

(1999) 02 AP CK 0068

In the Andhra Pradesh High Court

Case No : Criminal Appeal 1206 of 1997

Armugam Ramamma and Tiruvannamalai Rani

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 08-02-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313, 392

Evidence Act, 1872 — Section 106

Penal Code, 1860 (IPC) — Section 302, 307

Citation : (1999) 02 AP CK 0068

Hon'ble Judges : Vaman Rao, J;P. Venkatarama Reddi, J;Motilal B. Naik, J

Bench : Full Bench

Advocate : Subba Rao Korrapati, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—This criminal appeal is filed against the judgment in sessions case No. 103 of 1996 dated 31 -3-1997 on the file of the District and Sessions Judge, Nellore.

2. Appellant is the accused in the said sessions case No. 103 of 1996 and was found guilty of the offence u/s 302 IPC and sentenced to suffer imprisonment for life by the Court below.

3. The gravamen of charge against the appellant-accused is that on 13-8-1995 at about 6-30 a.m., at her house at Naidupet, she committed the murder by intentionally causing the death of J. James by pouring kerosene on his person and lit fire on him while he was sleeping on a cot.

4. The case of the prosecution, in brief is as under:

The appellant is a resident of Rajiv Gandhi Colony, Thummur, Naidupet and she is stated to have been living by prostitution. The deceased was working as a sanitary mastery in ICF, Madras and originally was a resident of Kangai, Nellore

Road, Anna Nagar, Vellore. PW 6 is the wife of the deceased. According to the prosecution, the deceased developed illicit intimacy with the appellant and both were living together for more than 10 to 11 months as wife and husband at Rajiv Gandhi Colony, Naidupet prior to the incident. The deceased used to go to Madras to attend his work in the morning and return in the evening to the house of the appellant-accused. Even after the appellant and the deceased were staying together, the appellant-accused did not change her attitude and continued to lead an immoral life.

5. On 12-8-1995 around 10.00 p.m., when the deceased returned to the house of the appellant from Madras, he did not find the appellant in the house. When she returned, the deceased questioned her as to where she had gone, for which the appellant-accused adamantly replied that the deceased had no business to enquire about her movements. As the deceased became an obstacle to her activity, the appellant designed to do away with the life of the deceased. Accordingly, on 13-8-1995 around 6-30 a.m., the appellant poured kerosene on the deceased and set fire while the deceased was sleeping on the cot. The deceased got up with flames and caught hold of the appellant. However, the appellant ran out of the house making alarming cries "save me - save me". The neighbours, PWs 2 to 5 came out and found the appellant with burn injuries and asked the appellant as to what is the cause of her injuries. She did not reply. However, on noticing smoke coming out of the house of the appellant, the neighbours pushed the door, entered the house and found the deceased who was burnt completely from head to legs lying near the cot and could not speak. PW2 then went to the house of the VAO (PW1) and informed him about the incident. Then, PWs 1 and 2 came to the scene of offence, by which time police constables were present.

6. According to the prosecution, the deceased on being questioned by PW1 as to the reasons for his burns, stated that the appellant had poured kerosene on him and set him afire. The police constables took the deceased to the hospital in a rickshaw. PW 1 then went to the police station, Naidupet and gave a complaint (Ex.P1) on the basis of which Crime No. 122 of 1995 was registered u/s 307 IPC around 11-00 a.m. However, the deceased died in the hospital around 1-00 a.m. on 13-8-1995 and the FIR was altered to Section 302 IPC instead of 307 IPC. Ex.P5 is the altered FIR which was sent to all concerned including the Judicial Magistrate who received the same around 12.10 a.m. on 14-8-1995. PW 11 - Inspector of Police conducted inquest panchanama under Ex.P2 on the dead body of the deceased at the Governmental Hospital, Naidupet. PW 10-Medical Officer, Government Hospital, Naidupet conducted the post-Mortem Examination and issued Ex. P.6 Post Mortem Certificate opining that the deceased died due to burns. Ex.P7 is the wound certificate issued by PW10. The accused was arrested on 31-8-1995 after discharge from the hospital and was remanded to judicial custody. PW 11 took up the investigation and filed the charge-sheet against the accused.

7. In support of its case, the prosecution examined PWs.1 to 11 and marked Exs.Pl to P12 besides Mos. 1 to 3. PW 1 is the Village Administrative Officer, PW 2 is the neighbour, PW 3 is the wife of the PW2, PWs.4 and 5 are also neighbours, PW 6 is the wife of the deceased, PWs. 7 to 9 are the police personnel, PW 10 is the Medical Officer and PW11 is the Inspector of Police who conducted the investigation. No witnesses were examined on behalf of the defence.

8. On the basis of the incriminating evidence available against the appellant-accused, the trial Court examined the appellant u/s 313 Cr.P.C. However, the accused pleaded not guilty. She further pleaded that the deceased, James was in a disgusted mood and expressed the intention of committing suicide and in fact he committed suicide by pouring kerosene on him and setting fire. She further pleaded that in the process of saving him, she received injuries and came out of the house for help.

9. The learned Sessions Judge, on a consideration of the oral and documentary evidence, accepted the version of the prosecution and found the appellant-accused guilty of committing the offence u/s 302 IPC and sentenced her to suffer imprisonment for life through the impugned judgment dated 31-1-1997, against which the present appeal is filed.

10. We have heard Sri Subba Rao Korrapati, Counsel for the appellant and the learned Public Prosecutor on behalf of the respondent.

11. On the question of conviction of the appellant-accused u/s 302 IPC by the Court below, as my learned Colleague on Bench expressed his desire to render a separate judgment, I have, proceeded to examine the contentions raised on behalf of the appellant for rendering a separate judgment.

12. Sri Subba Rao Korrapati, Counsel appearing on behalf of the accused-appellant who has been entrusted the brief by the Legal Aid Board, contended that there is no motive for the appellant to kill the deceased and there is no direct evidence fixing the responsibility on the appellant that she poured kerosene on the deceased and set fire. It is further contended that the Court below has found the appellant guilty only on the basis of the oral dying declaration stated to have been "made by the deceased to PW 1 though as per the evidence of PW 10-Medical Officer that the deceased sustained severe burns and was unable to speak. Elaborating further, Counsel submitted that when the body of the deceased was burnt from head to legs, it would be impossible for the deceased to make any statements to anybody and as such the evidence of PW 1 that he deceased made a statement to him implicating the appellant as if she poured kerosene on him and setting afire, as supported by PWs.2 to 5 cannot be believed. Learned Counsel further contended that PW 7 who was the police constable deposed that when the head constable, who was discharging duty along with him at the scene of offence, enquired the deceased as to how he sustained burns, except screaming, the deceased did not say anything. Learned Counsel, therefore, contended that the evidence of PW 7 goes to establish clearly

that the version of PWs. 1 to 5 to the effect that the deceased has made a statement that the appellant has poured kerosene on him and set fire, is false. It is nextly contended that when a sentence of imprisonment for life is to be inflicted on the accused, Courts shall appreciate the evidence on record carefully and with utmost circumspection. Counsel also contended that when the deceased had an opportunity to disclose the name of the person responsible for his burns to PWs.2 to 5 who came to him in the early hours, he failed to disclose the same and as such it is highly improbable that the deceased would have made a statement to PW 1 around 10-00 a.m., when he asked about the reasons. In support of his contentions, Learned Counsel has drawn our attention to a decision of the Supreme Court reported in K. Ramachandra Reddy and Another Vs. The Public Prosecutor, . Learned Counsel under these circumstances, submitted that the Court below has erroneously come to the conclusion, on the basis of the evidence of PWs. 1 to 5, that the appellant-accused is guilty of committing the offence u/s 302 IPC, and therefore, the conviction and sentence imposed on the appellant-accused by the Court below are liable to be set aside.

13. Learned Public Prosecutor appearing on behalf of the State, on the contrary, justified the conviction and sentence imposed by the Court below on the accused. According to the Public Prosecutor, PW1 who is an independent witness has deposed that the deceased informed him that the appellant had poured kerosene on him and set him afire, which version is also supported by PWs.2 to 5. The testimony of PW 1 on this aspect is supported by PWs.2 to 5 about the information given by the deceased implicating the appellant, it is contended that there is no reason to disbelieve the evidence of these witnesses. According to the learned Public Prosecutor, PW7-Police Constable had deposed that when he and the head constable asked the deceased about the cause for his burn injuries, the deceased only screamed but did not say anything. PW7 has also deposed in his chief-examination that when PW 1 questioned the deceased about the cause of the burn injuries present on his body, the deceased stated that the appellant poured kerosene on his body and set fire. Therefore, it is contended that the evidence of PW 7 also supports the case of the prosecution. According to the learned Public Prosecutor, the Court below on a consideration of the evidence of PWs. 1 to 5 and 10 has rightly found the accused guilty of committing the offence u/s 302 IPC. Learned Public Prosecutor, therefore, submitted that no interference is called for in the well-considered judgment of the Court below.

14. In the wake of the above submissions, the only point that emerges for consideration is whether the prosecution has established the guilt of the appellant-accused u/s 302 IPC beyond all reasonable doubt?

15. As the Learned Counsel for the appellant-accused contended that the deceased who sustained severe burn injuries on his body could not have disclosed to PW 1 that the accused has poured kerosene on his body and set fire and the deceased has also not disclosed the person responsible for his injuries though PWs.2 to 5 rushed to him in the early hours on the date of the incident

and as such the evidence of PWs. 1 to 5 cannot be accepted, it is necessary to scrutinise the evidence of PWs. 1 to 6, 7 and 10.

16. PW2- Bhuvanagir Babu whose house is situated behind the house of the accused at a distance of four feet, has deposed that the accused and the deceased are residing in their house as wife and husband without marriage. He stated that the accused is a loose character lady. According to PW2, the deceased James returned from Madras to his house around 9.00 or 10.00 p.m., on the fateful night and did not find his wife at that time. After her return, when the deceased questioned her, she replied that he better mind his own business, following which heated exchange of words ensued between them. As the exchange of words between them is a routine affair, PW 2 stated that he did not evince much interest in it. However, in the morning at 6-30 a.m., when he heard the cries from the house of the accused, himself and his wife (PW 3), along with one Kistamma, Nagamma (PW 4), Kuppamma (PW5) went to the house of the accused and noticed the accused coming out of the house saying "help me" and sat under a neem tree. He further deposed that he noticed burn injuries on the forehands of the accused and also on her face. When questioned, she did not reply and he then noticed smoke coming out of the house of the accused. They went inside and saw the deceased James lying with burn injuries near the cot. PW2 stated that though the deceased was conscious, when questioned, he did not reply. Immediately, he rushed to the house of PW 1 and informed him about the incident and came back to the scene of offence along with him. He further deposed that the smell of kerosene was coming from the roof of the house of the accused. PW2 further deposed that when PW 1 enquired the deceased about the cause for his burns, the deceased stated that the accused poured kerosene on his body and set fire. PW 2 also admits to the fact of two constables present when he along with PW 1 came there. He further deposed in his cross-examination that when the deceased was narrating the incident to PW 1, he was standing outside the house by the side of door.

17. PW3- Bhuvanagiri Kumari is the wife of PW2. She stated that James (deceased) has kept the accused as concubine and the accused was leading a prostitute's life. She speaks to the fact of hearing the cries of the accused around 6-30 a.m., and the exchange of words between the accused and the deceased on the intervening night and PWs.2 to 5 going into the house of the accused after pushing the door and noticing burns on the deceased. She also deposed to the fact that after hearing the cries from the house of the accused, herself along with her husband (PW2) and PWs.4 and 5 and one Kistamma went to the house of the accused noticing the accused coming out of the house and sitting under a neem tree. She stated that she noticed burns on the forehands and head of the accused, She also deposed that the deceased though was conscious, but when asked about the cause of the injuries, he did not speak. She admits, however, that when questioned by PW1 as to the reason for his injuries, the deceased revealed to PW 1 that the accused poured kerosene on him and set fire.

18. PW-4 - Uppala Nagamma whose house is situated 10 feet away from the house of the accused, deposed that the accused and the deceased were residing as husband and wife and the accused was a loose character lady. According to PW4, the accused and the deceased used to quarrel quite often. On the fateful night, the deceased did not notice the accused in his house after his return from his work. After her return, when the deceased questioned her, she asked the deceased to mind his own business and heated exchanges ensued between them. As their quarrel was a regular feature, she did not give much importance. In the morning hours, around 6.30 a.m., on 13-6-1995, she heard the cries from the house of the accused and she along with PWs.2 and 3 and others went there and saw the accused coming out of her house with burn injuries on the forehands and head. When questioned, the accused did not give any reply. In the mean time, as they noticed smoke coming from the house of the accused, they went inside the house and found the deceased with burn injuries lying near the cot. She also stated that on arrival of PW 1 and on his questioning about the burn injuries, the deceased stated that the accused poured kerosene and set him afire.

19. PW5 - Katav Kuppamma who is also a resident of Rajiv Gandhi Colony deposed that the distance between her house and the house of the accused is about 10 feet. She testified that the deceased has kept the accused as concubine and the accused is a loose character woman. She has also deposed to the fact of quarrel between the accused and the deceased, going into the house of the accused on noticing smoke and finding the deceased with burn injuries near the cot, and the fact of the deceased disclosing to PW1 on being questioned by him that the accused poured kerosene on him and set afire.

20. Coming to the evidence of PW,. 1 who was the Village Administrative Officer of Thummur during the relevant period, he deposed that on 13-8-1995 around 10-00 a.m., PW 2 came to his house and informed him about the incident. On learning the same, he immediately rushed to the scene of offence along with PW 2 where he found the wife of PW2 i.e. PW3, PWs.4 and 5 and also two constables and some others. He deposed that he noticed the deceased with burn injuries in the house of the accused lying on the side of the cot. He also noticed half burnt cot because of plastic hawar. He further deposed that when he asked the deceased as to the cause of his burns, the deceased informed him about the accused pouring kerosene on his body and setting fire. PW 1 also deposed to the fact of the presence of PWs.3 to 5 along with PW2.

21. He further testified that at the time of narrating the incident to him, the deceased was conscious and was capable of doing so. PW 1 stated that he noticed the smell of kerosene in the house. According to PW 1, he went to the Police Station and lodged a complaint. On 13-8-1995, inquest panchanama was conducted over the dead body of the deceased in the Government Hospital, Naidupet and he signed on the inquest panchanama. He further deposed that police seized MOs. 1 to 3 from the scene of offence.

22. PW-10- Dr. M. John Ravi is the Medical Officer who conducted post-mortem

examination over the dead body of the deceased on 13-8-1995. He deposed that except burn injuries, he did not find any external and internal injuries over the dead body of the deceased. According to PW 10 the cause of death is secondary shock due to fluid loss on account of burns. He further deposed that the burn injuries are sufficient to cause the death in the ordinary course of nature and such injuries are possible only by pouring kerosene and setting fire. In the cross-examination, PW 10 deposed that after examining the accused, he referred her case to Head quarters Hospital, Nellore. According to him, he saw the deceased lying in an unconscious state in the dispensary. He testified that the deceased would have died around 1:00 p.m. while undergoing treatment in the Government dispensary. PW 10 further deposed that he came to the hospital at 11-45 a.m. and noticed the deceased in an unconscious state.

23. PW7- J.V.S. Sarma was working as Police Constable in Naidupet Police Station from March, 1995 to December, 1995. He testified that on 13-8-1995 while he was at the police station, he received a vague information about the incident and he along with H.C. No. 209 went to the scene of offence and found four ladies along with PWs.1 and 2 coming there. He further deposed that PW 1 questioned the burnt injured James and the said person stated that the accused poured kerosene on him and set fire. According to PW7, at the scene of offence, when the head constable questioned the deceased about the injuries, the deceased did not give any answer except screaming.

24. On a careful scrutiny of the above evidence of PWs.1 to 5, it is abundantly clear that the deceased after deserting his wife at Madras started residing with the accused. It has also come in the evidence that the accused is a loose character lady and that there were frequent exchange of words between the accused and the deceased. It is revealed from the evidence of PWs.2 to 5 that in the early hours on 13-8-1995 around 6.30 a.m., when they heard the cries from the house of the accused they came out and saw the accused coming out of her house with burn injuries on her forehands and head and sitting under a neem tree. It is further evident from their evidence that on seeing smoke coming from the house of the accused, they rushed inside the house only to find the deceased lying near the cot with burn injuries all over the body. When they enquired, the accused did not reveal anything. PW2 has testified that he went and informed PW 1 who after coming to the scene of offence asked the deceased as to who was responsible for his burns for which the deceased informed him that the accused poured kerosene on him and set fire. This piece of evidence of PW 1 has been corroborated by PWs.2 to 5 and also PW7 -police constable who was present when PW1 asked the deceased about the reasons for his injuries. Though PWs. 1 to 5 were cross-examined at length, nothing is elicited from them to discredit their testimony. It is worthwhile to mention that PWs.2 to 5 are the neighbors of the accused and the deceased is a stranger to them since he was living with the accused only from eleven months earlier before the date of the incident. All these witnesses in one tone have testified that the accused was a loose character lady and the deceased revealing the fact to PW1 that the accused poured kerosene on

him and setting fire.

25. Thus, on a careful analysis of the evidence of the above witnesses, I have no hesitation in my mind to come to the conclusion that the accused alone is responsible for the death of the deceased.

26. It is interesting to note that the accused was found with burn injuries on her forehands and face when came out of her house. PW10- Medical Officer has referred her to Government Dispensary, Nellore. When the accused was examined by the Court below u/s 313 of Cr.P.C., she denied to have committed the offence and pleaded that the deceased committed suicide by pouring kerosene on himself and setting fire and when she attempted to save his life, she sustained burns in the said process. This alibi of the accused though intended to show that she is not responsible for the burns found on the deceased is highly improbable in as much as when she saw the deceased committing suicide, the normal human conduct would be to raise hue and cry in order to get help from others to extinguish the fire, however, the accused did not raise any cries except saying "save me" and, sat, coolly under a neem tree. She did not seek any help to protect the deceased. She did not even inform the PWs.2 to 5 who came out after hearing the noise about the incident. She has not even made any attempt to make a complaint to the police or any other person regarding the suicide committed by the deceased. PW11 - Inspector of Police who conducted investigation into the crime has categorically denied a suggestion put to him on behalf of the defence that the accused made a complaint on 13-8-1995 around 7-00 a.m., that the deceased James committed suicide by setting himself fire. When the accused and deceased are living together as husband and wife and when the husband attempts to commit suicide, it is but natural on the part of the wife to become panicky and to raise hue and cry to get some help from other to extinguish the fire. But, however, the conduct of the accused is highly suspicious as she has not informed anybody when enquired and she has not even preferred a complaint to the police that the deceased committed suicide. On the contrary, the categorical deposition of PW 1 that the deceased informed him that the accused poured kerosene on him and set fire, corroborated by PWs.2 to 5 clearly goes to show that the accused has poured kerosene on the deceased and set fire. Therefore, on a careful scrutiny of the evidence of PWs.1 to 5 it is abundantly clear that it is the accused and the accused alone is responsible for the death of the deceased. The circumstances as probablised in the prosecution evidence are consistent with the guilt of the accused and not her innocence.

27. Learned Counsel for the appellant-accused contended that if the oral dying declaration constitutes the sole basis for convicting the accused, greater care and circumspection are required in analyzing such dying declaration. In support of his contention, Learned Counsel has placed reliance on the decision of the Supreme Court K. Ramachandra Reddy case cited above. However, after carefully going through the said decision, I am of the considered view that the said decision has no application to the facts and circumstances of the case and as such it does not

lend any assistance to the Learned Counsel for the appellant. In that case, the deceased though had three occasion to meet the prosecution witnesses and spoke to them, he did not reveal the names of the accused who are responsible for the assault on him. The Supreme Court, therefore, observed that though the deceased had three occasions to mention the names of the assailants to the prosecution witnesses, he did not do so and as the Magistrate had also not put a direct question to the injured whether he was capable mentally to make statement, the Supreme Court found fault with the dying declaration recorded by the Magistrate. However, in the instant case, the conviction of the accused is not based on the sole oral dying declaration made by him to PW1. The presence of the accused at the scene of offence is proved beyond doubt by the testimony of PWs.2 to 5 who saw the accused coming out of her house immediately after the incident with burn injuries on her forehands and head and sitting under a neem tree. PWs.2 to 5 have further deposed that when they rushed inside the house, they saw the deceased lying near the cot with burn injuries all over his body and though he was conscious, he did not respond to their queries. When PW2 informed the same to PW 1 who is the VAO, PW1 came and asked the deceased the reasons for his burn, for which the deceased stated that the accused poured kerosene on him and set fire. This categorical piece of evidence is also corroborated by the prosecution witnesses PWs.2 to 5. PW 10-Dr. M. John Ravi who conducted postmortem examination over the dead body of the deceased has deposed that the burn injuries present on the body of the deceased are possible only by pouring kerosene and setting fire. Even in the cross-examination of PW 10, it was not suggested to him that the deceased was incapable of making any statements to anyone atleast upto 9.30 or 10.00 a.m., on the fateful day though he had seen the deceased at 11.45 a.m., and found him in that bad state. Failure on the part of the accused to narrate the incident to PWs.2 to 5 and in the absence of any attempt made by her to lodge a police complaint, would lead to only conclusion that she has a hand in the death of the deceased. As discussed, all these circumstances only lead to an irresistible conclusion that the accused alone is responsible for pouring kerosene on the deceased and set fire and no other inference is possible from the evidence on record.

28. Ex.P1 is the complaint given by PW1 to the Sub-Inspector of Police, Naidupet about the incident on which basis a Crime No. 122 of 1995 u/s 307 IPC was registered and Ex.P4-FIR was issued. PW9- S. Madhava Rao, who was working as Head Constable during the relevant period at Naidupet Police Station testified that on 13-8-1995 at 11.00 a.m., PW 1 came to him and gave a report, Ex.P1 on which basis he registered the case and issued express FIR-Ex.P4. He further deposed that he visited the scene of offence along with constable and also to the Governmental Hospital, Naidupet where he found the deceased James in an unconscious state with burn injuries. He further testified that on receiving the death intimation of James and he altered the section in the FIR from Section 307 IPC to 302 IPC and issued revised FIR under Ex.P5 to all concerned. A perusal of the records indicate that Ex.P5 - revised FIR has been received by the Judicial

First Class Magistrate, Venkatagiri, on 14-8-1995 around 12.10 a.m. Though no arguments are advanced on the delay in sending the revised FIR to the concerned Magistrate, incidentally, I noticed that the revised FIR (Ex.P5) has been received by the concerned Magistrate on 14-8-1995 at 12.10 a.m. through PW1 lodged a complaint at 11.00 a.m. on 13-8-1995. It is to be noted here that Ex.P5 is only a revised FIR altering the section of law from Section 307 IPC to 302 IPC. On verification of the record, it is not known as to when the first FIR (Ex.P4) is received by the concerned Magistrate. There is no endorsement about the time of receipt of Ex.P4 by the concerned Magistrate. Even the Head Constable who was examined as PW 9 and who received Ex.P1 on which basis he issued Ex.P4 deposed that the express FIR under Ex.P4 has been issued by him to all concerned. He did not say at which time the concerned Magistrate received the same. It is, therefore, difficult to say as to at what time Ex.P4 was received by the concerned Magistrate. This discrepancy, in my considered view, is insignificant and may not be fatal to the case of the prosecution.

29. Having regard to the above discussion and in the light of the categorical evidence of PWs.1 to 5, I am of the considered view that the prosecution has been able to establish the guilt of the accused u/s 302 IPC and as such, the Court below has rightly imposed the conviction and sentence of life imprisonment on the accused u/s 302 IPC.

30. In the result, this criminal appeal is dismissed.

Vaman Rao, J.

I respectfully regret that I am unable to agree with the conclusions of my learned brother, I have my separate judgment.

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31. This appeal is directed against the judgment of the Sessions Judge, Nellore dated 31-1-1997 rendered in SC No. 103 of 1996 under which the accused/appellant has been convicted for the offence u/s 302 of the Indian Penal Code and sentenced to imprisonment for life.

32. The facts relating to this case as brought out by the witnesses examined during the trial may be stated briefly as follows:

The deceased James has been a resident of Madras working there as a maistry in a factory. PW 6 is his wife. They have three children. But, according to the wife of the deceased, PW 6, Suguna, about six months prior to his death, he stopped paying any money for the maintenance of the family. PW6 came to know that the deceased had kept a woman as concubine at Tummu village in Nellore District and had been residing with her. Thus, the deceased had been living in Rajiv Gandhi Colony at Tummu from six months prior to the date of his death with the accused in her house. PW2, Bhuvanagiri Babu, is the husband of PW3, Bhuvanagiri Kumari. Their house is situated behind the house of the accused at a short distance. PWs.4 and 5 are also the neighbours of the accused. According to

the evidence of the prosecution, the deceased used to go to Madras every morning to attend to his work and return in the evening. On 13-6-1995 at about 6.30 a.m., the deceased was found with burn injuries on his body. On the previous night, James (the deceased) returned to that house late in the night around 10.00 p.m. The accused was not in the house at that time. Some time later, the accused arrived. James questioned her as to where she had gone. The accused replied with she need not answer to him. Then there was a quarrel. According to PWs.2, 3, 4 and 5, it was a routine daily affair and so they kept quiet. In the morning at about 6.30 a.m., PWs.2, 3, 4 and 5 heard the cries from the house of the accused. Then, PW2, Bhuvanagiri Babu, PW3, Bhuvanagiri Kumari, PW4, Uppalla Nagamma and PW5, Katav Kuppamma went to the house of the accused. According to PW2, the accused came out of the house crying "help me, help me" and sat under a neem tree and she had burn injuries on the two forehands and also on her face. When they questioned the accused as to what happened, she did not say anything. Meanwhile, they noticed smoke coming out the house of the accused and they went and saw and found James lying with burn injuries near the cot. When they questioned the deceased, he did not speak though he was conscious. Thereafter, PW2 went and informed PW1, the Village Administrative Officer. PW1 accompanied by PW2 came to the house of the accused. PW1 enquired the deceased James about the incident and the deceased stated that the accused poured kerosene and burnt him. At that time, two police constables were present including PW7. While PW1 questioned, PWs.2 to 5 and 7 were also said to be present. The police men took James (who was alive by then) in a rickshaw to the hospital. According to this version, by the time PW1 came there the accused was not there. PW1 went to the police station and lodged the complaint, Ex.P1. The deceased is said to have died later in the hospital at about 1.30 p.m. PW9, the Head Constable, at Naidupet Police Station received the report Ex.P1 from PW1 and registered a case in Crime No. 122 of 1995 u/s 307 of the Indian Penal Code and issued First Information Report, Ex.P4. He visited the scene of offence. He did not find any witnesses there and he kept a police constable to watch the scene of offence and went to the Government Hospital, Naidupet and found the deceased in unconscious state with burn injuries. Later at about 1.30 P.M., while he was at the police station he received intimation of death of deceased and altered the section of offence as to one u/s 302 of IPC and issued revised FIR under Ex.P5. PW10, the Doctor, found the deceased with excessive burn injuries and he made a requisition referring him to the Government Hospital, Nellore and before he was shifted he died at 1.30 p.m. He conducted post-mortem examination on the dead body of the deceased and found injuries from top to bottom and opined that the death resulted due to secondary shock, due to fluid loss due to burns. PW 11 is the Inspector of Police who conducted investigation. He conducted inquest over the dead body of the deceased under Ex.P2 before handing it over for the purpose of post-mortem examination. The accused was also undergoing treatment in the hospital and later she was referred to District Head Quarters Hospital, Nellore for better treatment. Later, he went to the scene of offence, prepared observation

report, Ex.P3 and seized MOs.1 to 3 i.e., half burn nawar (tape) with cot, burnt plastic can having some kerosene and burnt mat from the scene of offence. He recorded the statements of PWs. 1 to 5 and 6 and sent the material objects to the forensic science laboratory for analysis. In support of this version, PWs. 1 to 11 have been examined and Exs.PI to P12 and MOs. 1 to 3 have been marked. No evidence has been adduced on behalf of the accused/appellant.

33. Basing on the above evidence, the learned Sessions Judge found the accused guilty for the offence u/s 302 of the Indian Penal Code and sentenced her to life imprisonment.

34. Now, the point for consideration is: Whether the prosecution has proved the guilt of the accused beyond reasonable doubt, and the judgment under appeal can be sustained?

35. The key-stone of the prosecution evidence on which the case mainly hinges is the oral dying declaration said to have been made by the deceased to PW1 in the presence of neighbors, PWs. 2 to 5, Police Constable, PW7 and a Head Constable. The Trial Court, however, also found that the accused had the motive for committing the murder of the deceased. There is some material as to the conduct of the accused but except on the question of motive, the trial Court has not made any observation indicating that the conduct of the accused is a circumstance in support of proof of guilt of the accused. Even in respect to oral dying declaration, there is no specific discussion in the judgment of the trial Court as to various circumstances associated with the alleged oral dying declaration appearing in the evidence. There is no discussion why the learned Judge considered the dying declaration worthy of credit and acceptable. The trial Court's observation or conclusions are couched in general terms which I will refer to presently.

36. The learned Sessions Judge appears to have recorded certain conclusions on questions of fact which are not borne out by evidence on record. At page 11 of the judgment in para 20, the following observations are found:

As per the evidence of the prosecution, it has come to light that whenever he used to return from Madras by about 9.00 or 10.00 p.m., the accused never used to be in the house. Therefore, the deceased James seems to have warned her several times not to develop illicit intimacy or contact with others and because of that there used to be regular quarrel. She had been always saying to the deceased James that he has no right to question her movements. Thus, the accused seems to have vexed with the objection of the deceased James regarding her movements. In order to, live again a free life, James has become an obstruction to her. The contention of the Learned Counsel for the accused that James was disgusted with his first wife and children and therefore decided to end his life is not tenable and sustainable and has no basis at all. The discussion referred above establishes motive of the accused for the commission of the offence."

The evidence of neighbours, PWs.2 to 5, consistently is that on that particular night the deceased came back at about 10.00 p.m. or so and the accused came sometime later. When the deceased James questioned her, she stated that he could not question her movements. There was a quarrel between them. As it was a "regular quarrel", they kept quiet. It is pertinent to mention her that these witnesses have deposed specifically in respect of what had happened on that particular night. There is nothing in the evidence of any of these witnesses to show that every day the accused came late and every day he questioned her and that she defiantly answered every day. The only general statement made by them was that when the deceased and the accused started quarreling, they kept quiet as the quarrel between the deceased and the accused was a regular or routine affair. Thus, it does not justify any inference that the accused went late every night and that the deceased questioned her every time and that there was quarrel on the identical issue each time. When a man and woman are living like husband and wife, there may be quarrels between them on any number of points or issues. That is what the witnesses referred to when they deposed that the quarrel between them was a routine affair which did not call for any particular attention on their part. At any rate, it is difficult to appreciate how this evidence leads to an inference or conclusion that the accused never used to be in the house and for that reason the deceased James had warned her several times not to develop illicit intimacy or contact with others and because of that there used to be regular quarrels. None of these witnesses has uttered a word about James warning the accused about her illicit intimacy or contact with others. The further conclusion that the accused was vexed with the objection of the deceased James regarding her movements and that in order to live again a free life James has become an obstacle to her is not based on any evidence and it is merely speculative. The learned Sessions Judge while repelling the contention on behalf of the accused that it was a case of suicide observed that no suicide attempt will be conducted at 6.30 a.m., after the entire public has woke up and was moving in the village. Further, the person committing suicide will choose loneliness. Here, there is only one room and in that both are living. Apart from that he will choose a place and time so that nobody will come to his rescue. It may be seen that most of this argument will be applicable more convincingly to the theory of committing murder. If the accused wanted to commit the murder of the deceased she would not have chosen the time at early in the morning when everybody in the locality would be awake. She had whole night at her disposal. She could have quietly slipped from the house after committing the murder.

37. In regard to motive in the absence of any evidence that the accused had illicit contact with any others and in the absence of any material as to the relationship between the deceased and the accused, from the evidence as to a single incident that when the accused came late, the deceased questioned her and she defiantly answered, it is difficult to conclude that the accused had the motive for killing the deceased. The same circumstances could be applied to the theory of suicide also. It is pertinent to mention here that as stated by the wife

of the deceased, PW6, he had stopped caring for the family and he stopped giving any money for the maintenance of the family for the last six months prior to his death. It is apparent that because of fascination for the accused, the deceased had burnt his bridges with his wife. Under these circumstances, if the prosecution version is true that the accused had developed illicit intimacy with others, it might under the circumstances appear to be shocking to the deceased who had already abandoned his wife for the sake of the accused. This may have led to a state of acute mental distress and depression. The possibility of suicide thus cannot be totally excluded.

38. Though the learned Sessions Judge has not based his finding of conviction on the basis of conduct of accused except cursarily mentioning it, it may be taken up for discussion.

39. The evidence adduced by PWs.2, 3, 4 and 5 is that at about 6.30 a.m., or according to one witness at 7.00 a.m., they heard the cries of the accused and they went to the house of the accused. By then, the accused came out the house crying "help me, help me" and sat under a tree in front of the house. When they questioned her what happened, she did not answer. They went into the house and found the deceased James lying with burn injuries from head to toe. The only conduct of the accused about which the evidence is available shows that at that time she came out of the house and cried saying "help me, help me" and sat under tree in front of the house. It has been suggested to the investigating officer that accused herself went to the police station and informed that the deceased committed suicide. The Investigating Officer, PW 11, denied this suggestion, but there is intrinsic material on record which at least goes to show that the version of the accused might be true. It is in the evidence of PW 11 that by the time he went to the hospital, the accused was already there for treatment of her burn injuries. The wound certificate in respect of the accused is Ex.P7 which has been proved by the Doctor PW 10. Ex.P7 specifically records the fact that the accused was referred to the hospital with a requisition of the Police Station, Naidupet and was accompanied by the Police Constable (PC 1953) in respect of her burns. This document supports the version put forth on behalf of the accused that she went to the police station, and reported about the suicide of the deceased and that as she was having injuries she was sent to the hospital. It is possible that a report must have been taken from the accused or at any rate her statement must have been recorded at least in the general diary. It seems to have been suppressed. Otherwise, it is inconceivable that she would have been referred to the hospital with a requisition accompanied by a police constable. Admittedly, the accused had burn injuries on her forehands and face. The prosecution has not chosen to explain how those injuries were sustained by the accused. Considering the nature of the injuries sustained by the accused, this suggestion and her statement made u/s 313 of the Cr.P.C. examination that the deceased committed suicide by pouring kerosene by himself and when she tried to save him she sustained injuries cannot be dismissed as imaginary or improbable. It is necessary to remember that the accused is not required to

prove her version beyond reasonable doubt. But, if the circumstances appearing in the evidence of the prosecution render the defence version probable, the Court has to give due weight to it. It is pertinent to mention here that nothing has been elicited from the Doctor, PW 10 to show that the injuries found on the accused are not consistent with the version that she sustained those injuries when she tried to save the deceased. Thus the finding of the trial Court that the accused had motive to kill the deceased is not supported by any evidence. On the other hand, the circumstances appearing on record do not rule out the possibility that the deceased might have decided to put an end to his own life. As to the conduct of the accused, the only conduct which appears suspicious is that according to the prosecution witnesses i.e., PWs. 2 to 5, when she was questioned as to what happened, she kept silent. But as stated above, the circumstances that she went to the police station where she certainly must have reported the matter and the fact that she was sent to the hospital by the police with a requisition goes to show that the failure of the accused to narrate to the prosecution witnesses about the incident might be due to the circumstances that she was under shock from the incident. It is also probable that if the deceased might have committed suicide on account of her, she must have been under stress due to feeling of guilt. Further, while her silence may be a circumstance which may appear to go against her, but the very fact that she came out of the house and sat under a tree instead of running away and the circumstances which appears from the record that she went to the police station and probably reported about the incident there would go to show that the alleged conduct of the accused cannot be used as an incriminating circumstance against her. The fact that she went to the police station itself probabilises that she reported about the incident. This is further strengthened by the fact that even before PW 2 went and brought PW 1 and he gave any report to the police, the constable, PW 7 along with Head Constable had already arrived at the scene. This fact appears from the evidence of PW 7 himself. Further she might have come out of the house thinking that the James had died as he received burn injuries from the head to toe, though evidence discloses that he died later in the hospital.

40. Thus, the finding of the trial Court that the accused had sufficient motive to commit the murder of the deceased is borne out by any material on record. Though the trial Court did not specifically refer to the conduct of the accused as one of the circumstances contributing to the finding of guilt of the accused, but even on independent examination of evidence as to the conduct of the accused brought on record, it cannot be used as an incriminating circumstances leading to inference of guilt on the part of the accused in view of the circumstances discussed above. The learned Sessions Judge's comments on the answers given by the accused in her examination u/s 313 of Cr.P.C. may be noted:

The accused in her Section 313 Cr.P.C. statement has pleaded that James was in a disgusted mood and expressed that he will commit suicide and in fact he committed suicide and she tried to save him and received injuries and came out of the house for help. But the said version cannot be believed because no suicide

attempt will be conducted at 6.30 a.m., after entire public has woke up and moving in the village. Further, the person committing suicide will choose loneliness. Here there is only one room and in that both are living. Apart from that he will choose a place and time so that nobody will come to his rescue.

It may be pertinent to mention that when an alternative theory has been suggested on behalf of the accused, it is not as though the accused is required to prove the said version by adducing evidence. The Court is required to examine the version stated by the accused during examination u/s 313 Cr.P.C. as to its probability and to test whether the said version is probable and leads to doubt about the veracity of prosecution version which is not proved by any eye-witnesses. As to the reasons for holding the version of the accused improbable. As already mentioned above, if the timing of suicide is considered improbable then the same argument could be used for showing that it would be improbable that the accused would have chosen such a time for committing murder. The learned Sessions Judge's findings as to the manner in which the incident occurred make a strange reading as can be seen from the following extract:

The half burnt MOs. 1 to 3 reveal that when the deceased was sleeping on a cot, the accused seems to have poured kerosene and lit fire and deceased got up and caught hold of her but she pushed him down and ran out for help by sustaining some burn injuries. The same thing was spoken to by PWs. 1 to 5 and also by the deceased James before his death.

There is absolutely no basis in the evidence for such a finding. Firstly, it is difficult to appreciate how mere articles MOs.1 to 3, namely, half burnt nawaar with cot. burnt plastic can with some kerosene and burnt mat, in themselves could have revealed to the learned Sessions Judge the vivid details as to the manner in which the incident occurred, namely, that "when the deceased was sleeping on a cot, the accused seems to have poured kerosene and lit her and deceased got up and caught hold of her, she pushed him down and ran out for help by sustaining some burn injuries." Further, there is absolutely nothing in the evidence of PWs.2 to 5 in regard to the manner in which the incident occurred as admittedly they were not eye-witnesses and their attention was invited to the incident only when the accused came out raising some shouts. Further, there is nothing in the so called statement said to have been made by the deceased, James, before his death on this aspect. The oral dying declaration about which PWs. 1 to 5 and PW 7 have deposed consists of a cryptic six words statement that "the accused poured kerosene on me and set fire.

41. Thus, the only other evidence upon which the learned Sessions Judge seems to have based finding of conviction appears to be oral dying declaration said to have been made by the deceased PW1 which PWs.2 to 5 and 7 are said to have heard. I have carefully gone through the judgment of the learned Sessions Judge. It would be seen that there is no specific discussion as to the factors which are relevant for assessing the evidence relating to dying declaration. There is no reference or discussion about probable infirmities in the evidence relating to

the oral dying declaration. The conclusions of the trial Judge are couched in an omnibus statement as follows:

Thus, witnesses PWs. 1 to 5 have not been shaken in the cross-examination. No vital contradictions, inconsistencies and discrepancies could be elicited from them so as to disbelieve their testimony. Only it was suggested that the witnesses were inimical because of some plot dispute but in order to substantiate the same, there is absolutely no evidence on record.

This indicates that the relevant factors which are germane to the acceptance of dying declaration as a sole basis for conviction have not been properly considered.

42. For holding dying declaration as sufficient as solitary piece of evidence for proving the offence charged, the prosecution must show the following:

(i) that the deceased was in a proper state of mind and health to be able to give the statement attributed to him;

(ii) that the deceased, infact, made such a statement; and

(iii) that the statement made by the deceased was true.

In this case, there is not a speck of evidence adduced by the prosecution either by way of any medical opinion or by way of eliciting any answers from the deceased which could satisfy the Court that the deceased was at the relevant time in a sound state of mind and health to give such a statement. The only evidence in this regard is the bald statement of PW1, the Village Administrative Officer, who stated that "James narrated the incident in full conscious state and was capable to narrate the incident". There is nothing to corroborate this ipse dixit of PW1. Admittedly, as stated by PW1, he asked the deceased "as to what happened", and the deceased gave a cryptic six words reply "the accused poured kerosene on me and set fire". It is the evidence of PW2, Bhuvanagiri Babu, that "when we questioned James, he did not speak though conscious". This is also spoken to by PW4. Uppala Nagamma. Even the charge-sheet mentions as observed by the learned Sessions Judge that when PW 2 questioned the deceased could not answer.

43. PW7 stated in his cross-examination that himself and Head Constable questioned the injured, but he did not give any answer except screaming. Thus, it emerges from the prosecution evidence itself that the deceased was questioned by PW2, a neighbor, at about 6.30 or 7.00 a.m., but he did not elicit any answer from the deceased. Again at about 9.00 a.m., no other than a person in authority like Head Constable questioned the deceased about the incident, the deceased did not give any reply except screaming. It is in the evidence of PW1 that PW2 went to his house at about 10 a.m., and informed about the deceased having been burnt. It is thereafter that PW 1 along with PW2 went to the scene of offence. According to their version, they went from the house of PW 1 to the scene of offence by walk. According to PW1 his house was half a kilo metre from

the scene of offence. But, according to PW 2 it was two kilo metres. PW1 was a stranger to the locality and to the house of the accused i.e., scene of offence. PW 2 is the resident of the locality and he went to PW 1. taking into consideration any estimate of distance from the house of PW1 to the scene of offence, 15 to 20 minutes might have taken for PW1 and PW2 to reach the scene of offence from the house of PW1. Thus, PW1 must have questioned the deceased, according to his own version, some time after 10-15 or 10-20 a.m. It is in the evidence of the police constable, PW7, that they admitted the deceased in the Government Hospital at 10-30 a.m. or 11-00 a.m. This could only be at 10.30 a.m., in as much as the Doctor, PW 10 saw the deceased in the hospital at 10.45 a.m. This narrows down the time when PW 1 questioned the deceased, to some time between 10.15 and 10-30 a.m. It is in the evidence of the Doctor, PW10, that when he first saw the deceased in the hospital at 10.45 a.m., he was unconscious. The prosecution would want the Court to believe that the deceased who could not give answer at about 7.00 a.m., and again at about 9.00 a.m., suddenly was fit enough to answer to the question of PW1 in a cryptic six words statement between about 10.15 and 10.30 a.m., and immediately thereafter he became unconscious at 10.45 a.m. These circumstances fall short of requirement that the prosecution should show that the deceased was in a fit state of mind and health to be able to give such a statement.

44. Taking an alternative view, is it a case that the deceased though was able to speak, did not want to speak to PW2 and the Head Constable who questioned him? Did he have any special confidence in PW 1 that he responded to the question of PW 1? The evidence of PW 1 makes it absolutely clear that he was a stranger to the deceased. In fact, the evidence discloses that other witnesses had to identify the deceased as James to PW1. The deceased himself was working at Madras leaving his house at Tummur early in the morning and returning late in the night. He had hardly any opportunity to know PW1. PW1's evidence does not even disclose that he informed the deceased that he was the Village Administrative Officer. PW2 was a neighbor and must have been certainly known to the deceased. A Head Constable who had gone there on duty must have been in his uniform. A Head Constable is a symbol of authority. If the deceased declined to answer to a neighbour, PW2 and a person of visible authority like a Head Constable, it is inconceivable that he would have answered PW1. Thus, the possible argument that the deceased might have thought it not fit to tell anything to PW 2 and the Head Constable and must have thought it proper to tell PW1 does not fit in with these circumstances. It was contended that PW7's (Police Constable) statement in cross-examination that the Head Constable questioned the deceased and did not elicit any answer cannot be taken seriously as it was a stray answer given in the cross-examination. PW7 was very specific about it. His statement on this aspect is perfectly in consonance with probabilities. When the Head Constable has reached the scene of offence on the basis of information about the incident, it was not only probable that he might have questioned but it was his duty to question the deceased. PW 7's statement

thus cannot be brushed aside. The only inference is that the deceased who failed to answer at 7.00 a.m., and at 9.00 a.m., and was positively found to be unconscious by the Doctor at 10.45 a.m. could not have been in a state of mind and health which could enable him to speak at 10.15 or 10.30 a.m. Under these circumstances, the version that when PW 1 questioned and the deceased gave his oral dying declaration is absolutely inconsistent with the above referred circumstances.

45. The learned public prosecutor contended that inasmuch as the version that the deceased gave, his oral dying declaration in answer to the question by PW 1 before other witnesses i.e. PWs.2 to 5 and 7 has to be accepted especially when there is nothing to show that these witnesses have any enmity with the accused. As to PW7, the police constable, it may be pointed out that there is a glaring contradiction from his previous version given during his examination u/s 161 Cr.P.C. He admitted that in his earlier statement recorded in Part II Case Diary he stated that PW 1 enquired James in the hospital. It is nobody's case that PW 1 questioned the deceased in the hospital apart from questioning him at the scene of offence. Had PW7 really witnessed this transaction of the deceased giving statement to PW 1, this discrepancy would not have arisen.

46. PW 7 is a Police Constable. It is not uncommon that once the investigation agency on whatever ground, may be even on the basis of subjective moral conviction of the guilt of the accused, decides to launch prosecution, they may resort to some devices to ensure conviction of the accused. PW7, being a police constable, would be a party to such a decision. PW1, the Village Administrative officer, apparently is under the thumb of the police. It may be pointed out that in this case not only he gave first information report, Ex.P1, but he attested the inquest report, Ex.P2 and mahazar nama of the scene of offence, Ex.P3.

47. As to PWs.2, 3, 4 and 5, there might be no positive evidence to show that they had any enmity with the deceased, but their evidence discloses that they were far from cordial neighbours of the accused. In fact, they have displayed a positive prejudice against the accused inasmuch as all of them have described the accused as a prostitute or as a woman of loose character without any instances or evidence known to them, PW4 categorically admits that the accused was not prosecuted by the Police at any time regarding prostitution and that they have not given any report to the police in that regard. PW5 also admits in his cross-examination that they had no evidence to prove that the accused was a prostitute. In fact, PW5 displays further hostility towards accused by stating that the accused had been talking to her in adamant manner. She further stated that the other neighbours also did not go to the house of the accused. It has been suggested to PW 3, who is the wife of PW2, that there was a dispute between them and the accused regarding four feet plot between their houses. This suggestion was, however, denied. Thus, it would appear that the witnesses, PWs.2 to 5 were loaded with some prejudice against the accused inasmuch as they branded her as a prostitute without any ground.

48. It is very difficult to speculate about the motives of the witnesses for giving false evidence against the accused. Some times motives may not be apparent. But, in this case, there is some material to show that PWs.2 to 5 have been prejudiced against the accused.

49. It is possible that these witnesses somehow might have believed that the accused was responsible for the death of the deceased and on the basis of such belief, it is not unknown that the witnesses to agree to make some adjustments to incriminate the accused. At any rate, in the teeth of the specific circumstances referred to above which improbablise the version that the deceased had given an oral dying declaration to PW1, the version of PWs. 1 to 5 and 7 cannot be accepted simply because a large number of these witnesses have spoken against the accused. If this contention is accepted it would amount to counting the evidence rather than weighing it. Thus, in this case, the prosecution failed to bring out either by direct evidence or by circumstances brought on record that the deceased was in a fit state of mind and health to give the alleged oral dying declaration and that he gave any such statement. The question of considering the third point whether the statement was true does not arise for consideration.

50. It is true that the dying declaration need not contain all details and absence of such details in itself may not be a ground for disbelieving it. But, in this case the alleged dying declaration is so cryptic that it is not possible to as certain its veracity by testing it on the touch-stone of consistency With other circumstances either admitted or brought on record. In this connection, I may refer to some illustrative cases from the decisions of the Supreme Court on the question of proving of dying declaration. In the case of State of Orissa Vs. Parasuram Naik, , it was alleged that the accused husband had poured kerosene on the body of his wife and lit fire. There were extensive burn injuries sustained by the deceased. The prosecution case was that oral dying declaration was made to her mother. There was no certificate showing that the deceased was medically fit for such statement. In these circumstances, the Supreme Court upheld the view of the High Court disbelieving the alleged dying declaration. The Supreme Court had taken into consideration the fact that the deceased had suffered from excessive injuries in that case. In the case on hand also it is in the evidence of the Doctor, PW 10 that the deceased had burn injuries right from head to toe and that the dead body was so charred that it was unidentifiable.

51. In the case of Maniram Vs. State of M.P., the case of the prosecution was that the accused husband poured kerosene oil on the deceased wife, set fire and ran away. Her dying declaration was said to have been recorded by the Sub-Inspector in the nature of first information report. No attestation was taken from the Doctor to the effect that the patient was conscious or not. The signature of the deceased was not taken on the dying declaration. Under these circumstances, it was held that the dying declaration was of highly doubtful nature and the accused was acquitted.

52. In the case of Kanchy Komuramma v. State of A.P. 1996 SCC (Crl.) 31, the

dying declaration was recorded by no other than a Judicial Magistrate but the Doctor who certified mental fitness of the deceased was not examined. It was also found that the Magistrate failed to observe the safeguards regarding the proper mental fitness of the deceased, it was also found that the deceased had not told her mother and her husband as to how she received burn injuries and who was responsible for the same. Under these circumstances, it was held that the dying declaration was not reliable.

53. In the present case, the deceased had failed to disclose the involvement of the accused to the neighbors who specifically questioned him at 6.30 or 7.00 a.m., and even to the Head Constable at 9.00 a.m. who also specifically questioned him. He (the deceased) had received burn injuries from head to toe and the body was so charred that it was described as unidentifiable in the post-mortem report. It has also not been elicited from PW 10, the Doctor who examined the deceased that in view of the fact that he was found unconscious at 10.45 a.m., whether he could have been in a position to give any statement between 10.15 and 10.30 a.m., considering the excessive injuries sustained by him. In these circumstances, the evidence though given by as many as six witnesses that the deceased made an oral dying declaration in answer to the question put by PW1 who was a total stranger to him, some time between 10.15 and 10.30 a.m., is highly incredible. It is quite suspicious whether the deceased, in fact, made any dying declaration at all.

54. There is another circumstance which needs mention. It is in the cross-examination of PW2, Bhuvanagiri Babu, that when PW1 questioned the deceased, he was standing outside the house by the side of the door. PW3 also specifically states that at that time "they were standing outside the house by the side of the door". She must be referring to herself, PWs.2 to 5 and Police Constable, PW 7 when she said "we with reference to those who stood outside, though contrary to this, PW5 states that at that time they were inside the house of the accused. Considering this circumstance, this contradiction cannot be dismissed as inconsequential.

55. Another question is whether the deceased could have spoken so loudly to enable those standing outside the house to hear, particularly in view of very serious burn injuries from head to toe, which the deceased had sustained. This is another circumstance rendering the version improbable. The accused is, therefore, entitled to benefit of doubt. Under these circumstances, the conviction of the accused/appellant for the offence u/s 302 of IPC cannot be sustained.

56. In the result, the appeal is allowed. The accused is held not guilty for the offence u/s 302 of the Indian Penal Code and she is acquitted of the said charge and the sentence imposed therefore is set aside. The accused shall be set at liberty forthwith if not required in any other matter.

This criminal appeal having been set down for hearing before the Hon'ble Mr. Justice P. Venkatarama Reddi on 19-11-1999 pursuant to the judgments of the

High Court dt.8-2-1999 and upon perusing said judgment and the order of the Lower Court and the record and material papers in the case and upon hearing the arguments of Mr. Subba Rao Korrapati for the appellant (appeal through Jail) and of the Public Prosecutor on behalf of the respondent the Court on 19-11-1999 delivered the following judgment:

P. Venkatarama Reddi, J.

57. This Criminal Appeal preferred by the accused in jail against the judgment of the District and Sessions Judge, Nellore in Sessions Case No. 103 of 1996 was heard by a Division Bench consisting of Dr. Motilal B. Naik and Vaman Rao, JJ. The difference of opinion amongst the learned Judges has brought this appeal before me as per the orders of Hon"ble Chief Justice in terms of Section 392, Cr.P.C. The learned Sessions Judge found the accused-woman guilty of murdering her paramour by name James , and convicted and sentenced her to life imprisonment u/s 302, IPC. Dr. Motilal B. Naik, J., upheld the conviction and sentence and Vaman Rao, J., felt that it was a case for acquittal.

58. The prosecution case as unfolded by the charge-sheet is as follows:

The appellant is a resident of Rajiv Gandhi Colony, Thummur, near Naidupet. She was indulging in promiscuous behavior. The deceased was working as a sanitary maistry or mason in ICF Madras. PW6 is the wife of the deceased, and they have children. The deceased developed illicit intimacy with the appellant and they were living together since 10 or 11 months prior to the incident. The deceased used to go to Madras to attend to his work and return in the evening to the appellant. However, the appellant continued to indulge in prostitution. They were quarreling frequently. On 12-8-1995, at about 10.00 p.m., the deceased returned to the house from Madras and the appellant came to the house some time later. The deceased questioned her as to where she had gone but she answered adamantly that he should mind his business and cannot question her. The appellant had planned to remove him as he became hurdle. Accordingly, on 13-8-1995, at about 6.30 a.m., she poured kerosene on the deceased while he was sleeping on the cot and set fire. He got up with flames and caught hold of the appellant. She ran out closing the door and raising alarming cries "save me, save me". As she did not say anything and the smoke was seen, the neighbours went inside and found the deceased in a completely burnt condition. He was lying down near the cot and could not speak. Then, PW2-the neighbour went to the house of the VAO-PW1 and informed him about the incident. Then, PWs. 1 and 2 came to the scene of offence. By that time, two constables were present (HC 209 and PW 7). The deceased stated to PW1 that the appellant had poured the kerosene and burnt him. The police constable took the deceased to the hospital in a rickshaw. PW1 went to the Police Station and gave FIR -Ex.PI. PW9 registered a case in Crime No. 122 of 1995 u/s 307 of Indian Penal Code at 11.00 a.m. The deceased died in a hospital. The FIR was altered to Section 302, IPC. Ex.P5 is the altered FIR. PW11 (IO) conducted the inquest panchanama (Ex.P2) at Government hospital, Naidupet. PW 10 conducted the post-mortem

and issued postmortem certificate Ex.P6 expressing the opinion that the deceased died due to burns. The appellant was referred to District Headquarters Hospital, Nellore by PW10, who issued wound certificate Ex.P7. The accused was arrested on 31-8-1995 after the discharge from the hospital and sent for remand. PW11 conducted the investigation and filed the charge-sheet against the appellant. The appellant denied the charge and stated in her examination u/s 313, Cr.P.C. that the deceased was in a disgusted mood and wanted to commit suicide and in fact committed suicide and while trying to rescue him, she received burns.

59. To prove its case, the prosecution examined PW 1 to 11, PW1 is the Village Administrative Officer, who gave the FIR. PW2 is the neighbour who informed the incident to PW1. PW3 is the wife of PW2. PWs.4 and 5 are the neighbours. PW 6 is the wife of the deceased PWs.7 to 9 were police constables. PW 10 is the medical Officer and PW11 is the Inspector of Police who conducted the investigation. No witness was examined from defence side.

60. The dying declaration said to have been given by the deceased at the instance of PW 1, Village Administrative officer in the presence of others, within a few hours after the incident formed the main basis for conviction by the learned Sessions Judge. The Learned Judge spelt out the motive for the crime in his own words without reference to the evidence on record and i shall advert to it a little later. Another factor relied upon by the Sessions Judge was the half-burnt MOs. 1 to 3 i.e., cot with nawar (tape), plastic can and burnt mat which according to the learned Judge reveal that the accused poured kerosene and lit fire on the sleeping deceased. The learned Judge then ruled out the theory of suicide set up by the accused. At the outset, I am constrained to observe that the learned Sessions Judge omitted to discuss the crucial and clinching circumstances emerging from the prosecution evidence. Before proceeding further. I would like to comment on the observations of the learned Sessions Judge on the conclusions/observations on the two secondary points viz., motive and half burnt MOs adverted to above. With regard to the motive, that is what he stated:

As per the evidence of the prosecution, it has come to light that whenever he used to return from Madras by about 9.00 or 10.00 p.m., the accused never used to be in the house. Therefore, the deceased James seems to have warned her several times not to develop illicit intimacy or contact with others and because of that there used to be regular quarrel. She had been always saying to the deceased James that he has no right to question her movements. Thus, the accused seems to have vexed with the objection of the deceased James regarding her movements. In order to live again a free life, James has become an obstruction to her.

61. This is what constituted motive according to the learned Sessions Judge. As rightly commented by Vaman Rao, J., the inferences of the learned Judge are not borne out by any evidence on record. The prosecution witnesses spoke to the fact that they were quarreling now and then and on the preceding night i.e. on

12-8-1995, the deceased questioned the accused as to where she had gone by the time he reached home. She replied that he cannot question her movements. The deceased questioning her about illicit intimacy with others and the quarrel emanating there from, was neither here nor there. The prosecution evidence does not establish any definitive motive. The deceased protesting about her absence at the time he reached home and the accused answering him rudely, does not constitute a strong motive to put an end to the life of her paramour. However, the absence of motive by itself is not material if the evidence leads to the inescapable conclusion that the appellant and appellant alone committed crime.

62. Regarding MOs.1 to 3, the learned Sessions Judge observed as follows:

The half burnt MOs. 1 to 3 reveal that when the deceased was sleeping on a cot, the accused seems to have poured kerosene and lit fire and the deceased got up and caught hold of her but she pushed him down and ran out for help by sustaining some burn injuries. The same thing was spoken to by PWs. 1 to 5 and also by deceased James before his death.

63. It is difficult to understand, as rightly pointed out by Vaman Rao, J., as to how half-burnt MOs.1 to 3 reveal that the accused poured kerosene and lit fire. The further statement that "same thing was spoken to by PWs. 1 to 5" is even more incongruous, as their evidence has no bearing on the inference to be drawn from the burnt MOs.1 to 3.

64. At the outset, it needs to be clarified that the cause of death -whether homicidal or suicidal is not clearly discernible from medical evidence. The evidence of PW 10 - Medical Officer of Government Hospital, Naidupet who saw the deceased in the hospital at about 11.00 a.m., on that day i.e. 13-8-1995 and who conducted post-mortem only shows that the deceased died of ante-mortem burn injuries and that he smelt kerosene at the time of post-mortem and he found that the entire body from top to toe was burnt and it was beyond identification except to known persons. He deposed that burn injuries would have taken place by pouring kerosene and setting fire and such injuries were sufficient in the ordinary course of nature to cause death. It was not elicited from him whether such burn injuries could have been caused by the acts of the deceased himself. In fact, no specific answer could perhaps be expected from a Medical expert even if such question was put. The Court is therefore left to determine the question whether the deceased died a homicidal death with reference to the circumstances revealed from the evidence of prosecution witnesses, apart from the dying declaration if believed.

65. It is time to turn my attention to the oral dying declaration spoken to by PWs. 1 to 5 and 7, which as already stated, formed the main basis for the conclusion reached by the learned Sessions Judge, that found the approval of one of the learned Judges of the Division Bench. The key witness in this regard is PW 1. PW1 is the Village Administrative Officer of Tummur village. He did not

know the deceased earlier. On information given by PW2 at about 10.00 a.m. on 13-8-1995, he went to the scene of offence along with PW2. By that time, he found the wife of PW2 (PW3), PWs.4 and 5 and two constables and others. James was found with burn injuries by the side of the cot. The cot with plastic nawar was half-burnt. He admitted that in Column 5 of Ex.P2 (inquest panchanama) to which he was a party, it was mentioned that the entire body was burnt and it was beyond identification. PW1 stated that after going to the scene of offence, he asked the deceased as to what had happened and he informed PW1 that the accused poured kerosene on him and set fire. That is all what the deceased was supposed to have said when he enquired from him. PW 1 then stated that when the deceased spoke these words, the other PWs., including the constables were present. PW1 asserted that the deceased was in a conscious state and was capable of "narrating the incident". The accused was not found at the place of offence. He further stated that the asbestos roof was emanating kerosene smell. The constables took the deceased to the hospital in a richshaw he went to the Police Station and lodged the complaint Ex.P1 which was received at 11.00 a.m. The inquest over the dead body was conducted in the Government Hospital. He confirmed the contents of the inquest report which he signed. He also signed the scene of offence panchanama Ex.P3. He then testified to the fact that the police seized the cot with half-burnt nawar, (MO1), burnt plastic can having some kerosene (MO2) and a burnt mat (MO3). Police examined him on the same day. He stated in cross-examination that the police constables did not make any effort to record the dying declaration. He denied the suggestion that on account of his official position, he obliged the Police in foisting a case against the accused on suspicion.

66. PW 2 whose house is almost next door to the house of the accused stated that after the accused came out of the house crying "help me, help me" and noticed smoke coming out of the house, he and PWs.3 to 5 went inside the house and enquired and found the deceased lying with burn injuries near the cot. When he questioned the deceased, he did not speak though conscious. He informed about the incident to the VAO-PW1. When PW1 came to the scene of offence at about 10.00 a.m., and enquired from the deceased, he responded stating that the accused poured kerosene and burnt him. At that time, he was standing outside the house of accused by the side of the door. PW3, wife of PW 2, PW4 and PW5 spoke in the same tone and confirmed the version of PW2 in all aspects. They corroborated the version of PW1 with regard to the alleged statement made by the deceased regarding the cause of death and corroborated the version of PW2 on other aspects. They were all supposed to be standing outside the house of the accused within which the deceased was lying in a fully burnt condition. One more person who tried to corroborate the version of PW 1 as regards the statement made by the deceased is PW7 - Police Constable who was present at the scene. But, in cross-examination, he admitted that as per his statement incorporated in the Case Diary Part II, PW 1 enquired from the deceased only in the hospital.

67. The learned Sessions Judge observed that the evidence of PWs. 1 to 5 have not been shaken in the cross-examination as there were no vital contradictions or discrepancies. Dr. Motilal B. Naik, J., also held so.

68. Vaman Rao, J., was not inclined to place any reliance on the oral dying declaration said to have been made to PW1. I agree with the conclusion reached by the learned Judge in this regard. The recent trend of the decisions of the Supreme Court is to insist on strict standards in accepting the dying declarations of severely injured persons on the verge of death. The mere fact that the deceased was conscious, has been held to be not sufficient. If there was omission on the part of the Doctor to certify that the deceased was in a fit condition to give the statement, even the dying declarations recorded by the Magistrates were invalidated as being unsafe to be relied upon. The dying declaration in the present case is, qualitatively, in a much worse position.

69. In the instant case, the first and foremost aspect to be noticed is that even at the earliest point of opportunity, when the deceased could have responded, he did not or probably, could not speak out although he was conscious. PWs.2 to 5 in one voice stated that they entered the house immediately after the incident, having noticed smoke and the accused coming out crying. They further spoke to the fact that the deceased was conscious. Thus, at the earliest and initial stages, the deceased did not say anything about the incident. This was at about 6.30 or 7.00 a.m. The deceased did not given any answer, when the Head Constable who reached the scene after 9.00 a.m., tried to elicit the information from him. This is what PW7-Constables stated though the Head Constable was not examined. About an hour later, when PW1 reached the scene and questioned the deceased, he could get immediate response. The deceased is supposed to have uttered a sentence "accused poured kerosene and set me on fire". The next stage is when the deceased was shifted to the hospital at about 11.00 a.m. According to PW10-Doctor, the deceased was lying in an unconscious state in the dispensary by the time he came there at 10-45 a.m./11.45 a.m. (two timings were given). The head constable attached to the Naidupet Police Station who was examined as PW9 and who received the report from PW1 also stated that he learnt from the Doctor that the deceased was not in apposition to speak. In the light of this fact-situation. Vaman Rao, J., rightly observed:

The prosecution would want the Court to believe that the deceased who could not give answer at about 7.00 a.m. and again at about 9.00 a.m., suddenly was fit enough to answer to the question of PW 1 in a cryptic six words statement between about 10.15 and 10.30 a.m. and immediately thereafter he became unconscious at 10.45 a.m.

70. A reasonable doubt could be entertained whether the deceased who although remained speechless, opened his mouth to utter a few words in response to the question put by PW1 and made such a cryptic statement, and whether he was in a fit state of mind to make such a statement. Incidentally, it may be noted that PW1 was admittedly a stranger to the deceased. Therefore, the possibility of the

deceased labouring hard to make a statement to a PW1 because of his official position has to be ruled out. In fact, if he had capacity to say anything, the deceased would have strained himself to reveal it to the Police Officer present, rather than to a stranger. Moreover, it is pertinent to notice that PW7 admitted that as shown in the Case Diary, Part II, he made a statement that PW1 enquired from the injured (deceased) only in the hospital. This again creates any amount of doubt as regards the veracity of the version that PW1 questioned the injured at the scene of offence. The version of PWs.2 to 5 that the deceased made a statement within their hearing when PW1 questioned him is, in my view, quite unworthy of credence. The five or six words which if at all would have spoken to in a feeble voice could not have been heard by PWs.2 to 5 while standing outside the house. Above all, it was not elicited from the doctor that the deceased could have been in a position to speak and in a fit state of mind to speak out more than three hours after the incident. It was also not elicited from him that the deceased with extensive burn injuries could have been in a position to talk intermittently or after a gap of two or three hours and he would have been in a position to speak with full senses despite his initial inability to communicate.

71. Thus, I am of the view that the physical condition of the victim caused by complete burning right from the inception till his death coupled with the evidence that he failed to respond when attempts were made within a few minutes after the incident and again 2 hours later, when the Police came and that he was found in a conscious state in the hospital by the doctor, leads to the irresistible inference that the injured/deceased was not at all in a position to respond much less to speak. It is not safe to rely on the mere ipsi dixit of PW1 (VAO) that the victim was in a position to narrate the incident.

72. The case of *State of Orissa v. Parasuram Naik* (supra), is quite relevant to the facts of the case. That was also a case where the accused was alleged to have poured petrol on his wife and lit fire. The prosecution inter alia relied on the alleged dying declaration made by the deceased to her mother and sister who were PWs.4 and 5. Their Lordships of the Supreme Court were not inclined to accept their evidence having regard to the extensive burn injuries sustained by the deceased who died during the same night. The prosecution also relied on the dying declaration recorded by the doctor who stated that when the injured was brought to the dispensary, she was first given an injection and thereafter her statement was recorded. He further stated that she was conscious at that time and died within 15 minutes after recording of dying declaration. The Supreme Court observed "It is relevant to note that PW1 has not certified that she was in her full senses and she was medically fit to make a statement although he had certified that she was conscious. Having regard to the fact that she has sustained extensive burn injuries and died within 15 minutes immediately after recording the statement, it appears that she might not be in a proper and fit condition to make a statement as regards her cause of death. The High Court did not feel it safe to rely upon the dying declaration recorded by PW1. having regard to the facts and circumstances, we also do not think it safe to rely upon the dying

declaration."

73. Another case to which reference has been made by Vaman Rao, J., is the case of Kanchy Komuramma v. State of A.P. (supra). In that case, the dying declaration recorded by a Judicial Magistrate from the victim who died of burn injuries was disbelieved by the apex Court as it did not pass the test of trustworthiness and reliability. Though the Doctor made an endorsement that the patient was in a fit state of mind to depose at the time when the Magistrate questioned her, the Doctor was not examined, though, however, the Magistrate deposed that he enquired from the Doctor whether the victim was in a fit condition for which he got an affirmative answer. Another aspect taken into account by Their Lordships of Supreme Court was that according to the evidence of PW1 (the mother of the deceased), the deceased did not tell her or other relations as to how she had received the burn because she was not in a fit condition. The learned Judges observed:

the failure of the prosecution to establish that the deceased, before she made the dying declaration, was in proper mental condition to make the dying declaration detracts materially from the reliability of the dying declaration and it would not be safe to rely upon it. That the dying declaration has been recorded by a Judicial Magistrate by itself is not a proof of truthfulness of the dying declaration, which in order to earn acceptability has still to pass the test of scrutiny of the Court.

74. Their Lordships further observed:

That apart, the natural instinct of the patient would be to immediately tell her nearest available relation...as to how she received the burn injuries and who was responsible for the same.... PW1 admitted in the cross-examination that she was present when the Magistrate had arrived and that some of her relations had also come prior to the arrival of the Magistrate in the hospital but that the deceased did not tell any one as to how she had received the burn injuries. Keeping in view the above statements of the mother of the deceased, the denial by the Magistrate about the presence of the mother near the deceased does not appear to be correct.

75. In another recent case i.e. P. Rosamma v. State of A.P. 1999 (7) Supreme 640, which was also a case of death by burning, the Supreme Court was not inclined to place reliance on the dying declaration recorded by the Judicial Magistrate mainly on the ground that the doctor did not certify that the injured was in a fit state of mind at the time of recording the dying declaration and the mere certificate that patient was conscious was not sufficient. Their Lordships further observed that in the absence of medical certificate that the injured was in a fit state of mind, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the deceased was in a fit state of mind at the time of making the declaration.

76. The so-called dying declaration in the instant case, if examined from the

standard adopted by the Supreme Court in the aforementioned cases does not inspire confidence in the mind of the Court that it was truly and consciously made by the victim in a fit mental condition. I have already pointed out various circumstances which throw any amount of doubt as regards the credibility and reliability of the solitary sentence said to have been uttered by the deceased in the presence of PW1.

77. For the aforesaid reasons, I am inclined to agree with Vaman Rao, J., that no reliance can be placed on the alleged oral dying declaration.

78. The next question is whether the conviction of the accused can be based on other circumstantial evidence. My learned Brother Dr. Motilal B. Naik, J., also relied on the circumstances, apart from the dying declaration. I share the view taken by the learned Judge on this aspect of the case.

79. The law is well settled that the circumstances must be such as to provide a complete chain of evidence without any missing links and the totality of circumstances proved should point only to the guilt of the accused. The legal position regarding the appreciation of circumstantial evidence, has been succinctly stated in *Brijlala Pd. Sinha Vs. State of Bihar*, :

The law relating to circumstantial evidence no longer remains *res integra* and it has been held by a catena of decisions of this Court that the circumstances proved should lead to no other inference except that of the guilt of the accused, so that the accused can be convicted of the offences charged. It may be stated as a rule of caution that before the Court records conviction on the basis of circumstantial evidence, it must satisfy itself that the circumstances from which inference of guilt could be drawn have been established by unimpeachable evidence and the circumstances unerringly point to the guilt of the accused and further all the circumstances taken together are incapable of any explanation on any reasonable hypothesis save the guilt of the accused.

80. On a conspectus of the various circumstances satisfactorily established by the prosecution, I am of the view that the circumstances unerringly indicate the hand of the accused in causing the death of James by pouring kerosene and setting fire. It is crystal clear from the medical evidence burns were caused on account of setting fire to the body sprinkled with kerosene. The doctor PW10 stated that the body was smelling kerosene. PW1 noticed smell of kerosene in the house. The half burnt kerosene can MO2 was recovered. The next point is was it homicidal or suicidal act? In the very nature of things, accidental burning is ruled out. Another indisputable fact is that if it is not a case of suicide, the person responsible for setting the deceased on fire should only be the accused and none else. No one else was in the house, as is clear from the unequivocal evidence of PWs.2 to 5 and the version of accused herself. The plea of the accused was that James committed suicide and she herself did not allege the hand of any third party. The conduct of the accused immediately after the burning incident as spoken to by PWs.2 to 5, rules out, in my view, the possibility

of suicide and is only consistent with the conclusion of her involvement in the offence. The accused herself having been burnt partially on the forehead and face, came out of the house crying "help me, help me" and she coolly sat under the tree maintaining silence. She did not reveal any thing about the incident. PWs. 2 to 5 having noticed the smoke coming out of the house, entered the house and found the deceased lying down with burnt body. The accused was not found at the scene of offence thereafter. That could not have been the conduct of a person who watched her close friend committing suicide. If she really went to the extent of preventing the fire engulfing the body of the deceased by coming into close contact with the burning person in a bid to save him and in that process, bearing the impact of fire herself, the immediate reaction would have been to frantically run out and seek the help of neighbors. Her first natural act would have been to reveal to the neighbors viz., PWs 2 to 5 who were just near her house that James burnt himself and seeking their help to save him. But, as already narrated, she merely came out of the house with the cries "help me" and sat under the tree without speaking a word about the incident. Obviously, she ran out of the house crying as above because she received burn injuries herself. The Doctor- PW10 says that such injuries could have been caused to the accused if she attempted to press a burning person. The reasonable inference is that such attempt would have been made to arrest the movements of the victim trying to put out the fire or to pounce on the accused. If it is a case of accused receiving the burns on account of coming into contact with the deceased in the process of saving him her conduct in coming out of the house and coolly sitting outside the house without revealing a word to the neighbours would be most unnatural. Having come out with cries "help me, help me, she would not have refrained immediately from seeking help of neighbors to save her paramour. That would not have been the natural reaction of a panic-stricken woman seeing her close friend putting an end to life. Thus, the conduct of the accused noticed and deposed to by PWs 2. to 5 is only consistent with the commission of offence by the accused and rules out the theory of suicide.

81. It is true that the evidence of PWs.2 to 5 is vital to the unfolding circumstances pointing to the guilt of the accused. Merely because their version of the oral dying declaration has been disbelieved, their evidence need not be discarded in toto vis-a-vis other facts spoken to by them. Their evidence as regards the narration of incident and the conduct of the accused is quite natural and reliable. There is no good reason for all of them to set up a false story against the accused. The improvements and embellishments in their version in so far as the dying declaration is concerned cannot be a ground to discard their evidence as regards the event that took place soon after the burning incident. The maxim "Falsus in Uno, Falsus Omnibus" cannot be applied to the evidence of PWs.2 to 5.

82. In weighting the circumstances staring against the accused, the fact that she failed to divulge the details within her exclusive knowledge ought to be taken into account. When the prosecution proved the circumstances reasonably and

prima facie pointing to the guilt of the accused, it was the duty of the accused to come forward with the explanation of what had happened within the four walls of her house where no one else was there. The appellant apart from making a bare statement in the course of examination u/s 313, Cr.P.C. that James committed suicide in a disgusted mood, did not disclose any details. Whether or not Section 106 of the Evidence Act comes into play, the failure of the appellant in making no serious attempt to make a disclosure of the facts especially within her knowledge, is at least a relevant circumstance that should be taken into account in recording the finding against the accused.

83. Vaman Rao. J., was inclined to countenance the theory of suicide set up by the accused. In this context, the learned Judge relied upon two factors (I) the deceased would have been led to a state of acute mental distress when he learnt that the accused developed illicit intimacy with others; (2) there was every possibility of the accused having gone to the police station and reporting about the suicide and then being referred to the hospital with a requisition: and (3) the prosecution has not explained how the accused sustained injuries.

84. As regard the last aspect, with respect, the comment that the prosecution has not chosen to explain the injuries sustained by the accused is not correct. PW 10 did mention the circumstances under which the accused would have received the burns herself. Such explanation of the injuries is very well consistent with the accused perpetrating the crime. With regard to the first two aspects, I am of the view that they are more in the realm of surmise. From the mere fact that the accused was sent to the hospital with a requisition through a police constable, it cannot be inferred that the accused had gone to the police station and reported the matter. Even in Section 313 statement, there was no whisper about it. Even if it is tested from the touchstone of probability, a person who failed to reveal anything to the neighbors at the earliest point of time at the crucial moment when the help of the neighbors was imminently required, could not been thought of remaining silent till she went to the police station. Here again, the conduct soon after the incident as spoken to by PWs. 2 to 5 assumes importance.

85. As regards the first reason given by my learned Brother, suffice it to say that there is no evidence that the deceased grew suspicious about the promiscuous behavior of the accused. In any case, it is difficult to support the theory that the deceased would have been overpowered by such mental disturbance as to drive him to take an overnight decision to kill himself. With respect, I do not agree with my Brother Vaman Rao, J., that the plea of suicide is a plausible one or accords with probabilities.

86. In the light of foregoing discussion, I record my opinion that the conviction by the learned Sessions Judge shall stand, though for different reasons, and the appeal shall be dismissed.