

**ANIL KUMAR JUKANTI, J**

**\* THE HONOURABLE SRI JUSTICE K.SURENDER**  
**AND**  
**THE HONOURABLE SRI JUSTICE ANIL KUMAR JUKANTI**  
**+ CRL.A. No. 36 of 2017**

% Dated 21.11.2024

# Sameer Ali

... Appellant/A1

And

\$ The State of Telangana,

...Complainant/  
Respondent

**! Counsel for the Appellant:** Sri P.Prabhakar Reddy

**^ Counsel for the Respondent:** Sri D.Arun Kumar  
Learned Additional Public Prosecutor

**>HEAD NOTE:**

**? Cases referred**

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

**And**

**HON'BLE SRI JUSTICE ANIL KUMAR JUKANTI**

**CRIMINAL APPEAL No.36 OF 2017**

**JUDGMENT:** *(per Hon'ble Sri Justice K.Surender)*

The appellant was convicted and sentenced to undergo Life Imprisonment under Section 302 IPC vide judgment in S.C.No.13 of 2014 dated 11.01.2017 passed by the Special Sessions Judge-cum-VII Additional District and Sessions Judge, Mahabubnagar.

2. Heard Sri.P.Prabhakar Reddy, learned Counsel appearing for the appellant and Sri D.Arun Kumar, learned Additional Public Prosecutor.

3. According to the prosecution on 14.04.2013 around 9:00 p.m., the appellant namely Sameer Ali allegedly poured petrol/kerosene on the deceased and burnt her. She was taken to the hospital. In the hospital, requisition was given by the duty doctor under Ex.P14 to the jurisdictional Magistrate for recording the Dying Declaration. The Magistrate arrived at 10.30 p.m. and recorded the Dying Declaration. The Dying Declaration was recorded after putting preliminary questions. The duty doctor also endorsed that the

patient is conscious, coherent and was mentally in a fit status of mind, for recording the statement. After the endorsement of duty doctor, the learned Magistrate-PW.15 started recording the statement in his own handwriting. Initially, before recording the Dying Declaration, 6 questions were put by the learned Magistrate to satisfy himself that she was in a fit state of mind for recording the statement of the deceased, and started recording the statement.

4. To the question put by the learned Magistrate '*what happened*', the deceased answered saying that '*My husband Sameer, when I was sitting at the entrance of the house, he came and poured Kerosene on me, lit fire and went away. The statement is voluntarily given by me and there is no force by anyone.*' (translated by me)

5. To the next question '*do you wish to say anything else?*' the deceased answered '*nothing*'.

6. Thereafter, the learned Magistrate endorsed that the statement was read over to the deceased and she put her right thumb impression after the statement was read over and admitted to be correct. The duty doctor again certified that the patient was

conscious, coherent and was mentally in a fit state of mind, during recording of the statement. It was also signed by the doctor at 10.45 p.m.

7. Another statement of the deceased was recorded by PW.17-SHO of P.S., I town, which was marked as Ex.P17. In the said statement deceased narrated that while she was sitting at the entrance of her house, her ex-husband to whom divorce was given came walking and poured Petrol on her and lit her on fire.

8. On the basis of the statement recorded by P.W.17, FIR was registered under Section 307 IPC. The victim died on 15.04.2013. On the same day, inquest proceedings were concluded and also the postmortem examination. Alteration memo was filed which is Ex.P19. In the alteration memo, Section of law was altered from Section 307 IPC to Sections 498-A and 302 of IPC against Sameer, who is resident of Habeebnagar.

9. Learned Sessions Judge having examined the evidence placed on record found that the appellant was guilty for deliberately burning the deceased by setting her on fire and accordingly convicted him.

10. Learned counsel appearing for the appellant argued that the prosecution has failed to prove the identity of the person who burnt the deceased. In the Dying declaration recorded by the learned Magistrate, it was mentioned as 'my husband Sameer', however, in the statement made to P.W.17, it was mentioned as 'Sameer, ex-husband to whom divorce was given'. In the said circumstances, when the two dying declarations, made before her death are contradictory to one other, implicating the present husband and also the ex-husband, whose names are incidentally 'Sameer', benefit of doubt has to be given. The prosecution has not come up with any other evidence other than the two Dying Declarations to implicate the appellant only as the person who had perpetrated the crime.

11. On the other hand, Sri Arun Kumar Dodla, learned Additional Public Prosecutor submits that the findings of the learned Sessions Judge are correct and it was stated specifically in the statement recorded by P.W.17 regarding the identity of the accused that he was the ex-husband to whom divorce was given. In the said

circumstances, there is no element of doubt regarding identity of the accused.

12. Admittedly, there are no eye witnesses to the incident. No one has seen the appellant near the place of incident. All the witnesses turned hostile to the prosecution case. The only evidence that was before the learned Sessions Judge was the statement recorded by the learned Magistrate/P.W.15 and the statement recorded by P.W.17, who is the police officer.

13. In the Dying Declaration, which was recorded at 10.30 p.m, it was mentioned as 'Sameer, my husband'. The said dying declaration was recorded by the Magistrate having followed due procedure laid down under Rule 34 of Criminal Rules of Practice. In fact, the duty Doctor has given requisition and the doctor was present at the time of recording the statement of the deceased. The Doctor endorsed even prior to the statement being recorded that the deceased was in fit state of mind for recording dying declaration and after recording also, duty Doctor endorsed that during the course of recording the statement, the deceased was in a fit state of mind.

14. However, as seen from Ex.P17, statement which was recorded by P.W.17, there is no time mentioned as to when the said statement was recorded. The assistance of any Doctor was not taken to certify the mental status of the deceased. As seen from the statement, there were no preliminary questions that were put to the deceased. It is not explained as to why the assistance of the Doctor was not taken to know about the mental condition of the deceased while P.W.17 recorded the statement of the deceased.

15. When two dying declarations are made, one contradicting the other, the dying declaration recorded by the learned Magistrate by taking all precautions and also the assistance of the Doctor, has to be relied upon. In the dying declaration recorded by the Magistrate, the deceased stated that it was the husband Sameer who had poured kerosene on her and lit her on fire.

16. The police, during investigation did not make any efforts to trace out the place from where the petrol was purchased by the appellant. In fact, the learned Sessions Judge found that there is no evidence to show that the deceased had procured petrol, which was used in burning the deceased.



17. In view of above discussion, the appellant being ex-husband and in the dying declaration recorded by the Magistrate, it was specifically stated that her 'husband Sameer' had poured Kerosene on her, benefit of doubt has to be extended to the appellant.

18. In the result, the judgment of trial Court in S.C.No.13 of 2014 dated 11.01.2017 is hereby set aside and the appellant/A1 is acquitted. Since the appellant is on bail, his bail bonds shall stand cancelled.

19. Accordingly, Criminal Appeal is allowed.

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**K.SURENDER, J**

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**ANIL KUMAR JUKANTI, J**

Date : 21.11.2024  
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