J. RAMULU

v.

STATE OF ANDHRA PRADESH

(Criminal Appeal No. 758 of 2006)

FEBRUARY 26, 2008

(P.P. NAOLEKAR & LOKESHWAR SINGH PANTA, JJ.)

Penal Code, 1860; S.302 r/w S.34/Evidence Act, 1872; S.32:

Murder – Accused persons A1 and A2 allegedly thrown acid on face, neck and chest of deceased resulting in his death – Conviction based on dying declaration allegedly tutored by relatives – Correctness of – Held: Prosecution witnesses did not depose in their statement that they witnessed the incident nor the deceased in his dying declaration disclosed names of the accused – Son of the deceased deposed that his father had disclosed names of accused persons in his dying declaration to Magistrate after having tutored by relatives – In cross-examination, he categorically stated that he did not know the persons who poured acid on the face of his father – Oral evidence of eyewitness also did not support the prosecution version – Prosecution witnesses, being relatives of the deceased, are the truthful witnesses whose testimony cannot be doubted – Moreover, neither the Magistrate nor the medical officer made any endorsement on the proceedings of dying declaration that the declarant was in physically and mentally fit state of mind to make the statement – Hence, dying declaration in question not free from doubt and embellishment – Investigating officer also recorded the declaration of the deceased on small chits of paper when he was admitted in the hospital but these chits were not placed on record – Names of accused A1 and A2 were not disclosed by the deceased even before I.O. – Suppression and withholding of first dying declaration recorded by I.O. by itself creates suspicion and

A *reasonable doubt as to the correctness and truthfulness of the dying declaration – Medical report also reveals that a number of questions raised have not been satisfactorily answered, which precluded implicit acceptance of the dying declaration – Conviction cannot be vested solely on the basis of a doubtful* B *dying declaration – Under the circumstances, Courts below were wrong in convicting accused A1 and A2 for committing the offence of murder on the basis of weak and slender evidence – A1 and A2 are entitled to benefit of doubt, hence, acquitted of the charges leveled against them – Directions* C *issued – Code of Criminal Procedure, 1973 – s.164 – Testimony of relative witnesses – Reliance upon.*

Accused persons, viz., A-1, A-2 and the deceased were partners in a Rice Mill. Having developed some disputes amongst the partners, the deceased filed a Civil D **Suit against them for dissolution of the partnership. He had also filed a criminal complaint against them. On the fateful day, when the deceased was on his way to home and A1 and A2 were coming from the rice mill road side on a Scooter, A1 allegedly sprinkled acid on the face of** E **the deceased, who shouted for help. On hearing the same, his wife, son and daughter immediately came to his rescue and took him to a Hospital for medical treatment. PW-1 lodged a complaint in the Police Station. On the basis of the complaint, FIR was registered under Section 307 read** F **with Section 34 of IPC. The Police started investigation of the case. I.O. went to the Hospital and recorded the statements of PWs-1, 2, 3 and 4. On the next day, the Investigating Officer recovered burnt leaves of small plants and acid-mixed earth and control earth from the** G **place of occurrence and also went to the Hospital, where the deceased in the injured condition gave his statement by gestures and writing on small chits. The statement of the deceased was recorded after obtaining permission from the Medical Officer. On the same day, the Investigating Officer apprehended A-1 and A-2 and** H

recorded the disclosure statement of A-1, and on the basis of the said statement, seized the scooter allegedly used by accused in the commission of the crime and one green colour mug was taken into possession. Later, the Metropolitan Magistrate also went to the Hospital and recorded statement made by the deceased by gestures and signs as the injured was unable to see and talk due to the injuries. On receipt of the information about death of the deceased, the Police converted the offence in the FIR from s. 307 IPC to s. 302 IPC. After completion of the investigation, charge-sheet was filed by the Police against nine accused persons including accused A1 & A2. Trial Court found A-1 and A-2 guilty of committing murder of the deceased, convicted and sentenced them to life imprisonment. While no case has been found against A-3, A-4 and A-6 to A-9, they were acquitted of the charge, and A-5 had expired, therefore, the trial stood abated against him. Aggrieved against the Judgment and Order of the Trial Court, A-1 and A-2 filed appeal under Section 374 (2) of the Cr.P.C. before the High Court. The High Court dismissed the appeal and confirmed the sentence. Hence, the present appeals.

Accused contended that in the Hospital record where the deceased was admitted in injured condition, it was specifically recorded that some unknown offenders had thrown acid on the face of the injured deceased; that the first recorded information, being the intimation by the Hospital authorities referring to unknown persons as the culprits, has been suppressed; that PW-1, son of the deceased, in his statement has clearly stated that the names of A-1 and A-2 were disclosed at the instance of the relatives of the deceased, on the basis of which tutored FIR came to be registered which was corroborated by PW-4, daughter-in-law of the deceased; and that the dying declaration recorded by PW-11 - the Magistrate mentioning their names along with the names of A-3 to A-9, was as a result of due deliberation and tutoring of the deceased

A by his relatives; that the statement allegedly made by the deceased before the Magistrate was vague and there is no specific reference implicating them in the commission of the offence; and that the trial Court and the High Court have considered the alleged dying declaration as partly B untrue in respect of accused A-3 to A-9, who were acquitted of the charges and partly true against A-1 and A-2 without any corroboration from independent evidence and, therefore, no implicit reliance could have been placed on tutored dying declaration.

C Allowing the appeals, the Court

HELD: 1.1 Prosecution witnesses, the family members of the deceased, the alleged witnesses of the occurrence have not supported the case of the D prosecution at all and despite searching cross-examination by the Public Prosecutor, no material evidence is elicited from their testimony to implicate A-1 and A-2 in the commission of the crime. (Para – 10) [424-F, G]

E 1.2 PW-1, son of the deceased, deposed before the Court that he gave complaint to the Police at the instance of their relatives. Even this witness did not say in his statement under Section 164 of the Code of Criminal Procedure that he and his sister (PW-2), his mother (PW-F 3) and his wife (PW-4) witnessed the incident and/or his father disclosed the names of A-1 and A-2 who sprinkled acid on his face. (Para – 10) [424-G; 425-A, B]

1.3 PW-1 categorically stated that he noticed two unknown persons going on scooter at the place of G occurrence. PW-1 deposed that his father had given the names of A-1 and A-2 and other seven accused persons to PW-11 the Magistrate, on having tutored by their relatives. This witness in cross-examination conducted by the counsel for A-1 and A-2 categorically stated that he H did not know the persons who poured acid on the face of

his father. (Para – 10) [425-C, D]

1.4 PW2, daughter of the deceased, deposed that she did not know who caused acid burns injuries to her father. She denied the suggestion of the prosecution that she deposed against the prosecution in order to help the accused. (Para – 11) [425-G; 426-A]

1.5 PW-3, wife of the deceased, deposed that she did not see the persons who caused acid burns to him. The suggestion of the Public Prosecutor that she has resiled from her earlier statement in order to help A-1 and A-2, is denied by her. Similarly, PW4 – wife of PW-1 has not supported the prosecution version. (Para – 11) [426-A, B]

1.6 The oral evidence of the eye-witnesses, the son, daughter, wife and daughter-in-law of the deceased, have not supported the prosecution version to prove that it were A-1 and A-2 who poured acid on the face, neck, etc. of the deceased on the day of occurrence. PWs 1, 2, 3 and 4 are the truthful witnesses whose testimony has to be accepted without any embellishment. The family members of the deceased would have not spared A-1 and A-2, if they in fact were the real culprits who caused acid burns injuries on his person. (Para – 12) [426-E, F, G]

2.1 The evidence of the eye-witnesses clinches that the deceased had named A-1 and A-2 as assailants in dying declaration made to PW-11, the Magistrate, on the intervening night of 11/12.07.2000 on being tutored by his relatives during the period 07/08.07.2000 to 11/12.07.2000, when they had gone to visit him in the ward of the hospital. PW-11 recorded original dying declaration of the deceased in Telugu. (Para -12) [426-G; 427-A]

2.2 On perusal of the dying declaration, it reveals that the deceased had given the names of A-1 and A-2 and other accused persons who were acquitted by the trial court. It has come in the cross-examination of PW-11 that

A he did not make any endorsement on the proceedings of the dying declaration that the declarant was physically and mentally fit throughout the proceedings. Similarly, the Doctor on duty also did not specifically state in his endorsement that the declarant was physically and
B mentally in a fit state to make the statement. PW-11 also admitted suggestion of the defence that in the dying declaration he did not mention that he disclosed his identity to the declarant before recording dying declaration. (Para – 12) [427-C, D, E]

C 2.3 The dying declaration allegedly made by the deceased is not free from doubt and embellishment. It is the specific case of PW-13, a Sub-Inspector of Police, who went to the hospital immediately on receipt of the complaint and found that the deceased in injured
D condition was admitted in the Hospital on 09.07.2000; that he took the permission of the duty Doctor in regard to the physical and mental condition of the deceased. As per his version, the Doctor certified that injured deceased was fit to make statement. He recorded the statement of injured
E on small chits which he did not place on record of the case. This version of the Investigating Officer clearly and plainly shows that on 09.07.2000, the deceased in injured condition, made some statement to the Investigating Officer which in all probability did not contain the names
F of A-1 and A-2 who were responsible for throwing acid on his face, neck and chest. Those chits were important documentary evidence which was deliberately withheld by the prosecution from the Court with clear intention of suppressing the true version of the deceased subscribed
G by him on some paper chits at the first available opportunity. (Para – 13) [427-F, G; 428-A, B, C]

2.4 PWs-2 and 4 clearly and plainly deposed that the deceased made tutored statement to PW-11 at the behest of their relatives who had been the regular visitors of the
H ward where the deceased before death was lying and they

had compelled the deceased to mention the names of A-1 and A-2 along with other accused. (Para – 13) [428-D, E]

2.5 The suppression and withholding of the first dying declaration of the deceased recorded by PW-13, I.O., by itself creates suspicion and reasonable doubt as to the correctness and truthfulness of the dying declaration allegedly made by the deceased to PW-11, the Metropolitan Magistrate. (Para – 13) [428-E, F]

P. Mani vs. State of T.N. (2006) 3 SCC 161 – relied on.

2.6 The medical report raised a number of questions which have not been satisfactorily answered, which precluded implicit acceptance of the dying declaration. (Para – 15) [429-B]

2.7 The dying declaration shows that the deceased was not in a position to speak and see and in such state of mind, it is highly doubtful and unbelievable that the deceased had written such a lengthy statement running into more than 3 pages containing various details by sign and gestures. The contents of the dying declaration are shrouded by doubts and suspicion and the entire evidence suggests that the dying declaration does not reveal the entire truth, it has to be considered only as a piece of evidence on which no implicit reliance can be placed and in which event conviction cannot be rested solely on the basis of such doubtful dying declaration. In the facts and circumstances, this Court is not satisfied with the findings recorded by the Trial Judge and the High Court holding A-1 and A-2 guilty of the offence on the basis of weak and slender evidence led on record by the prosecution. Hence, A-1 and A-2 are entitled to benefit of doubt. Accordingly, the judgments of the High Court and the Trial Court are set aside and A-1 and A-2 are acquitted of the charges levelled against them. (Paras - 15 & 16) [429-F, G; 430-A, B, C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal

No. 758 of 2006.

WITH

Criminal Appeal No. 763 of 2006.

Sushil Kumar, A. Dasharatha, Aditya Kumar and Naveen R. Nath for the Appellant in Criminal Appeal No. 758/2006.

U.U. Lalit, Guntur Prabhakar for the Appellant in Criminal Appeal No. 763 of 2006.

Altaf Fathima (for D. Bharathi Reddy) for the Respondent.

The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. 1. The above-said two appeals relate to single incident and are directed against common Judgment dated 22nd December, 2005 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No.2290 of 2004, they are heard together and shall stand disposed of by this common judgment.

2. Criminal Appeal No.763 of 2006 has been filed by G. Venkatesh (A-1) against his conviction under Section 302 of the Indian Penal Code [for short 'IPC'] and sentence to undergo imprisonment for life and to pay a fine of Rs.2000/-, in default thereof to suffer simple imprisonment for two months. Criminal Appeal No.758 of 2006 has been filed by J. Ramulu (A-2) against his conviction under Section 302 read with Section 34 of IPC and sentence to undergo imprisonment for life and to pay a fine of Rs.2000/-, in default thereof to suffer simple imprisonment for two months, passed by II Additional Metropolitan Sessions Judge, Hyderabad and confirmed by the High Court in Criminal Appeal No. 2290 of 2004.

3. In all, nine accused persons were tried by the II Additional Metropolitan Sessions Judge, Hyderabad, in Sessions Case No.352 of 2001 for the offences under Section 302, IPC, and Section 302, IPC, read with Section 34 of IPC and Section 109 of IPC. A-1 and A-2 were found guilty of the murder of

G.Janardhan, while other seven accused were acquitted of the charges. A

4. Briefly stated, the case of the prosecution against A-1, A-2 and other accused persons is that G. Janardhan was resident of Anandnagar Colony, Malakpet. A-1 is resident of R.K. Puram, whereas A-2 and A-7 are residents of Dilshuknagar B and A-3 and A-6 are residents of Chaitanyapuri. A-4 is resident of Vanaparthy, Mahaboobnagar District, A-5 is resident of Kothakota, Mahaboobnagar District, and A-8 & A-9 are residents of Jadcherla, Mahaboobnagar District. A-1, A-2 and G. Janardhan were partners in Manjunadha Rice Mill and they C had some disputes between themselves and other partners regarding the mill transactions. G. Janardhan filed O.S. No.92 of 1999 on the file of the I Additional Senior Civil Judge, Ranga Reddy, against A-1 and A-2 for dissolution of the partnership of the mill. Second suit O.S.No.579 of 1994 on the file of the II D Additional Senior Civil Judge, Ranga Reddy, is also pending between the parties. G. Janardhan also filed C.C. No.114 of 1998 on the file of the Additional Judicial First Class Magistrate, Hyderabad, *inter alia* alleging that the accused persons cheated him in the transactions of the rice mill. E

5. On 08.07.2000 at about 4.00 P.M., G. Janardhan along with his eldest paternal uncle G. Satyanarayana went to Ramkrishna Muth and after completing of their prayers, they came back to their residence by city bus. After getting down from the bus, G. Satyanarayana went to his house, while G. F Janardhan proceeded to go to his house. A-1 and A-2 stated to have come from the rice mill road on a Scooter. A-1 was pillion rider, he sprinkled acid on the face of G. Janardhan with a Mug. G. Jandardhan shouted for help which attracted the attention of G. Raju, son (PW-1), Jamuna Rani, daughter (PW-2), G. Savithri, G wife of G. Janardhan (PW-3), who were sitting in the verandah of their house. They immediately came to the spot and took G. Janardhan to Yashoda Hospital for medical treatment. G. Janardhan received burn injuries on his face, chest and neck. PW-1 went to the Police Station Chaderghat, Hyderabad and H

A handed over complaint (Ex.P1) to Shri B. Sivaranireddy (PW-9), who, at the relevant time, was Sub-Inspector of the Police Station, Chaderghat. On the basis of the said complaint, FIR (Ex.P26) was registered under Section 307 read with Section 34 of IPC. G. Guravaiah (PW-13), Sub-Inspector of Police took B up investigation of the crime at 10.20 P.M. on the same day. He went to Yashoda Hospital, Malakpet, where injured G. Janardhan was admitted in emergency ward. He recorded the statements of PWs-1, 2, 3 and G. Anuradha (PW-4) wife of PW-1 and daughter-in-law of injured G. Janardhan. On the next day, i.e. C 09.07.2000, at about 7.00 A.M., the Investigating Officer recovered burnt leaves of small plants and acid-mixed earth and control earth from the place of occurrence. He again went to Yashoda Hospital where the injured G. Janardhan gave his statement by gestures and writing on small chits to him. The D statement of injured G. Janardhan was recorded after obtaining permission from the Doctor. On the same day at about 8.00 P.M., the Investigating Officer apprehended A-1 and A-2 on the road in front of the house of A-1. He recorded the disclosure statement of A-1 which is marked as Ex.P24 and on the basis of the said statement, Scooter bearing No. AP 28 L 2745 was E recovered and one green colour mug was taken into possession, from inside the ducky of the Scooter. On requisition Ex.P27 sent by the Inspector of Police, B. Gyaneshwar Rao (PW-11) XIV Metropolitan Magistrate, Hyderabad, at midnight of 11/12.07.2000, went to Yashoda Hospital and recorded statement F made by G. Janardhan to him by gestures and signs as the injured was unable to see and talk due to burn injuries. On 25.07.2000, P. William Caruy (PW-12) received information in regard to the death of injured G.Janardhan at about 12.30 A.M. He converted the offence in the FIR from Section 307 of IPC to G Section 302 of IPC. After receipt of the dead body and completion of the investigation, charge-sheet was filed against the above-said nine accused persons.

6. The accused pleaded not guilty to the charges and claimed to be tried. The prosecution examined as many as 13 H

witnesses and produced on record 32 documents in support of its case. The accused persons in their statements recorded under Section 313 Cr.P.C. pleaded not guilty to the charges and claimed to be tried. No defence witness has been examined by them. The trial court, on appreciation of the oral and documentary evidence, found A-1 and A-2 guilty of the charge of murder of G. Janardhan and convicted and sentenced them as aforesaid, while no case has been found against A-3, A-4 and A-6 to A-9, therefore they are acquitted of the charge. During the pendency of the trial, A-5 had expired, therefore, the trial stood abated against him.

7. Being aggrieved against the Judgment and Order of the learned Trial Judge, A-1 and A-2 filed appeal under Section 374 (2) of the Cr.P.C. before the High Court. The High Court dismissed their appeal and confirmed their sentence. Hence, A-1 and A-2 have filed these appeals by special leave.

8. We have heard Mr. U.U. Lalit, learned senior Advocate appearing on behalf of A-1, Mr. Sushil Kumar, learned senior Advocate appearing on behalf of A-2, and Ms. Altaf Fathima, Advocate for respondent–State, and with their assistance, we have examined the entire oral and documentary evidence on record. The learned counsel for A-1 and A-2, *inter alia*, contended: (a) that in the Yashoda Hospital record where injured G. Janardhan was admitted on 08.07.2000, it was specifically stated therein that some unknown offenders had thrown acid on the face of the injured G. Janardhan, the general diary number column in the FIR has been left blank, which would suggest that the first recorded information, being the intimation by the Hospital authorities referring to unknown persons as the culprits, has been suppressed; (b) PW-1, the son of G. Janardhan, clearly stated that on the evening of 09.07.2000, Police got complaint (Ex.P1) made from him in which the names of A-1 and A-2 were disclosed at the instance of their relatives, on the basis of which tutored FIR (Ex.P25) came to be registered; (c) PW-4, daughter-in-law of G. Janardhan, also clearly stated that Police got complaint (Ex.P1) recorded from her husband (PW-1) at the

A instance of their relatives; and (d) the so-called dying declaration (Ex.P28) recorded by PW-11 - the Magistrate, on 11/12.07.2000 at midnight mentioning the names of A-1 and A-2 along with the names of A-3 to A-9, was as a result of due deliberation and tutoring of G. Janardhan by his relatives as per the admission of B PW-1 and the statement allegedly made by G. Janardhan before the Magistrate was vague and there is no specific reference to A-1 and A-2 implicating them in the commission of the offence. Lastly, the learned counsel submitted that the trial court and the High Court have considered the alleged dying declaration as C partly untrue in respect of accused A-3 to A-9, who were acquitted of the charges and partly true against A-1 and A-2 without any corroboration from independent evidence and, therefore, no implicit reliance could have been placed on tutored dying declaration.

D 9. Per contra, the learned counsel appearing on behalf of the respondent–State contended that the evidence of PW-11 is very clear, who recorded dying declaration (Ex.P28) of G. Janardhan in which the names of A-1 and A-2, who poured acid on his face which caused his death, were mentioned by the E deceased. The learned counsel also contended that the trial court as well as the High Court have appreciated the entire evidence in its right perspective and this Court shall be slow to interfere in the well-reasoned and well- merited judgments of the courts below.

F 10. We have given our anxious and thoughtful consideration to the respective contentions of the learned counsel for the parties. We may, at the outset, record that PW-1, son, PW-2, daughter, PW-3, wife, and PW-4, daughter-in-law of G. Janardhan, the alleged witnesses of the occurrence, have not G supported the case of the prosecution at all and despite searching cross-examination by the learned Public Prosecutor, no material evidence is elicited from their testimony to implicate A-1 and A-2 in the commission of the crime. PW-1, the son of the deceased, on 08.07.2000 submitted report (Ex.P1) to the H police at Police Station, Chaderghat, on the basis of which FIR

(Ex.P25) was registered at the Police Station. He deposed before the Court that he gave complaint (Ex.P1) to the Police at the instance of their relatives. Even this witness did not say in his statement under Section 164 of the Code of Criminal Procedure that he and his sister (PW-2), his mother (PW-3) and his wife (PW-4) witnessed the incident and/or his father disclosed the names of A-1 and A-2 who sprinkled acid on his face. It is his evidence that on the day of the occurrence they heard the sound of cry of his father near the gate of their house and he along with PWs-2 and 3 rushed to the spot and found acid burns on the face and neck of his father who was not in a position to speak nor he could open his eyes. The incident took place in front of the house of injured G. Janardhan at around 8 P.M. PW-1 categorically stated that he noticed two unknown persons going on Scooter at the place of occurrence. PW-1 deposed that his father had given the names of A-1 and A-2 and other seven accused persons to PW-11 the Magistrate, on having tutored by their relatives. This witness in cross-examination conducted by the learned counsel for A-1 and A-2 categorically stated that he did not know the persons who poured acid on the face of his father. It is his evidence that their relatives came to Yashoda Hospital where his father was taken immediately after the incident. The Police also reached at the Hospital and wanted to record his father's statement but his father was not in a position to speak, so his statement could not be recorded. He stated that his father before the incident had been telling him that naxalites were threatening him with dire consequences, if money was not paid to them.

11. PW-2 – daughter of G. Janardhan, deposed that on the day of incident, i.e. 08.07.2000, she was not at the house of her parents, but she was at a house in Warasiguda when at about 7.00 or 7.30 P.M. she received telephone call that her father had been taken to Yashoda Hospital for medical treatment for acid burns. She deposed that she did not know who caused acid burns injuries to her father. She denied the suggestion of the prosecution that she deposed against the prosecution in

A order to help the accused. It is the evidence of PW3 – wife of the deceased that on 08.07.2000 at about 7.30 or 8.00 P.M. when she was in her house, she heard some sound of cry. She came out of her house and saw her husband coming inside the gate of their house, who was unable to speak. He was shifted B to Yashoda Hospital as he received acid burns. She did not see the persons who caused acid burns to him. The suggestion of the Public Prosecutor that she has resiled from her earlier statement in order to help A-1 and A-2, is denied by her. Similarly, PW4 – wife of PW-1 has not supported the prosecution C version. According to this witness, her father-in-law received acid burns at 7.30 or 8.00 P.M. near their house when she along with her husband and mother-in-law was present in the house. They took injured G.Janardhan to Yashoda Hospital where he was admitted in emergency ward. She was not allowed to go D inside the ward while PWs 1, 2 and 3 were allowed to go inside the ward. Their relatives were also present in the hospital. In cross-examination by the learned Public Prosecutor, she stated that her father-in-law was in Intensive Care Unit for 15 days and thereafter he was shifted to Apollo Hospital. Their relatives were regularly visiting her father-in-law in the unit. She stated that on E 09.07.2000, their relatives and police got a report drafted from her husband against A-1 and A-2.

12. The oral evidence of the eye-witnesses, discussed above, who are none else than the son, daughter, wife and F daughter-in-law of the deceased, have not supported the prosecution version to prove that it were A-1 and A-2 who poured acid on the face, neck, etc. of the deceased – G.Janardhan on the day of occurrence. PWs 1, 2, 3 and 4 are the truthful witnesses whose testimony has to be accepted without any G embellishment. The family members of G. Janardhan would have not spared A-1 and A-2, if they in fact were the real culprits who caused acid burns injuries on his person. The evidence of the eye-witnesses clinches that the deceased had named A-1 and A-2 as assailants in dying declaration made to PW-11, the Magistrate, on the intervening night of 11/12.07.2000 on being H

tutored by his relatives during the period 07/08.07.2000 to 11/12.07.2000, when they had gone to visit him in the ward of the hospital. PW-11 recorded original dying declaration of the deceased G.Janardhan in Telugu. The evidence of PW-11 would show that on 11/12.07.2000 at 12 O' Clock mid-night he received requisition (Ex.P27) from the Inspector of Police, Police Station Chaderghat requesting him to record dying declaration of G.Janardhan at Yashoda Hospital. He stated that the declarant was not able to speak and see due to burn injuries but he was responding by gestures to the questions put to him. He gave him pen and a paper to write his statement who wrote the answers on the proceedings of the dying declaration. On perusal of the dying declaration, it reveals that the deceased had given the names of A-1 and A-2 and other accused persons who were acquitted by the trial court. It has come in the cross-examination of PW-11 that he did not make any endorsement on the proceedings of the dying declaration that the declarant was physically and mentally fit throughout the proceedings. Similarly, the Doctor on duty also did not specifically state in his endorsement that the declarant was physically and mentally in a fit state to make the statement. PW-11 also admitted suggestion of the defence that in Ex.P28 he did not mention that he disclosed his identity to the declarant before recording dying declaration.

13. We have carefully examined the reasons recorded by the learned Sessions Judge and the High Court for accepting the dying declaration as credible and for accepting the evidence of Magistrate who recorded the alleged dying declaration (Ex.P28) as bringing home the charge of murder against A-1 and A-2 beyond shadow of reasonable doubts. The dying declaration allegedly made by the deceased, in our view, is not free from doubt and embellishment. It is the specific case of PW-13 G. Guravaiah, Sub-Inspector, who went to the hospital immediately on receipt of the complaint (Ex.P1) and found injured G.Janardhan admitted in the Yashoda Hospital on 09.07.2000 that he took the permission of the duty Doctor in

A regard to the physical and mental condition of the deceased. As per his version, the Doctor certified that injured G.Janardhan was fit to make statement. He recorded the statement of injured G.Janardhan on small chits which he did not place on record of the case. This version of the Investigating Officer clearly and
B plainly shows that on 09.07.2000 G.Janardhan made some statement to the Investigating Officer which in all probability did not contain the names of A-1 and A-2 who were responsible for throwing acid on his face, neck and chest. Those chits were important documentary evidence which was deliberately
C withheld by the prosecution from the Court with clear intention of suppressing the true version of G. Janardhan subscribed by him on some paper chits at the first available opportunity. G.Janardhan remained in Yashoda Hospital from 08.07.2000 till 24.07.2000 on which date he left the hospital and got himself
D admitted in Apollo Hospital where he died on the next day. The medical report of Yashoda Hospital reveals that injured G.Janardhan had refused to undergo surgery and got discharged from the hospital against medical advice. PWs-2 and 4 clearly and plainly deposed that the deceased made tutored statement to PW-11 at the behest of their relatives who had been the regular
E visitors of the ward where the deceased before death was lying and they had compelled the deceased to mention the names of A-1 and A-2 along with other accused. The suppression and withholding of the first dying declaration of the deceased recorded by PW-13 on 09.07.2000, by itself creates suspicion
F and reasonable doubt as to the correctness and truthfulness of the dying declaration allegedly made by the deceased to PW-11, XIV Metropolitan Magistrate.

14. This Court in *P. Mani* v. *State of T.N.* [(2006) 3 SCC
G 161], while dealing with the question of dying declaration, held that conviction can be recorded on the basis of the dying declaration alone but the same must be wholly reliable. In a case where suspicion can be raised as regards the correctness of the dying declaration, the Court before convicting an accused on the basis thereof would look for some corroborative
H

evidence. Suspicion is no substitute for proof. If evidence brought on records suggests that such dying declaration does not reveal the entire truth, it may be considered only as a piece of evidence in which event conviction may not be rested only on the basis thereof. The question as to whether a dying declaration is of impeccable character would depend upon several factors; physical and mental condition of the deceased is one of them.

15. As noticed above, the medical report raised a number of questions which have not been satisfactorily answered, which precluded implicit acceptance of the dying declaration (Ex.P28). First, PWs 1 and 3, who took injured G.Janardhan to Apollo Hospital and got him admitted there, have deposed that at that time G.Janardhan was not physically and mentally fit to make the statement. Second, who was the doctor on duty at the time of admission? PWs-1 and 2 did not say about it and the history sheet reveals that the injured was alleged to have sustained multiple burns over face and upper part of chest and neck when attacked with acid by unknown persons near his residence at about 8.15 P.M. PW-13 recorded the first dying declaration of the injured G.Janardhan on 09.07.2000 in the presence of some doctor, but the name of the Doctor has not been mentioned by him. The Doctor, in whose presence PW-11 recorded dying declaration (Ex.P28), has not been examined by the prosecution to corroborate the correctness and truthfulness of the dying declaration on which conviction of A-1 and A-2 has been recorded by the Trial Court and confirmed by the High Court, while the same document was not accepted by the courts below in respect of A-3 to A-9 whose names were also mentioned in the dying declaration. The dying declaration shows that the deceased was not in a position to speak and see and in such state of mind, it is highly doubtful and unbelievable that the deceased had written such a lengthy statement running into more than 3 pages containing various details by sign and gestures. The contents of the dying declaration are shrouded by doubts and suspicion and the entire evidence, discussed above, suggests that the dying declaration does not reveal the entire

A truth, it has to be considered only as a piece of evidence on which no implicit reliance can be placed and in which event conviction cannot be rested solely on the basis of such doubtful dying declaration. In the facts and circumstances, we are not satisfied with the findings recorded by the Trial Judge and the
B High Court holding A-1 and A-2 guilty of the offence on the basis of weak and slender evidence led on record by the prosecution.

16. In our view, A-1 and A-2 are entitled to benefit of doubt. In the result, we allow the appeals and set aside the judgments of the High Court and the Trial Court. A-1 and A-2 are acquitted
C of the charges against them.

17. G. Venkatesh and J. Ramulu shall be set at liberty forthwith, unless required to be detained in connection with any other case.

D S.K.S. Appeals allowed.