

**(2002) 04 AP CK 0014**

**Andhra Pradesh High Court**

**Case No:** Criminal Appeal No. 1528 of 2000

Battina Govindamma and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

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**Date of Decision:** April 11, 2002

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 302, 34, 341, 449

**Citation:** (2002) 3 CriminalCC 570

**Hon'ble Judges:** Goda Raghuram, J; Bilal Nazki, J

**Bench:** Division Bench

**Advocate:** C. Praveen Kumar, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

1. Heard the learned counsel for the appellants as well as the Public Prosecutor. The accused are three ladies and closely related to each other. A-1 is daughter-in-law of A-2 and A-3 is daughter of A-2. They were accused of having committed murder of Battina Mutyalu on 9th June, 1997 at about 10.00 a.m. in the house of the deceased. They were charged with offences under Secs. 449, 341 and 302 read with 341 PC. They pleaded not guilty and were tried. The learned Sessions Judge convicted them u/s 302 read with 34 IPC and sentenced them to life imprisonment with fine of Rs. 1,000/- each, in default of payment of fine they have to undergo simple imprisonment for two months. They were also convicted u/s 449 IPC and sentenced to suffer rigorous imprisonment for ten years with fine of Rs. 500/- each, in default of payment of fine they have to suffer simple imprisonment for one month.

2. Prosecution examined 10 witnesses and exhibited 28 documents. The case of the prosecution was based primarily on the testimony of P.W. 1 who was projected as eye-witness coupled with two dying declarations allegedly having been made by the deceased before a Magistrate and also before a Police Officer. The trial court did not believe that P. W. 1 was an eyewitness and rejected her evidence on the ground that

she had only been projected as eye-witness by the police as an afterthought. However, the trial court believed the dying declarations and based the conviction on those dying declarations. The reasons given by the trial court for rejecting the evidence of P.W. 1 are cogent. In the first place it is pointed out that in one of the dying declarations (Ex. P-22) the deceased had himself stated that when the occurrence took place, nobody other than him and the accused persons was present in the house. The trial court also found that the P.W. 1 being the mother of the deceased was not even available at the house at the time of inquest. She was also not found at the hospital. She did not accompany the deceased to the hospital. Therefore, there was strong suspicion as to whether P.W. 1 was present at the time of occurrence. We do not find any reason to upset this finding of the learned Sessions. Judge.

3. Now, there remain two dying declarations on the basis of which the accused have been convicted. Mr. C. Padmanabha Reddy, learned Senior Counsel appearing for the appellants-accused contends that both the dying declarations cannot be relied upon for conviction as they can not inspire confidence of the Court-He challenges the reliability of the dying declarations mainly on two grounds. Firstly he contended that in both the dying declarations contradictory statements have been made by the deceased as to the actual occurrence and there are also contradictions with respect to the role allegedly played by different accused persons. Secondly, he contended that, admittedly even according to the prosecution the occurrence had taken place at 10.00 a.m. on 9th June, 1997. the deceased had been taken to hospital by 12.00 noon, both the dying declarations were recorded between 12.00 noon and 1.00 p.m. and the deceased died at 10.00 p.m. The Doctor who conducted post-mortem had found 100 ml. undigested liquid rice particles in the stomach of the deceased, the doctor was sure that the food would have been taken by the deceased 4 hours prior to his death, that means the deceased had taken food that too rice after recording dying declaration in the hospital, this has not been explained by the prosecution.

4. First coming to the 2nd ground, the patient had 100% burns. We do not believe that a person with 100% burns could eat Rice. The Doctor was also categorical that in Hospitals in cases of severe burns no solid food" is allowed to be given to the patient orally and they are kept on fluids. In such cases even liquid food is not given. Therefore, the prosecution version as to the recording "of dying declarations is also doubtful.

5. Now coming to the first ground of attack with regard to the contradictions with respect to the occurrence and the role played by different accused persons, it would be necessary to reproduce the relevant portions of both the dying declarations. In Ex. P-22 made to the S.I. of Police (P. W.9) it is stated:

"....at the time about 10-O'clock when I am at any house Battina Govindamma w/o Rama Rao, Battina Galivanamma w/o Gurayya. Gondela Mutyalamma w/o Vaniayya

(Vanjaram) the three persons when I am in the house; the said that persons have come into the house and poured kerosene on me and when two persons have caught hold me not to go outside the Gali Vanamma took the match stick and put on me and leave me and they ran away. My skin was burnt very well. By that-time, nobody is available either at out house or our neighbours....."

Second dying declaration is Ex.P-2 made at 12.40 p.m. to the Magistrate (P. W.8) in the presence of Doctor (P.W.5) which is to the following effect.

"....Gondela Mutyalud/Gurayya, wife of Gurayya, Govinda the granddaughter of Gurayya. The said persons brought kerosene to my house and poured on the person slept over and put fire and I was burnt..."

In one of the dying declarations as pointed out the deceased stated that one of the accused poured kerosene two caught hold of him preventing him to go outside and the 2nd/accused burnt him with match stick. In the second dying declaration it is stated that all the three persons brought kerosene, poured it over him while he was sleeping and then put fire. Materially different versions with regard to the actual occurrence and role played by each of accused were given. Such an eventuality was considered by Supreme Court in [Dandu Lakshmi Reddy Vs. State of A.P.,](#) . After pointing out the contradiction in the two dying declarations and its reliance by the High Court, the Supreme Court in para-16 held:

"Thus the High Court has sidelined such a noticeable discrepancy looming large as between the two different statements made by the same person. When the sphere of scrutiny of dying declaration is a restricted area, the Court cannot afford to sideline such a material divergence relating to the very occasion of the crime. Either the context spoken to one was wrong or that in the other was wrong. Both could be reconciled with each other only with much strain as it relates to the opportunity for the culprit to commit the offence. Adopting such a strain to the detriment of the accused in a criminal case is not a feasible course."

Therefore, these dying declarations do not inspire confidence to the level of justifying the conviction.

6. The appeal is allowed. Conviction and sentence set aside. The appellants be set at liberty, if not required in any other case.