land lady Smt. Guramma and her daughter-in-law who in fact were quarelling with them for enhancement of rent but it was not done so. Learned counsel for the appellant submitted that the deceased had not mentioned in her statement Ext. P 5 that she was set on fire by the appellant when she obstructed him from throwing the articles of the house and removal of the tiles. It was also submitted that the deceased also did not state in the dying declaration as to who had poured water on her to extinguish the flames but simply stated that someone had poured water. It was, therefore, contended that the dying declaration should not be believed. In this connection we may point out that it is not the requirement of law that the person making the dying declaration should make an elaborate and exhaustive statement so as to cover each and every aspect of the incident and narrate the whole history of the case. The fact could not be lost sight of that according to the medical evidence the deceased Nageswari had suffered 90 per cent burns and must have been under a severe stress and agony. According to the evidence on record she was talking in a low voice which indicated that she was able to speak with some difficulty and, therefore, it was not possible for her to make a very detailed statement covering the minutes details which could not be expected under the facts and circumstances of the present case. However, the statement Ext. P 5 is very clear and specific that it was the appellant who poured kerosene oil and set her body on fire by lighting a match stick and there was hardly any occasion for the deceased to escape from there. After reading the statement Ext. P 5 as a whole we are convinced that it does not suffer from any infirmity so as to render it doubtful or unworthy of reliance. In this connection a reference may be made to the observations of this Court made in Mannu Raja v. Slate of M.P [AIR 1976 SC 2199].

10. Besides the written dying declaration discussed above there is ample evidence about the oral dying declaration made by the deceased Nageswari. Smt. Seelam Narasayamma, PW1 is the mother of the deceased girl. She deposed that in the morning of the date of occurrence she had sent Rs. 120/- to the land lady through her son Srinivasarao, PW 3 as rent for the premises. But the land lady refused to receive the same saying she had enhanced the rent of Rs. 30/- more and demanded Rs. 150/-. When her husband came home in the afternoon she informed him that the land lady was demanding

Rs. 30/- more. She further stated that on the same night the land lady Guramma and her daughter-in-law Sitalakshmi, the wife of the appellant came to her, abused her and demanded Rs. 150/-. She requested them to wait till the arrival of her husband and when they were so talking, her daughter Nageswari was sitting in the backyard- The accused appellant also came there abusing in loud voice and demanded immediate payment of rent at the rate of Rs. 150/- per month without waiting for the return of her husband. The appellant threatened to remove the household articles and the tiles of the

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house if the rent of Rs. 1501 was not paid to them forthwith. The appellant went to the backyard through the eastern lane and soon thereafter cries of Nageswari were heard and when they rushed to the backyard through the eastern lane, the appellant came opposite to them and went away pushing them aside. When PW1 alongwith her another daughter Venkateswari, PW1 and her son Srinivasarao, PW 3 reached the backyard they found Nageswari burning in fire. They therefore poured water on her and extinguished the fire. She further deposed that injured Nageswari was in full consciousness and on questioning as to how and why she was burning, she told them that the accused appellant came abusing and tried to remove the articles and throw them away. She obstructed him to do so. The appellant, therefore, took kerosene tin from the kitchen, poured the same on her and lighted the fire with match stick. This statement of Seelam Nasaramma, PW1 is fully and consistently supported and corroborated by Km. Seelam Venkateswari, PW 2 and Srinivasarao, PW 3. As discussed earlier Pullarao, PW 4, Seelam Apparao, PW 7, Palika Apparao, PW 8 and the father of the girl Seelam Venkateswarlu, PW 9 who had also returned home in the mean while have all deposed the same way. There is absolutely no reason for them to falsely implicate the appellant in the occurrence, there being absolutely no animus to do so. There evidence suffers from no infirmity so as to cast any doubt in the truthfulness of their version and the High Court was fully justified in accepting their evidence as truthful and reliable.

11. In the facts and' circumstances discussed above we find no cause for any interference in the conclusions recorded by the High Court. Consequently, the appeal fails and is hereby dismissed.

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