

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No. 1415 OF 2010

Between:

Bommishetti Ravinder

... Appellant/
Accused

And

The State of A.P. rep. by State Public
Prosecutor, High Court of A.P.,
Hyderabad.

... Respondent/
Complainant

DATE OF JUDGMENT PRONOUNCED:

21.07.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.A. No. 1415 OF 2010

% Dated 21.07.2023

Bommishetti Ravinder

...Appellants/
Accused

And

\$ The State of A.P. rep. by State Public
Prosecutor, High Court A.P.,
Hyderabad.

... Respondent/
Complainant

! Counsel for the Appellant: Sri J. Venkateshwar Reddy

^ Counsel for the Respondents: Public Prosecutor for State

>HEAD NOTE:

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.1415 OF 2010****JUDGMENT:**

1. The appellant is questioning the conviction under Section 304-II of IPC. He has been sentenced to undergo 10 years of rigorous imprisonment for pouring kerosene on wife and setting her on fire.

2. Briefly, the case of the prosecution is that the deceased was living along with the appellant since 5 years prior to the incident. On the date of incident, the deceased under the influence of alcohol had beaten the deceased, poured kerosene on her and set her on fire. Seeing the deceased in flames, the appellant poured water on her and tried to put out the fire and thereafter, escaped from the house.

3. On the basis of dying declaration and also investigation, the Police have filed charge sheet for the offence under Section 304-II of IPC.

4. Having examined the witnesses P.Ws.1 to 17 and also marking Exs.P.1 to P15, learned Sessions Judge found that the appellant did not have any intention of causing death of the deceased for which reason, though the charge was framed under Section 302 of IPC, the appellant was sentenced to 10 years of imprisonment under Section 304-II of IPC.

5. Learned counsel appearing for the appellant would submit that the entire case of the prosecution cannot be believed for the reason of contradictory versions between P.W.1 and P.W.6/parents of the deceased. There are several inconsistencies in the version of the witnesses and they are not able to substantiate the relationship between the deceased and the appellant for which reason benefit of doubt has to be extended. Further, the Magistrate who recorded the dying declaration/Ex.P.6 had taken printed proforma. The said dying declaration recorded in printed proforma cannot be given any credence. Further, for the reason of Magistrate accepting that statement of the

deceased was not recorded verbatim, the statement of deceased cannot be relied upon to convict the appellant.

6. On the other hand, learned Public Prosecutor would submit that there is nothing on record to disbelieve the version of the deceased. In fact, the accused was examined by the Doctor as he received burn injuries. In the said circumstances, it cannot be said that the appellant has nothing to do with the incident. For the said reason, the conviction has to be sustained.

7. Learned Magistrate had taken a printed proforma for recording dying declaration wherein the details were entered by the learned Magistrate. The certification of coherence and consciousness of the deceased was in printed form and the duty Doctor has appended his signature underneath. The endorsement regarding health condition of a patient being fit to give statement cannot be in a printed proforma and it is the duty of the Doctor to examine and write his opinion regarding condition of the deceased.

8. However, I do not find favour with the argument of the learned counsel that the learned Magistrate had to record dying declaration in verbatim. There is no necessity for the Magistrate to depose against the appellant. Further, it is not brought on record that there was any kind of tutoring by the relatives of the deceased prior to recording of the dying declaration of the deceased. For the said reason, the recording of the dying declaration in the said manner cannot be found fault with. However, it is desirable and necessary that the Magistrate records the dying declaration in verbatim to rule out any doubts regarding the correctness of the statement. Such statements cannot form sole basis for conviction.

9. However, in the present circumstances, since there is nothing on record to come to a conclusion that the dying declaration was a result of tutoring, the findings of the learned Sessions Judge on the basis of the dying declaration and the corroborating evidence of P.W.1, is reasonable and cannot be interfered with.

10. The appellant was in a drunken state and poured kerosene after altercation with the deceased. Immediately, having realized that what he has done was wrong, he has put out the flames and taken her to the hospital. In the said circumstances, the reduction of sentence can be considered. Accordingly, the sentence of rigorous imprisonment of 10 years is reduced to 3 years of rigorous imprisonment.

11. Accordingly, the Criminal Appeal is partly allowed. The concerned Magistrate shall cause appearance of the appellant and send him to prison to serve out the remaining part of the sentence. Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 21.07.2023

Note:

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