

PETITIONER:
NAVAKOTI VEERA RAGHAVULU

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 15/01/1997

BENCH:
M.K. MUKHERJEE, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

M.K. MUKHERJEE, J.

This appeal is directed against the judgment dated June 11, 1991 rendered by Andhra Pradesh High Court in Criminal Appeal No. 624 of 1990 whereby, it reversed the acquittal of the appellant of the charge under Section 302 of the Indian Penal Code and convicted and sentenced him thereunder.

The deceased Navakoti Gagarin was the son of the appellant and at the time of his death was aged about 21 years. In his childhood he had become a victim of polio and hence he used to move around in a tri-cycle. According to the prosecution case his parents used to illtreat and neglect him for his physical disability and their such inhuman attitude towards their own son prompted his maternal grand-father Ingilala Polaiah to take him to his house, where he (Polaiah) use to stay with his divorced sister Polamma, and adopt him as his son. In the year 1980 Polaiah died leaving behind 40 ankanama of non agricultural land and a house. With a view to grabbing the above properties which were inherited and looked after by the deceased the appellant persuaded him to come to his village Manubolu and stay with him but a few days later he returned to his earlier home.

It is alleged by the prosecution that on October 26, 1988 at or about 10.30 P.M. when the deceased was returning home from Muthyalapet Centre of Gudur town on his tri-cycle the appellant accosted him on the lane by the side of Pollaluru Kotareddy Mica Factory. He then poured kerosene oil on the deceased and set him on fire. The deceased raised a cry and hearing the same Krishnaiah (P.W.1), Seshagiri (P.W.2), Murlikrishna (P.W.3) and Parvate Ramanaiah (P.W.4), who were nearby, rushed to his rescue. In the meantime the appellant had managed to flee away.

The deceased was immediately removed to the Headquarters Hospital, Nellore where Dr. M.C. Narasimhulu (P.W.9) examined him at 11.45 P.M. To P.W.9 the deceased disclosed that his father had set him on fire. After recording the statement of the deceased in the wound certificate (Ex. P.11), P.W.9 sent intimation to Gudur Town Police Station as also to the local Munsiff-Magistrate to

record his dying declaration. On receipt of the intimation Sk. Allabakash (P.W.12), Head Constable of the Police Station reached the hospital at 12.15 A.M. and recorded the statement of the deceased (Ex. P.16). Following P.W. 12, Shri N.V.S. Talpasayve (P.W.8) the District Munsiff of Gudur reached the hospital at 1.10 A.M. and recorded his (the deceased's) statement in presence of P.W.9 (Ext. P.10). On the following morning the deceased succumbed to his injuries.

The appellant denied the accusation levelled against him and asserted that he was falsely implicated at the instance of Sundaram (P.W.5), with whom he had enmity. To sustain the charge levelled against the appellant the prosecution relied mainly upon the above three recorded dying declarations of the deceased. Besides, the prosecution examined P.Ws. 1 to 4 to prove that they reached the site immediately after the incident took place and heard the utterances of the deceased implicating the appellant.

On perusal of the judgments of the learned Courts below we find that both the Courts held that all the three dying declarations, namely Ext. P.11, Ext. P.16 and Ext. P.10 were made by the deceased while he was in for that matter, the prosecution case on the grounds that it signally failed to prove the motive ascribed to the appellant for committing the murder of his own son, that the dying declarations were made by the deceased at the instance and instigation of Sundaram (P.W.5), a distant relation of the deceased, and that there was no evidence to corroborate the dying declarations. In reversing the above findings the High Court observed that there was not an iota of material on record from which the trial Court could infer that the dying declarations were made at the dictation of P.W.5 and held that the deceased had no reason to falsely implicate his father. According to the High Court all the three dying declarations were made at the earliest opportunity and the declarations clearly proved that the appellant committed the murder of his son owing to dispute over property.

This being a statutory appeal we have carefully gone through the entire evidence on record. The unimpeachable evidence of P.W.9 and P.W.8 clearly proves that the deceased made his dying declarations before them in a fit state of mind and they were properly recorded. While in his statement before the doctor (P.W.9), which was recorded in the wound certificate, (Ext. P.11), the deceased stated that his father set him on fire, in his statement before the Munsiff (P.W.8) which was recorded in a question and answer form, and in presence of P.W.9, he further stated that there was a dispute between him and his father over property and out of that enmity he set him on fire. On the face of such a statement the finding of the trial Court that the prosecution failed to prove any motive for the murder must be said to be patently wrong. The other finding of the trial Court that the dying declaration was the outcome of tutoring by P.W.5 is also perverse for, as rightly observed by the High Court, there is no material whatsoever in support thereof. It is, of course, true that P.W.5 accompanied the deceased to the hospital but that fact by itself does not indicate that he influenced the deceased to falsely implicate his father. Indeed, in cross examination of P.W.5 no suggestion to that effect was even put to him.

While on this point we cannot also lose sight of the evidence of P.Ws. 1, 2, 3 and 4 which goes a long way to support the prosecution case but was not at all considered by the learned Courts below. At the material time P.W.2 was an employee of the tyre shop of P.W.1 which is near Raghava

Reddy Lane, where the deceased was set on fire. He testified that when he was working in the shop he heard cries 'catch hold of my father, catch hold of my father' from that lane. Accompanied by P.W.1 he rushed there and found Gagarin (the deceased) in flames. After extinguishing the fire by a gunny bag and a mat when they questioned the boy he told them that his father had pushed him down from the tri-cycle, poured kerosene oil and set him on fire. P.W.1, however, did not fully support the version of P.W.2 for he corroborated him only to the extent that he along with Seshagiri (P.W.2) went to Raghava Reddy lane and found a boy burning in flames and crying 'catch hold of my father, catch hold of my father'. He was then declared hostile by the prosecution and cross examined as during investigation he claimed to have heard the deceased also saying that his father had set him on fire. P.W.3, who was working as a clerk in the office of the Lorry Owner's Association, Gudur, which was at a distance of 12 yards from Raghava Reddy Lane, stated that he heard some cries 'save me, save me' from the lane. He was also declared hostile as he resiled from his statement recorded under Section 161 Cr. P.C. wherein he spoke about the dying declaration of the deceased also. The last witness examined on this point, namely, P.W.4, deposed that while he was in his tractor repairing shop saw a boy being taken to the hospital in a rickshaw. P.W.4 was also declared hostile. Since all the above four witnesses were, at the material time, in their respective working places, they were the most natural and probable witnesses and we do not find any reason to disbelieve their evidence, particularly, that of P.W.2. The evidence of P.W.2 along with the evidence of the above three witnesses clearly proves that the deceased was set on fire in the lane and that he made a statement that his father was the culprit. The dying declaration so made by the deceased at the spot immediately after the occurrence also demonstrates that the finding of the trial Court that the three dying declarations were the result of tutoring by interested party is wholly untenable.

For the foregoing discussion we do not find any merit in this appeal. It is accordingly dismissed.