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**(2002) 01 AP CK 0019**

**Andhra Pradesh High Court**

**Case No:** Criminal Appeal No. 149 of 1996

Kosipalli Satyanarayana

APPELLANT

Vs

State of A.P.

RESPONDENT

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**Date of Decision:** Jan. 31, 2002

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 304B

**Citation:** (2002) 1 ALD(Cri) 667 : (2002) 2 ALT(Cri) 85 : (2002) 2 DMC 749

**Hon'ble Judges:** Elipe Dharma Rao, J

**Bench:** Single Bench

**Advocate:** C. Padmanabha Reddy and C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Elipe Dharma Rao, J.

This criminal appeal is directed against the judgment dated 29.2.1996 passed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad, in SC No. 147 of 1995, whereby the learned Sessions Judge found the appellant-accused No. 1 guilty for the offence u/s 304-B of Indian Penal Code (for brevity the Code), convicted thereof and sentenced him to suffer rigorous imprisonment for seven years, which is the minimum mandatory imprisonment for the said offence, but acquitted the accused 2 to 4 of the said charge.

2. The case of the prosecution, in nutshell, is that Manjula - the deceased was the wife of A-1, A-2 is the younger brother of A-1 and A-3 is the mother of appellant, A-4 is the daughter of A-3. On 9.11.1991 on receipt of information from Gandhi Hospital, LW-17 Shiv Kumar Yadav, went to hospital and recorded the statement of the deceased, who was admitted therein, according to which the appellant married the deceased and at that time, cash of Rs. 10,000/- and six and half Tolas of gold and utensils, and cash of Rs. 10,000/- for purchase of motor cycle were given; that one

month after the marriage the appellant and his mother started ill-treating the deceased for additional dowry in the midst of her family members and warned of dire consequences. The appellant further suspected her character and also snatched away pusthela tadu. While so, on 18.11.1991, the appellant and his younger brother abused her in filthy language and, therefore, on that night at about 2.00 a.m., she drenched herself with kerosene and set her afire unable to bear the harassment, in her parents' house. The crime was registered as 349 of 1991 u/s 498-A of the Code and Sections 3 and 4 of the Dowry Prohibition Act. P.W. 7, V Metropolitan Magistrate recorded the dying declaration of the deceased on requisition from the Investigating Officer, inquest was conducted over the dead body by the Mandal Revenue Officer and the corpse was subjected to post-mortem and after completion of investigation, the appellant and others were charge-sheeted.

3. In order to bring home guilt of the accused, the prosecution has examined as many as eight witnesses and got marked Exs. P-1 to P-12 and MOs 1 to 3. The defence of the accused was a total denial. Neither oral nor documentary evidence was adduced on their behalf.

4. The learned Sessions Judge, on appraisal of oral and documentary evidence, more particularly the dying declaration recorded by P.W. 7 under Ex. P-7, held that the prosecution could establish the guilt of the appellant and, therefore, convicted and sentenced him as stated supra.

5. Mr. C. Padmanabha Reddy, the learned Senior Counsel appearing on behalf of the appellant, contended that the deceased committed suicide in the house of her parents i.e. P.Ws. 1 and 2, who stated that the deceased and the appellant had cordial relations during their life-time and thus, even though they did not support the case of the prosecution, the learned Judge has erred in convicting the appellant exclusively basing on the dying declaration, Ex. P-7. He further submitted that a part of the said dying declaration, Ex. P-7 is patently false and, therefore, Ex. P-7 has got to be carefully scrutinized, for the reason that the dying declaration is recorded in the absence of the accused and such declarant is not subject to cross-examination to test its veracity.

6. Contending so, the learned Counsel has drawn my attention to the dying declaration, Ex. P-7 wherein to a question by P.W. 7 as to the reason for burning she has stated thus :

"... My husband Satyanarayana used to harass me frequently demanding money very often and he used to throw me from the cot, he used to harass me frequently by beating and abusing me to bring Re. 1,500/1,600 from my mother's house very often..."

To another question, as to why she did the act when she was staying for the last four months, she replied :

"... Yesterday my husband sent my brother-in-law Jagan to my mother's house to inform me to bring the money. I could not tolerate this type of humiliation and harassment demanding for money. Since I know that my parents have no money and hence, I decided to end my life. Hence, I thought that I should not be a burden to any body and burnt myself..."

To another question by P.W. 7, as to whether she would like to say anything, the declarant stated as under :

"... My husband is more suspicious about my character. Now I am 7 or 8 months pregnant. My husband with extreme cruelty humiliated me saying that I got the pregnancy through my brother. Four months back, he snatched away my Mangal Sutra chain saying that he had to give money to some body. As I could not tolerate the harassment, I came to my mother's house..."

7. The above statement of the deceased was certified by the doctor to the effect that the declarant was conscious and in full senses throughout the recording of her statement.

8. The learned Counsel for the appellant, contended that Ex. P-5, the post-mortem certificate, issued by P.W. 5, does not show that the deceased was pregnant by 7 or 8 months. It is evident that stomach contained about 100 ML of bile coloured fluid and there was no suspicious smell. It further shows that the pelvic walls, urinary bladder, urethra and genital organs were normal and nothing particular was found. Thus, the portion of Ex. P-7 recorded by P.W. 7 when she says that she was pregnant by 7 or 8 months is patently incorrect.

9. The learned Counsel for the appellant contended that when part of the dying declaration is false, it cannot be relied on to base conviction. In support of his contention, reliance is placed on the judgment of the Apex Court in [Dandu Lakshmi Reddy Vs. State of A.P.](#), wherein, in Ex. P14 dying declaration recorded by the Sub-Inspector of Police, she stated that on 9.10.1994 when she was lighting the stove in the kitchen and preparing coffee at about 6.00 a.m., her mother-in-law and husband came from behind, after entering the kitchen, her husband caught hold of her hairs and when she was unable to move, her mother-in-law sprinkled kerosene on her body and clothes and asked her son i.e. her husband to set fire and her husband lit the match stick and threw on her clothes and when her clothes caught fire she started shouting and then both her husband and her mother-in-law ran away. But the same deceased in Ex. P-II dying declaration which was recorded by the Judicial Magistrate of First Class, she stated that her mother-in-law's name is Narayanamma and her husband's name is Dandu Lakshmi Reddy, that in the morning at 6.00 a.m. when she was sweeping, her mother-in-law Narayanamma and her husband Laxmi Reddy both poured kerosene on her, lit the match stick and set her to fire. In those circumstances, the Apex Court has held that a Criminal Court cannot ignore evidence of the parents of the deceased. If the Court has even a slight

doubt about the mental soundness of the author of the dying declaration, it would be unsafe to base a conviction on such a statement, albeit its inadmissibility u/s 32 of the Evidence Act. Their Lordships further held that as the dying declaration is tested thus on the touch-stone available in evidence and permitted by law, it does not stand scrutiny and it will be unsafe to convict any person on the strength of such a fragile and rickety dying declaration. In that case, the evidence of the parents of the deceased totally went against the deceased in Exs. P-II and P-14, the dying declarations.

10. The Apex Court in yet another decision [Khushal Rao Vs. The State of Bombay](#), , which is said to be first authority on the dying declaration, has held that if a part of the dying declaration is deliberately false, it will not be safe to act upon the other part of the declaration without any definite corroboration. It is also ruled that it is not correct to postulate that because some part of the dying declaration is false, the whole declaration must necessarily be disregarded.

11. Applying these settled principles with regard to the dying declaration to the facts and circumstances of the instant case, Ex. P-7 recorded by the Magistrate does not corroborate with the evidence of P.Ws. 1 and 2, declarant's mother and sister that she was pregnant by 7 or 8 months. It is also the evidence of P.Ws. 1 and 2 that they have tutored the deceased to give statement against the appellant out of anger. They have not stated with regard to the pregnancy of the deceased. Therefore, on a scrutiny of the material placed before the learned Judge, he acquitted all the accused except the appellant/accused No. 1. In the absence of any cogent and clinching evidence or any overt act against the appellant and in view of the admission on the part of P.Ws. 1 and 2 that they were tutored to give false evidence against the accused, and also in view of the patently falsity of the declarant-deceased that she was pregnant by 7 or 8 months, and above all when the Court below has extended the benefit of doubt to all the accused except the appellant, the findings arrived at by the Court below in convicting the appellant alone, cannot be sustained.

12. Mr. T. Niranjan Reddy, learned Public Prosecutor has submitted that the fact that the deceased died an unnatural death otherwise than under normal circumstances within a period of seven years of her marriage and that she was subjected to ill-treatment for demand of additional dowry, soon before her death, which is evident from Ex. P-7 dying declaration and, therefore, being unable to bear the same she committed suicide. As such the Court below was justified in convicting the appellant. Contending so, he relied on a decision of the Supreme Court in [Kusa and Others Vs. State of Orissa](#), , and contended that it is well settled principle that although the dying declaration should be carefully scrutinized but if after perusal of the same, the Court is satisfied that the dying declaration is true and is free from any effort to prompt the deceased to make a statement and is coherent and inconsistent, there is no legal impediment in founding the conviction on such a

dying declaration even if there is no corroboration. Thus, if the statement of a dying person passes the test of careful scrutiny applied by the Courts, it becomes a most reliable piece of evidence which does not require any corroboration. Therefore, he contended that when once the deceased has stated that the appellant and others were demanding dowry and the appellant prior to the day of her suicide, sent her brother-in-law to her parents house for getting money, the dying declaration is believable and conviction can be based on it.

13. I am afraid, this submission cannot be countenanced in view of the well established principle that if a part of the dying declaration is deliberately false, it will not be safe to act upon the other part of the declaration without any definite corroboration. To seek corroboration of the allegation that Mr. Jagan was sent to the parents' house of the deceased, none was examined and P.Ws. 1 and 2 mother and sister of the deceased have not supported the case of the prosecution and stated that out of anger they gave evidence and they were tutored. In such circumstances, without corroboration of any part of Ex. P-7, conviction cannot be based. That apart, the post-mortem report, Ex. P-5 does not speak anything with regard to her pregnancy. Therefore, with so much of inconsistencies in the evidence of witnesses, uncorroborated dying declaration cannot be relied upon to base conviction. Therefore, the ratio laid down by the Apex Court in Kusa's case, relied upon by the learned Public Prosecutor cannot be made applicable to the facts and circumstances of the instant case. Having regard to ratio laid down by the Supreme Court in Kushal Rao's case and Lakshmi Reddy's case, it cannot be held that the Ex. P-7 is a definite piece of evidence worth accepting without corroboration. Therefore, the findings arrived at by the Court below cannot be sustained.

14. Consequently, the conviction and sentence recorded by the Court below are set aside and the criminal appeal is accordingly allowed.