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DASARI PEDA GONDIYYA

v.

STATION HOUSE OFFICER, JANGREDDYGUDEM
(Criminal Appeal No.1162 of 2007)

B

NOVEMBER 12, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

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*Penal Code, 1860 – s.302 – Homicidal death due to
burns – Deceased was mistress of the accused – Multiple
dying declarations – Conviction by Courts below – On appeal,
held: Deceased gave consistent dying declarations before her
mother, the Mandal Revenue Officer and the Sub-Inspector
of Police pointing out that the accused was responsible for her
burns – There were reasons as to why accused set her on fire
– Factual scenario leaves no manner of doubt that accused-
appellant was responsible for causing homicidal death of the
deceased – Conviction accordingly upheld – Evidence Act,
1872 – s.32.*

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**According to the prosecution, Appellant killed his
mistress by pouring kerosene oil on her and thereafter
setting her on fire. Both Trial Court and High Court
convicted the Appellant under s.302 IPC placing reliance
upon the dying declarations made by the deceased
before her mother (PW1), the Mandal Revenue Officer
(PW6) and the Sub-Inspector of Police (PW10). Hence the
present appeal.**

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Dismissing the appeal, the Court

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**HELD:1. The dying declarations given by the
deceased to her mother (PW-1), the statement recorded
by PW-10 and the dying declaration recorded by Mandal
Revenue Officer (PW-6) clearly establish that the**

H

deceased gave a consistent version in the dying declarations pointing out that the accused was responsible for her burns. There were reasons as to why accused set her on fire. [Para 3] [1097-H; 1098-A]

2. The factual scenario leaves no manner of doubt that the accused was responsible for causing homicidal death of the deceased. Judgments of the Trial Court and High Court do not suffer from any infirmity to warrant interference. [Para 4] [1098-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1162 of 2007.

From the final Judgment and Order dated 8.12.2006 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Appeal No. 942 of 2005.

Harinder Mohan Singh, Kaushal Yadav, Durgesh Yadav and Manav Bajaj for the Appellant.

Altaf Fathima and D. Bharathi Reddy for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Andhra Pradesh High Court upholding the conviction of the appellant for offence punishable under Section 302 of the Indian Penal Code, 1860 (in short the 'IPC'). The accused was charged for allegedly killing of Thirupathamma (hereinafter referred to as the 'deceased') by pouring kerosene and burning her at 10.00 p.m. on 29.10.2000 at the house in which she was kept by him as his mistress.

2. Prosecution version in a nutshell is as follows:

The deceased was the wife of one Narsaiah and he left her after the birth of a female child and therefore the deceased

A used to live with her parents. She developed illicit intimacy with the accused three years prior to the date of occurrence. The accused kept the deceased in a thatched hut separately and started living with her. The accused used to drink ID arrack and beat the deceased by suspecting her character. On 29.10.2000
B at about 6.30 p.m. the accused quarrelled with the deceased by suspecting her fidelity, beat her and abused her in filthy language and went away. At about 10.00 p.m. the accused returned to the house in drunken state, picked up the kerosene tin, poured kerosene on the deceased while she was lying on
C the cot and set fire to her person and fled away from the house by bolting the door from outside. When the deceased raised cries, the neighbours came there and found the accused running away from the house. They opened the door, extinguished the flames and took the deceased to the hospital. On receipt of requisition from the hospital, the Sub Inspector
D of Police (PW-10) reached the hospital, recorded the statement of the deceased and registered a crime under Section 307 IPC. The Mandal Revenue Officer recorded the dying declaration of the deceased. When the mother of the deceased (PW-1) questioned the deceased she stated that the accused
E was responsible for burns. While undergoing treatment, the deceased succumbed to the injuries at about 12.30 p.m. on 2.11.2000. Section of law was altered and FIR was sent to the concerned court. During the course of investigation, the
F Inspector of Police, visited the scene of offence, observation report was prepared, inquest was held over the dead body of the deceased and dead body was sent for post-mortem examination. After receipt of necessary reports and after completion of the investigation, the police laid the charge sheet. The plea of the accused was one of denial.

G In order to establish the accusations, prosecution examined 12 witnesses. The trial Court referred to the evidence of PW-10 who recorded the dying declaration of the deceased by Ext.P14. It also referred to the evidence of the Mandal
H Revenue Officer (PW-6) who on receipt of the requisition from

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the Sub Inspector of Police, proceeded to the Government Hospital and found the deceased lying with burn injuries. He cleared all the persons from that place and recorded the dying declaration Ext.P5 in the presence of the duty doctor PW-7. Accordingly, conviction was recorded. Appellant preferred an appeal before the High Court. He took the stand that the dying declarations are not reliable. The High Court did not accept the stand and dismissed the appeal. It was submitted in this appeal that the dying declaration Ext.P-14 as recorded by PW 10 is different from what was recorded by the Mandal Revenue Officer (PW-6). In any event, it was submitted that there was no intention to kill the deceased and therefore Section 302 has no application.

PW-1 is the mother of the deceased who deposed that the deceased had illicit intimacy with the accused and accused was beating her frequently on account of suspicion of her character. On the date of occurrence, as is evident from the evidence of PW-10 who recorded the statement of the deceased Ext.P14, the accused asked her whether she had gone for cutting paddy crop. When she informed that no sickle was available and, therefore, she went to some other work, the accused stated that there was somebody for her and, therefore, she went to other work and had beaten her. At about 10.00 p.m. while she was sleeping on a cot, the accused came in a drunken state and brought kerosene and poured it on her and lit a matchstick. Immediately, her body caught fire and there were burns all over her body. On hearing her cries, neighbours reached there and removed her clothes and extinguished the flames by using gunny bags and she was taken to the Government Hospital. At the said hospital, the Mandal Revenue Officer (PW-6) recorded her dying declaration. The doctor PW-7 certified that she was conscious to answer and made an endorsement to that effect in the dying declaration Ext.P5. The endorsement is Ext. P6.

3. We find that the declaration given by the deceased to the mother (PW-1), the statement recorded by PW-10 Ext.P14

A and the dying declaration recorded by Mandal Revenue Officer (PW-6), Ext.P5 clearly establish that the deceased gave a consistent version in the dying declarations pointing out that the accused was responsible for her burns. There were reasons as to why accused set her on fire.

B 4. The factual scenario as described above leaves no manner of doubt that the accused was responsible for causing homicidal death of the deceased. Judgments of the Trial Court and High Court do not suffer from any infirmity to warrant interference.

C 5. The appeal is dismissed.

B.B.B.

Appeal dismissed.