

APHC010632442009



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

[3368]

THURSDAY, THE TWENTY THIRD DAY OF APRIL
TWO THOUSAND AND TWENTY-SIX

PRESENT

THE HONOURABLE SRI JUSTICE B V L N CHAKRAVARTHI

CRIMINAL APPEAL No: 678/2009

Between:

1. DUDEKULA SOMAIAH, S/O DUDEKULA NADIPI UDURSA, R/O
B.KODUR VILLAGE, NANDYALA MANDAL, KURNOOL DIST.

...APPELLANT

AND

1. THE STATE OF A P, REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF A.P., HYDERABAD.

...RESPONDENT

Appeal under Section 372/374(2)/378(4) of Cr.P.C praying that the High Court may be pleased to present this memorandum of Crl.A., aggrieved by the Judgment in S.C.No.535 of 2008, dated 10.06.09 on the file of the Court of the III Addl. Sessions Judge, Kurnool at Nandyala.

IA NO: 1 OF 2009(CRLAMP 1482 OF 2009)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the sentence of the imprisonment made in the Judgment dated 10.06.09, S.C.No.535 of 2008, on the file of the Court of the III Addl. Sessions Judge, Kurnool at Nandyala, and release the petitioner on bail, pending disposal of the Crl.A.

Counsel for the Appellant:

1. D PURNACHANDRA REDDY

Counsel for the Respondent:

1. PUBLIC PROSECUTOR (AP)

The Court made the following:

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

CRL.A.No.678 OF 2009

Between:

Dudekula Somaiah, S/o.D.Nadipi Udursa,
Aged 36 years, R/o.B.Kodur Village,
Nandyal Mandal, Kurnool District. APPELLANT/ACCUSED

A N D

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court of Andhra Pradesh,
Hyderabad. RESPONDENT

DATE OF ORAL JUDGMENT PRONOUNCED : 23.04.2026

SUBMITTED FOR APPROVAL:

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

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|---|--------|
| 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 |

JUSTICE B.V.L.N.CHAKRAVARTHI.

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

+ CRL.A.No.678 OF 2009

% 23.04.2026

Between:

Dudekula Somaiah, S/o.D.Nadipi Udursa,
Aged 36 years, R/o.B.Kodur Village,
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A N D

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court of Andhra Pradesh,
Hyderabad. RESPONDENT

! Counsel for the Appellant : Sri D.Purnachandra Reddy

**^ Counsel for the
Respondent** : Sri C.P.Somayaji
Addl.Public Prosecutor

< Gist:

> Head Note:

? Cases referred:

1. 2023 (14) SCC 582

2. 2019 (8) SCC 779

This Court made the following:

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

CRIMINAL APPEAL No.678 OF 2009

ORAL JUDGMENT:

The appeal is preferred by the appellant/convict/accused challenging the Judgment dated 10.06.2009 delivered in S.C.No.535 of 2008 on the file of the III Additional Sessions Judge, Kurnool at Nandyal.

2. The appellant/accused was found guilty of the offence under Section 304 Part-II of the Indian Penal Code, 1860 (in short 'the IPC'). He was convicted and sentenced to suffer rigorous imprisonment for a period of ten (10) years and to pay a fine of Rs.1,000/- (Rupees One Thousand Only), in default to suffer simple imprisonment for a period of three (03) months.

3. For the sake of convenience, the parties hereinafter referred to as they were arraigned before the learned Sessions Court.

CASE OF THE PROSECUTION:

4. The case of the prosecution in brief is that Smt.Dudekula Fathima (herein after referred to as 'the deceased') is the wife of the accused. They are residents of B-Kodur Village. Their marriage was solemnized ten years ago. They were blessed with a male child (PW-2). Later, the accused addicted to alcohol started suspecting the fidelity of the deceased and harassing her. On 12.01.2007, at about 8:00 pm, the accused came to the house in intoxication. He abused

the deceased. He beat her. He instigated her to commit suicide. The deceased poured kerosene on her body and searching for a match box. The accused picked up a match box and lit a matchstick. He set fire the deceased. She raised cries. Neighbours came there and shifted her to the Government Hospital at Nandyal.

5. The Sub-Inspector of Police, PW-15 of Bandiatmakur Police Station visited the Hospital at about 7:00 am on 13.01.2007, on the receipt of MLC intimation from the Hospital. He recorded the statement of the deceased in the presence of PW-13, Civil Surgeon, Government Hospital, Nandyal. He registered Ex.P15 as a case in Cr.No.07 of 2007 vide Ex.P16-FIR and submitted the same to the Jurisdictional Magistrate. He visited the Hospital again and examined PW-2 and PW-3. Later, proceeded to the scene of offence located at B-Kodur Village. Observed the same, in the presence of PW-9 and others prepared Ex.P8-Panchanama and Ex.P17-Rough Sketch. He examined and recorded statements of PWs-5, 6 and 10.

6. On 14.01.2007, he proceeded to the Government Hospital at Nandyal. He examined and recorded PWs-1, 4 and another. On 20.01.2007, he received an intimation from the Hospital about death of the deceased. Therefore, he took steps to alter the provisions relating to offence vide Ex.P18-Memo and submitted the same to the Magistrate. Later, handed over the investigation to Inspector of Police, PW-14.

7. The Inspector of Police, PW-14 verified the investigation made by the Sub-Inspector of Police. He visited Government Hospital at Nandyal examined and recorded the statements of PWs.1, 2, 3, 7, 8 and others. He took steps to conduct inquest over the dead body vide Ex.P14-Inquest Report. Later, PW-11 i.e. Civil Surgeon at Allagadda Government Hospital conducted autopsy and issued Ex.P10-Postmortem Report opining that the cause of death due to shock due to septicemia on account of the burn injuries. The Inspector of Police i.e., PW-16 who conducted further investigation in the case laid the charge sheet after conclusion of the investigation before the jurisdictional Magistrate.

8. The Magistrate registered the same, report filed by the Police as PRC No.77 of 2007 on the file of Additional Judicial Magistrate of First Class at Nandyal. It was committed to the Court of Sessions, Kurnool Division under Section 209 Cr.P.C. It was registered as S.C.No.535 of 2008. It was later made over to III Additional Sessions Judge, Kurnool at Nandyal for trial in accordance with law.

9. The learned III Additional Sessions Judge charged the accused for the offence under Section 498-A and 302 IPC. The charge was read over to the accused. The accused pleaded not guilty and came to be tried.

EVIDENCE FOR THE PROSECUTION:

10. The prosecution to substantiate the above charge examined 16 witnesses as PWs-1 to 16 respectively and got marked as Exs.P1 to P18.

11. The accused was examined under Section 313 Cr.P.C., regarding the incriminating circumstances appearing against him from the evidence for the prosecution. He denied the same as not true and correct. No oral evidence was adduced for the defence. Ex.D1 i.e., Fire Accident Certificate, dated 12.01.2007 was marked for the defence.

FINDING OF THE SESSIONS COURT:

12. Basing on the above evidence, the III Additional Sessions Judge, Kurnool at Nandyal considering the above evidence found the accused not guilty for the offence under Section 498-A IPC. Accordingly, acquitted the accused for the said charge. But, found the accused guilty of the offence under Section 304 Part II IPC and convicted and sentenced him to suffer imprisonment as mentioned above.

13. No appeal was preferred by the State challenging the judgment of the trial Court for recording order of acquittal for the offence under Section 498-A and 302 IPC. This appeal came to be preferred by the accused challenging the conviction and sentence for the offence under Section 304 Part-II IPC.

SUBMISSIONS ON BEHALF OF THE APPELLANT/ACCUSED:

14. Learned counsel for the appellant/convict, Sri D.Purnachandra Reddy would argue that the trial Court committed a grave error which led to travesty of justice. He would submit that according to the case of the prosecution, after the alleged incident at the house of the accused, the injured i.e., the deceased was shifted to Government Hospital at Nandyal for treatment. At that time, PW-12 i.e., duty Doctor of the Government Hospital at Nandyal made an entry in the accident's admission register. He recorded the statement of the deceased regarding cause of the injuries suffered by her. She stated that she was sleeping in the house at about 8:00 pm on that day and suffered injuries in the fire accident occurred in the house. It is an admitted case of the prosecution that the deceased was conscious, coherent and fit state of mind to make a statement at that time. PW-12 in the evidence categorically admitted that he made the Ex.P13 entry in the admission register and it is in his handwriting and that he made the said entry as per the statement of the patient i.e., the deceased. Therefore, the first statement/dying declaration made by the victim is to the Doctor i.e., PW-12 which show that she suffered injuries in the fire accident occurred in the house when she was sleeping at 8:00 pm.

15. He would submit that the prosecution suppressed this fact came with a theory that the judicial Magistrate recorded Ex.P12-dying declaration and later, PW-15 i.e., Sub-Inspector of Police recorded

another dying declaration-Ex.P15, in which the victim stated that the accused is responsible for the fire accident. He would submit that admittedly, the Magistrate was not examined before the trial Court below to prove Ex.P12-Dying declaration. Therefore, the only other dying declaration available on record is that of Sub-Inspector of Police, Ex.P15. Therefore, the first statement made by the victim under Ex.P13 is inconsistent with her later statement under Ex.P15. It is diametrically opposite to the first statement made by the victim at the time of admission in the Hospital.

16. In those circumstances, the duty of the trial Court is to examine the rest of the materials in the form of evidence placed before the Court to conclude that the incriminatory dying declaration is capable of being relied upon.

17. Unfortunately, the learned trial Court failed to do so. It did not consider the evidence of PW-12 with reference to Ex.P13. It ignored Ex.P13 completely. The trial Court solely relied on Ex.P15. It also committed error on relying on Ex.P12 though the judicial Magistrate was not examined to prove Ex.P12. He would submit that PW-2 is none other than the son of the accused and the deceased. His evidence would show that on the date of incident, the deceased, PW-2 were residing in the house at about 8:00 pm. The hut caught fire. Then the mother i.e., deceased thrown away PW-2 from the house to save him. She caught fire accidentally and suffered burn injuries. This

evidence of PW-2 was not impeached in any manner by the prosecution. He was not declared hostile by the prosecution to put cross questions. Therefore, the evidence of PW-2 supports the first statement made by the deceased to PW-2 under Ex.P13 and rules out the Ex.P12 or Ex.P15.

18. He would further argue that the Court should have considered oral and documentary evidence mentioned above, in the light of inconsistency between P13, P12 and P15 and accept the version, which is compatible with the reality i.e., the evidence of PW-2.

19. Unfortunately, the trial Court did not make any such efforts or assigned no reasons as to why it did not consider the evidence of PW-2 and Ex.P13 and concluding that, Ex.P15 is capable of being relied upon. In those circumstances, the judgment of the trial Court is not sustainable either on facts or in law.

20. Sri C.P.Somayaji, learned Additional Public Prosecutor would argue that there are no grounds to interfere with the conviction recorded by the trial Court. He would submit that prosecution proved its case beyond all reasonable doubt in the light of dying declarations made by the deceased recorded by the Investigation Officer i.e., P.W-15 and the Judicial Magistrate, which were marked as Ex.P-12 and Ex.P-15 respectively. The dying declarations would show that the accused instigated the deceased to die. Therefore, the deceased unable to bear the harassment made by the accused, decided to

commit suicide. Accordingly, poured kerosene on her body and tried to lit herself. Meanwhile, the accused lit the matchstick and thrown it on the deceased. Therefore, the deceased caught fire on several injuries. Later died due to septicemia on account of the burn injuries. Hence, the cause of death is burning injuries, which were caused due to litting of match stick by the accused.

21. He would further submit that when the dying declaration inspires confidence in the mind of the Court, the dying declaration alone is sufficient to convict a person. No corroboration required for the dying declaration in the light of settled principles of law relating to dying declarations. In the case on hand, the trial Court made it clear that the dying declarations made by the deceased, inspiring confidence to believe the case of the prosecution and accordingly, found the accused guilty of the homicide of the deceased, convicted him U/s.304-II IPC. Hence, there are no grounds at all to interfere with the judgment of the trial Court. The dying declarations were corroborated even by the evidence of the Investigation Officers examined by the prosecution on all aspects about the incident in the case leading to a conclusion that accused is responsible for the injuries sustained by the deceased. Hence, the conviction recorded by the trial Court is sustainable in law and on facts.

22. In the light of above rival contentions, the point that would arise for consideration in this Criminal Appeal is as under:

“Whether the trial Court judgment is not sustainable?”

23. **P O I N T**: The specific case of the prosecution is that the accused was harassing the deceased. Therefore, he committed the offence U/s.498-A IPC, apart from the offence U/s.302 IPC. As already mentioned above, the trial Court found the accused not guilty for the offence U/s.498-A IPC. The State did not prefer any appeal, challenging the judgment of the Court below recording acquittal for the offence U/s.498-A IPC.

ANALYSIS:

24. The case of the prosecution is that on the date of incident i.e., on 12.01.2007 at about 08.00 p.m. accused came to the house in a drunken state. He abused the deceased and beat her. He instigated the deceased to commit suicide. Thereupon, the deceased herself poured kerosene on her body, made attempt to lit a match stick. At that time, accused lit a match stick and thrown it on the deceased. Therefore, the deceased caught fire, suffered injuries. She was admitted in Government Hospital at Nandyal during mid night of 12/13-01-2007. The hospital authorities intimated Judicial Magistrate for recording dying declaration considering the condition of the deceased on account of the burn injuries. Therefore, the Judicial Magistrate at Nandyal came to the hospital and recorded dying declaration of the deceased in the presence of P.W-12 the doctor present at that time. Later, MLC intimation was communicated to

P.W-15. He received it at 07.00 a.m. on 13.01.2007. He registered the same. Then, he proceeded to the Government Hospital and recorded statement of the deceased vide Ex.P-15 in the presence of P.W-13 doctor present in the hospital at that time. In both these statement i.e., in the statement recorded by the Judicial Magistrate and in the statement recorded by the SI of Police/P.W-15, the victim stated that the accused instigated her to commit suicide. Therefore, she poured kerosene on her body and searching for match box. Then, the accused lit the match stick and thrown it on the deceased. Therefore, she suffered injuries. Her father-in-law shifted her to the Government Hospital at Nandyal.

25. It is pertinent to note down that during the evidence of P.W-12 i.e., duty doctor at Government Hospital, Nandyal, on the night of 12/13-01-2007 during cross-examination, he was asked about entry recorded in the Accident Register of the hospital at the time of admission of the deceased in the hospital. He deposed that the patient made a statement regarding injuries sustained by her and as per the entry in the Accident Register, the patient sustained burn injuries, when she was sleeping in the hut on 12.01.2007 at about 08.00 p.m. Therefore, the evidence of P.W-12 would show that he questioned the victim about the cause of burn injuries sustained by her. She made a statement to P.W-12 that she was sleeping in the hut and at that time she suffered injuries. So, this is the first statement made by the victim

recorded by P.W-12 would show that she suffered burn injuries while sleeping in the house at about 08.00 p.m. on that day.

26. As rightly argued by the learned counsel for the appellant, Ex.P-13 was suppressed from the Court below by the prosecution. Ex.P-13 has not seen the light of the day, until cross-examination of P.W-12 for the first time. The reasons for not placing Ex.P-13 before the Court below are very clear. If Ex.P-13 is placed before the Court below, it will show that there are multiple dying declarations in the case. One recorded by the doctor, another recorded by the Police Officer and another by a Judicial Magistrate. The first dying declaration recorded in the case would be Ex.P-13 i.e., by the doctor at the time of admission of patient in the hospital. The evidence of P.W-12 as well as P.W-13 both doctors would show that patient was conscious, coherent and in fit statement of mind to make a statement all throughout. Therefore, if Ex.P-13 is taken into consideration as first statement made by the victim/deceased, it is inconsistent with her later dying declaration recorded under Ex.P-12 and Ex.P-15 respectively. In fact, it is diagonally opposite to the statement made later. Probably to avoid the inconsistency, P.W-15 for the reasons best known to him suppressed Ex.P-13 statement recorded by P.W-12 at the time of admission.

27. The Hon'ble Apex Court in the case of **Rajaram Vs. State of Madhya Pradesh and others**¹, considered the section 32 of the Evidence Act. Hon'ble Apex Court referred judgment of **Jagbir Singh Vs. State (NCT of Delhi)**², which reviewed several previous decisions involving multiple dying declarations and restated the law relating to dying declarations.

28. The Hon'ble Supreme Court in the case of **Jagbir Singh Vs. State** mentioned above held that *"in the case of third category of cases is that where there are more than one dying declaration and inconsistencies between the declarations are absolute and the dying declarations are irreconcilable being repugnant to one another. The duty of the Court is to examine the rest of the materials in the form of evidence placed before the court and still conclude that the incriminatory dying declaration is capable of being relied upon"*.

29. In the case on hand, as discussed above, Ex.P-13 is inconsistent with Ex.P-12 or Ex.P-15. It is pertinent to note down that the Judicial Magistrate, who recorded Ex.P-12 statement was not examined by the prosecution to say that there was no tutoring or prompting at that time. It was simply marked as an exhibit during the evidence of prosecution. Whatever it may be, there are more than one dying declaration in the case. There are inconsistencies between Ex.P-13 and other dying declarations. Ex.P-13 is the first statement of

¹ **2023 (14) SCC 582**

² **2019 (8) SCC 779**

the victim recorded by the doctor. The accused cannot be blamed for any of the dying declarations. He was not present in the hospital at the time of recording any of the statements. On the other hand, the evidence on record would show that the parents of the deceased were present in the hospital at the time of recording statement by the Police Officer. Ex.P-13 and Ex.P-12 or Ex.P-15 are repugnant to one another. In the first statement, the deceased stated she was sleeping at the time of fire accident. In the later statement she stated that she poured kerosene on herself and then accused lit the matchstick. Therefore, it is the duty of the Court below to carefully attend not only the dying declarations but examine the rest of the materials in the form of the evidence placed before the Court.

30. The material witnesses examined by the prosecution did not support the case of the prosecution. P.W-2 is a child, who around 9 years. He is the son of the deceased and the accused. It is the case of the prosecution that he was residing with the deceased and the accused in the house, where fire accident occurred. Therefore, his evidence would also play a vital role in the case. The trial Court recorded the evidence of P.W-2 after putting certain preliminary questions and satisfied that he is capable of giving evidence.

31. P.W-2 deposed that two years ago during nighttime P.W-2, the deceased and sister of P.W-2 were sleeping in the house. At that time, their thatched house caught fire. Then, the deceased thrown away

P.W-2 and his sister out of the house. The deceased accidentally caught fire and received burn injuries.

32. The prosecution did not put any cross questions to impeach his credit worthiness to say that he was tutored by the accused or any other person to speak in favour of the accused. The previous statement made by P.W-2 was not confronted to him, as per section 162 Cr.P.C. and section 145 of the Evidence Act, to impeach his testimony as laid down U/s.155(3) of the Indian Evidence Act, 1872. Hence, the evidence of P.W-2 remains unchallenged, by the prosecution. The testimony of P.W-2 corroborating the statement of victim recorded under Ex.P-13 by the doctor. Therefore, the evidence placed before the Court conclude that there was a fire accident when deceased, P.W-2 and another girl are sleeping in the house during nighttime on the date of accident. The deceased caught fire accidentally, while throwing the children out of the house to save them. Therefore, suffered burn injuries. Hence, the first version is compatible with the reality i.e., deposed by P.W-2. Further, the doctors were asked about the presence of kerosene or kerosene smell emanating from the body of the deceased. P.W-11, who conducted autopsy, deposed that she did not notice any odor of kerosene at the time of postmortem. The other two doctors i.e., P.W-12 and P.W-13 did not depose that they noticed smell of kerosene emanating from the body of the victim. Therefore, no material is forthcoming from the evidence

placed before the Court to conclude that the dying declaration under Ex.P-12 or Ex.P-15 is acceptable of being relied upon. Ex.P-13 is supported by the evidence discussed above. Hence, it can be concluded that, Ex.P-13 is acceptable of being relied upon. Therefore, no reliance can be placed upon Ex.P-12 or Ex.P-15.

33. Here, it is also pertinent to note down that the contents of Ex.P-12 or Ex.P-15 are not put to the accused during his examination U/s.313 Cr.P.C. to give an opportunity to him to explain the contents.

34. The trial Court in its judgment referred P.W-2 evidence, but did not assign any reason, why it was not considered. The trial Court did not refer Ex.P-13 and evidence of P.W-12. So, the trial Court ignored the material evidence. Simply based its decision on Ex.P-12 and Ex.P-15, though they are diagonally opposite to the statement under Ex.P-13. Hence, the finding of the trial Court is not based on material evidence placed before the Court.

CONCLUSION:

35. In the light of above discussion, the finding of the trial Court is not sustainable. Therefore, it is liable to be set aside.

RESULT:

36. In the result, the Criminal Appeal is allowed, setting aside the judgment dated 10.06.2009 rendered in S.C.No.535 of 2008 on the file of III Addl.Sessions Judge, Kurnool at Nandyal. The accused acquitted for the offence U/s.304-II I.P.C. The fine amount if any paid by him,

shall be refunded to him in accordance with law. The bail bonds executed by the accused shall stand cancelled. This judgment be certified to the trial Court, as per section 405 of Cr.P.C.

As a sequel, Interlocutory Applications pending, if any, shall stand closed.

JUSTICE B.V.L.N. CHAKRAVARTHI

23.04.2026

PMK/PSK

Note: L.R. Copy is to be marked

B/o.
PSK

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

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CRIMINAL APPEAL No: 678 OF 2009

Note: Mark L.R.Copy
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Date: 23.04.2026

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