

PETITIONER:
P. BABU

Vs.

RESPONDENT:
STATE OF A.P. (Jayachandra Reddy, J.)

DATE OF JUDGMENT 08/10/1993

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
RAY, G.N. (J)

CITATION:
1994 SCC (1) 388 JT 1993 (5) 699
1993 SCALE (3) 923

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- There are three appellants original accused 1, 2 and 3. They were tried along with four others for offences punishable under Sections 148, 302 and 302/149 IPC. These appellants were also charged under Section 302 simpliciter. The trial court acquitted all of them. The State preferred an appeal against the acquittal and the High Court while confirming the acquittal of A-4 to A-7, convicted the appellants under Sections 302/34 IPC and sentenced each of them to undergo imprisonment for life. Hence the present appeal.

2. The prosecution case is as follows: P. Narasinga Rao, the deceased in the case was working as a welder at Secunderabad. He had a vegetable shop also in the market and he used to attend to his shop in the evening. PW 16 is the maternal uncle of the deceased. He has also a vegetable shop in the same market. The accused are all related to each other. A-4's younger brother was murdered on August 4, 1978. The deceased and two others were prosecuted in that case and the same ended in acquittal. All the accused herein and also the absconding accused Sriramulu were aggrieved with the acquittal and bore grudge against the deceased. The deceased told PW 16 that the accused were intending to kill him. On March 21, 1979 at about 5 p.m., PW 7, a neighbour of PW 16 was doing painting work in a house in Picket, Secunderabad and after completing that work, he was going home. At about 7 p.m. he came near the State Bank and saw A-1 to A-7 and the absconding accused Sriramulu and heard Sriramulu telling A-1 and A-4 to do away with the deceased. After coming home, PW 7 informed PW 16 about what he had heard. On that day at about 6.30 p.m., PW 2 who worked under the deceased, went to the shop of deceased to meet him on a cycle. The deceased asked him to take him to the police station as he had to mark his attendance. Then both of them went on the cycle to the

market police station. After marking the attendance, both of them were coming back to the shop of the deceased on cycle. When they reached the State Bank, A- 1 emerged from the lane and caught hold of the deceased. A-2 to A-7 also joined A-1. A- 1 stabbed the deceased with a knife on his chest. A-2 and A-3 axed the deceased on his back with axes. A-4 to A-7 stabbed the deceased with knives on various parts of his body. PW 2 ran to the police station to give a report about the incident to the Inspector of Police, PW 21 who made an entry in the general diary and along with SIS and head constables rushed to the scene of occurrence. They carried the deceased to the hospital. PW 10, the Civil Assistant Surgeon who was on duty, examined the injured and found 10

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injuries and issued the wound certificate Ex. P-6. PW 10 admitted the injured into Cardio-Thoracic Ward and asked the SI to fetch the Magistrate for recording the dying declaration. The SI returned after 15 minutes and reported that the Magistrate was not available at his residence at that time. PW 21 also was present at that time in the hospital. He asked PW 1, who was working as House Surgeon in the Casualty Department to record the dying declaration of the deceased. PW 1 recorded the dying declaration of the deceased Ex. P-1 which was read out to the deceased and his thumb impression was taken. PW 1 handed over Ex. P-1 to PW 21 in the presence of PW 19, another police officer, who registered a case and issued express FIR. PW 21 continued the investigation. PW 20, Assistant Professor of Thoracic Surgery was contacted and he came to the hospital at about 9 p.m. and found the deceased to be in a bad condition. Therefore he could not undertake any surgical treatment. The injured expired at about 11.10 p.m. and an altered FIR was issued. The dead body was sent for postmortem and the Doctor found a number of incised injuries, which could have been caused by knives and axes. The accused were arrested except Sriramulu and the accused who were arrested were charge-sheeted and tried.

3. The prosecution relied on the dying declaration Ex. P-1 and also on the evidence of PWS 2 to 5. The accused pleaded not guilty. The trial court discarded Ex. P-1 pointing out certain infirmities and also held that the same was not recorded at 8.35 p.m. as claimed by the prosecution but it was brought into existence later. The trial court also discarded the evidence of PWS 2 to 5, the eyewitnesses pointing out certain inconsistencies. Accordingly all the accused were acquitted. The High Court mainly relied on the dying declaration Ex. P-1 recorded by PW 1, the House Surgeon whose evidence is also corroborated by another Doctor, PW 10 who was on duty at that time. In the said dying declaration, the overt acts were attributed to A- 1 to A-3. Since no overt acts were attributed to A-4 to A-7, the High Court confirmed their acquittal but set aside the acquittal of A-1 to A-3 and convicted them as mentioned above. The High Court, however, relied on the evidence of PWS 2 and 4 also and held that the same lends corroboration to the dying declaration so far as A-1 to A-3 are concerned. The High Court also observed that the dying declaration by itself is sufficient to convict A-1 to A-3.

4. Learned counsel for the appellants submitted that normal safeguards to be observed in recording the dying declaration have not been strictly observed and the evidence of PWS 1 to 10 regarding the manner in which the dying declaration was recorded and the time at which the same was recorded, does not inspire confidence and that the dying

declaration was recorded at the instance of PW 21, the Investigating Officer and the said declaration was brought into existence later and that the view taken by the trial court is quite reasonable and the High Court erred in interfering with the findings of the trial court.

5. As noted above, the injured was immediately rushed to the hospital. PW 1, Dr Pratap Kumar, the House Surgeon was on duty in the hospital at

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that time. He deposed that at about 7.40 p.m. the deceased was in the Casualty Department and that PW 10, Dr C. Srihari Rao, the Casualty Medical Officer was also present. The condition of the injured Narasing Rao was serious. PW 1 further deposed that he was asked by PW 10 to record the statement of the injured Narasing Rao and accordingly PW 1 recorded the same and obtained the thumb impression of the injured in the presence of PW 10 and after recording, handed over the same to the Inspector of Police, PW 21, who was present in the hospital at that time. The dying declaration reads thus :

"Ex. P-2 Dated March 21, 1979

Statement of Narasing Rao Recorded by PW 1
Statement of Shri P. Narasing Rao s/o Rajaiah,
age 23 years, resident of Sajanlal Street.

Today i.e., on 21.3.79 at about 7.40 p.m. I went to Market Police Station and returning to my home. When I reached Rajeswar Talkies two persons namely Babu and Daya caught hold of me and Raju A-3 beat me. I fell down. Then all the three inflicted injuries with axe and knives. I received injuries on chest, back side and on right side of the neck. They took revenge on me due to previous enmity.

Statement is read over to me and explained in Telugu and accepted to be correct. The incident was witnessed by one Daya of Kalasiguda who was came (not clear).

Recorded by Dr P.B. Pratap Kumar, Gandhi Hospital.

LTI of P. Narasing Rao LTI of 8.35 p.m.

P. Narasing Rao Pratap Kumar"

It can be seen that the deceased has mentioned that A-] and A-2 caught hold of him and Raju, A-3 beat him and he fell down. Thereafter all the three inflicted injuries with axes and knives. He also mentioned that the incident was witnessed by PW 2. The main criticism levelled against this dying declaration is that PW 1, the Doctor, who recorded the same, has not taken care to verify whether the injured was in a fit condition to make the statement and that the evidence of three Doctors, PWs 1, 10 and 20 would show that the condition of the deceased was very bad and therefore the injured would not have been in a position to make the said statement and that the statement was recorded when PW 21, the Inspector of Police was there. Learned counsel also contended that some of the admissions made by PWs 1 and 10 in their cross-examinations would throw any amount of doubt on the authenticity of this dying declaration. We shall now proceed to consider the evidence of PWs 1, 10 and 20. PW 1, in his chief examination, as already mentioned, clearly stated that he recorded Ex. P-1 as stated by the injured. He also stated that he obtained the thumb impression of the declare in the presence of the Casualty Medical Officer, PW 10 and thereafter he handed it over to PW 21. In the cross-examination, PW 1 admitted that the treatment of the injured

was not entrusted to him. However, he was asked at about 8
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p.m. to record the statement of the injured. PW 1 had further admitted that the injured gave the statement in Telugu and he recorded the same in English. PW 1 also admitted that PW 21 was present there and that after recording the statement, he handed over the same to him. He denied the suggestion that Ex. P- 1 was not recorded in the manner stated by the injured and that it was prepared subsequently at the instance of the Circle Inspector.

6. PW 1 is a young doctor and a highly independent witness. There is no reason whatsoever for him to speak falsehood. The recording of Ex. P- 1 by PW 1 is not in dispute. PW 1 has clearly stated that the injured gave the said statement and he duly recorded it and obtained his thumb impression. PW 10, the Casualty Medical Officer who examined the injured and admitted him, asserted that Ex. P- 1 was recorded by PW 1 as per his instructions. PW 10 also deposed that he asked the Inspector to secure the presence of the Magistrate but he was told that the Magistrate was not available. Therefore the Circle Inspector requested him to record the dying declaration. He, however, asked PW 1 to record the same. PW 10's evidence shows that he was present when the dying declaration was being recorded by PW 1 and that the patient was fully conscious when the dying declaration was recorded. PW 10 further deposed that after the statement was recorded, he verified it and the same was read over to the victim who affirmed the same to be correct and therefore his thumb impression was taken. PW 10 was cross-examined at length. In the first instance he was cross-examined about the availability of the Magistrate and the time taken to get the information that the Magistrate was not available. Then he was cross-examined with reference to actual recording. PW 10 asserted in the cross-examination that he asked PW 1 to record and he himself had gone through the entire dying declaration recorded by PW 1. PW 10 also stated that they noted in the accident register that the dying declaration was recorded. Ex. P-6 is the injury certificate. It appears that it was noted in Ex. P- 6 against an entry that the injured was said to have been stabbed by somebody. Placing much reliance on this entry, PW 10 was asked in the cross-examination as to how it was made. PW 10 stated that the deceased stated so in the first instance. The learned counsel relying on this admission sought to contend that the deceased was not aware as to who stabbed him. We see no force in this submission. It is a matter of common knowledge that such entry in the injury certificate does not necessarily amount to a statement. At that stage the doctor was required to fill up that column in a normal manner and it was not the duty of the doctor to enquire from the injured patient about the actual assailants and that the inquiry would be confined as to how he received the injuries namely the weapons used etc. It is next submitted that the condition of the injured was very serious and therefore it is highly doubtful whether he would have been in a position to make the statement. In support of this submission, the learned counsel relied on the evidence of PW 20 and also PW 9 another Doctor, who conducted the postmortem. PW 20 deposed that he found that the condition of the injured was serious and that the Magistrate should be informed for recording the dying declaration. Relying on this admission made by PW 20, the learned counsel contended that the condition

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of the injured was serious and therefore it would not have

been possible to record the dying declaration. The other submission is that since PW 20 made an entry that the Magistrate should be informed, it becomes doubtful that Ex. P-1 was already recorded and if, in fact, the same was already recorded, PW 20 would not have made such an entry. We do not find any substance in this submission. PW 20 does not say that he inquired of PW 10 whether any dying declaration was recorded already. Further, the accident register itself reveals that PW 10 had already made an entry in the relevant column that the dying declaration was recorded. Therefore the entry made by PW 20 that he visited the hospital at about 9 p.m. would not in any manner affect the veracity of the evidence of PWs 1 and 10 who are respectable doctors.

7. The next submission is that as PW 1 knew Telugu, he should have recorded the dying declaration in the same language. PW 1 has clearly stated that he can read and write Telugu. Therefore, there cannot be any doubt about the contents of the dying declaration which is recorded in English and what is more, PW 10 clearly stated that he read out the statement and explained to the injured, who admitted it to be correct. Having carefully examined the evidence of PWs 1 and 10, we see absolutely no grounds to reject their evidence. They are independent and truthful witnesses and their evidence establishes beyond all reasonable doubt that Ex. P-1 was duly and sincerely recorded as stated by the deceased. The view taken by the trial court that Ex. P-1 was fabricated, is highly erroneous and unsound. The High Court was fully justified in reversing the said finding.

8. Learned counsel also contended that the medical evidence namely that of PW 9, who conducted the postmortem, is in conflict with the version given in the dying declaration that after the deceased fell down, the three appellants inflicted injuries with knives and axes. PW 9 in the cross-examination gave his opinion that the injuries as found would show that they might have been inflicted while the injured was standing. No doubt in the dying declaration, it is mentioned that the deceased was beaten by A-3 and he fell down. But that does not mean that he would not have made an attempt to get up and stand. The opinion given by PW 9 is not in direct conflict with the version given in the dying declaration. Apart from the dying declaration, Ex. P-1, there is evidence of PWs 2 to 4 also which has been relied upon by the High Court also. PW 2 after witnessing the occurrence immediately rushed to the police station and informed the police. As a matter of fact his name was mentioned in the dying declaration itself. PW 4 deposed that he was selling groundnuts on a push-cart. He knew the accused and deposed that these accused persons attacked the deceased. The evidence of these two witnesses lends ample corroboration to the dying declaration. Therefore we see no grounds to interfere with the findings of the High Court.

9. It is reported that A-1, P. Babu is dead. Learned counsel for the appellants also confirms the same. Consequently appeal against A-1 stands abated. So far as A-2, G. Dayanand and A-3 M. Rajender are concerned, the appeal is dismissed.

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The Judgment of the Court was delivered by K. JAYACHANDRA REDDY, J.- The appellant Smt Nirmal Devi, who is the sole accused in the case, has been found guilty under Section 302 R.P.C. of J & K and sentenced to imprisonment for life for the offence of committing the murder of her husband by administering poison. The appeal

filed by her was dismissed by the High Court. Hence the present appeal.

2. The appellant was married to the deceased Girdhari Lal about 17 or 18 years prior to the occurrence. For 11 or 12 years they lived together. Later the appellant went to her parental house without the consent of the husband. Thereafter she never returned to the house of the husband. It is alleged that in her parental house she started leading an adulterous life which was resented by the deceased. About 13 or 14 months prior to the occurrence she joined training course of midwifery in a hospital at Jammu and she continued her activities of indulging in immoral acts. About 15 or 16 days before the date of the occurrence, the appellant gave birth to an illegitimate daughter in the Jammu Hospital. After that she went to her parental house in Village Siote only 6 or 7 days before the occurrence. During the wedlock the appellant gave birth to two sons and a daughter and the deceased husband had great affection for those children. When the accused came to her parental house, the deceased went to see his children in the house of his in-laws on June 16, 1975. Only the accused and the children were present in the house. During that visit the appellant, however, behaved well with her husband and showed great love for him. She prepared pakoras and tea and served the same to the deceased. The deceased after eating the pakoras and drinking the tea left for

From the Judgment and Order dated June 12, 1980 of the Jammu & Kashmir High Court in Crl. F.A. No. 16 of 1976 395

his house. On the way he felt pain in his abdomen and burning sensation in his throat causing restlessness. He reached the home with great difficulty and rested on the bed. After some time he vomitted and he asked his younger brother, PW 3 with gestures to bring a paper and a pen and in the note-book given, the deceased could hardly write "one cup-two cups tea half Pao Pakora" and became unconscious. His family members took him to the hospital where he expired on the same night. The Medical Officer, Dr Surendra Singh who treated the deceased, was examined in the committal court but could not be examined in the Sessions Court as he was transferred. He informed the police as he suspected some foul play. SI, PW 25 took over the investigation. Inquest was held and the postmortem was conducted and the viscera was sent to the Chemical Examiner. The report of the Chemical Examiner showed that a heavy concentration of arsenic was found in the viscera. A case under Section 302 R.P.C. was registered and thereafter the witnesses were examined. After completion of the investigation, the charge-sheet was laid.

3. When examined under Section 342 CrPC the appellant admitted that she had been staying in her parental house for the last 4 or 5 years and since he found it difficult to make both ends meet she went to her parental house and she denied having indulged in immoral acts. The rest of the case was denied by her. The prosecution mainly relied on the evidence of PWs 6, 7 and 8 and also on the evidence of PW 3, the brother of the deceased who gave the note-book on which the deceased scribbled about two cups of tea and pakoras. The said note-book was marked as Ex. PB. The learned Sessions Judge relying on the evidence of PWs 6, 7 and 8 who spoke about the serving of the tea and pakoras and the immediate movements of the deceased, convicted the accused.

4. The High Court again has discussed their evidence in great detail and held that these witnesses are independent

witnesses and their statements are natural and cogent and accordingly confirmed the conviction.

5. Learned counsel for the appellant submits that the witnesses were examined at a belated stage nearly after a month or so and that the courts below erred in relying on Ex. PB namely the writing of the deceased in the note-book and that no report was given immediately when the deceased came to his house and informed his mother about the discomfort in the stomach. His further submission is that the presence of arsenic is not enough to connect the accused with the alleged administration of poison.

6. As noted by both the courts below, PWs 6, 7 and 8 are independent witnesses. PW 6 deposed that he was coming from the water mill with a bag full of flour and on the way he met the deceased. He found him to be feeling very uneasy and on being asked, the deceased told him that he had gone to his wife who had come from Jammu and she served tea and pakoras and immediately after taking the tea and pakoras he developed pain in the stomach and that the tea also tasted bitter. PW 7 deposed that he knew the deceased and on that day he went around the village to purchase a goat and
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as he was feeling thirsty went near the water spring. Then on the way he went in front of the house where he saw the accused and the deceased. The deceased enquired him as to wherefrom he came and he saw the accused serving tea along with pakoras to the deceased and after taking the tea the deceased left the house. PW 7 also deposed that while taking the tea, the deceased remarked that the tea was tasting bitter. He came to know that the deceased was dead and that he informed the father of the deceased that he has seen on that day the deceased taking tea and eating pakoras in the house of his in-laws. PW 8 was also known to the deceased and the accused. On the day of occurrence he went to Subedar Nanak Chand to have some consultation in connection with the construction of a temple and when he was passing through the village at about 7.40 a.m. he saw the deceased going towards the house of his in-laws. PW 8 after finishing his talks with Subedar came back at 9 a.m. and again met the deceased at a distance of 150 yards from his in-laws house. The deceased called him by gestures and told him that he had been to his in-laws house and there his wife namely the accused served tea and pakoras and after taking them, he was feeling burning sensation in his throat and he was also holding his abdomen with his hands and was unable to walk. These three witnesses have been cross-examined at length and nothing significant has been elicited which affects their evidence. Both the courts below have discussed their evidence in great detail and have given good reasons for accepting their evidence. PW 2 is the mother of the deceased. She deposed that on that day the deceased went to his in-laws house and came back at about 11.30 a.m. and immediately after coming he laid himself on the cot and could not speak. She saw the deceased beating his chest and he made gestures to PW 3 his brother to give a pen and a paper and he scribbled on the note-book given to him. She also deposed about the adulterous life led by the accused. From their evidence it can be seen that the deceased immediately after eating pakoras and taking tea fell ill. Then we have the evidence of other witnesses to the effect that the deceased was taken to the hospital where he was treated but he died. This evidence establishes that the deceased fell ill immediately after eating pakoras and drinking tea served by the accused. Therefore the prosecution has firmly established that the tea and pakoras

served by the accused caused illness. Then we have the evidence of the doctor who suspected foul play and informed the police and the viscera was sent and the Chemical Examiner found heavy concentration of arsenic in the viscera. Therefore all the connecting links are complete to form a chain which conclusively incriminate the accused.

7. The criticism that there was delay in registering the case in these circumstances, is not at all material. It was only after the Chemical Examiner's report that it was firmly established that the deceased died due to arsenic poison. Consequently if there was any delay in examining the witnesses that is also not material. The question of registration of a case also would not have arisen because nobody could at that stage predict that the illness was due to poisoning. Yet another submission of the learned counsel is that the prosecution has not established as to how the appellant came into

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possession of arsenic poison. We are of the view that this by itself does not affect the prosecution case when the other evidence is clinching. The accused was earlier working as a nurse and it is quite possible that she could have easily procured the arsenic. Learned counsel further submitted that the courts below ought not to have placed any reliance on Ex. PB, the scribbling made by the deceased to come to the conclusion that it was the accused who served the tea and pakoras. We have seen the judgments of both the courts below. It is only observed that Ex. PB supports the evidence of PWS 6, 7 and 8. Even without Ex. PB their evidence is wholly sufficient to bring home the guilt to the accused. For all these reasons, we see no merits in this appeal. It is accordingly dismissed. The appellant, who is on bail, shall surrender and serve out the sentence.