

A PAPARAMBAKA ROSAMMA AND ORS.

v

STATE OF ANDHRA PRADESH

SEPTEMBER 13, 1999

B [S.P. KURDUKAR, K.T. THOMAS AND N. SANTOSH HEGDE, JJ.]

*Criminal Law:*

*Evidence Act, 1872: Section 32.*

C  
Dying declaration—Conviction based solely on—Deceased sustained 90 per cent burn injuries—Magistrate who recorded the dying declaration opined that deceased was in a fit state of mind—Doctor certified that deceased was conscious while recording the statement—Held: Consciousness and fitness of mind are two distinct stages—Doctor's certificate must show that not only the deceased is conscious but also in a fit state of mind to make the statement—Hence, Magistrate's opinion and doctor's certificate not in compliance with the requirement—Apart from these serious lacunas and some more infirmities, it is not safe to base the conviction solely on the basis of dying declaration—Penal Code, 1860, Ss. 302, 302/114 and 498-A.

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Dying declaration—Conviction based solely on—Scrutiny—Held: In such cases court must carefully scrutinise the dying declaration and the evidence of the Magistrate who recorded it and the doctor who examined the deceased.

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*Penal Code, 1860:*

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Section 498-A—Married woman—Death of—In matrimonial house—Due to extensive burn injuries—Allegedly inflicted by her close relatives, the accused—No evidence to indicate that deceased was meted out any ill treatment or there was any dowry demand—Only grievance made in her dying declaration was that she wanted to live separately but her husband was opposed to it and on that score had beaten her the previous day—It was also stated therein that her grandmother disliked her—Held: These statements in the dying declaration not sufficient to substantiate the prosecution case that the accused committed offence under S.498-A

H The appellants-accused were convicted by the Sessions court for offences

under Sections 302, 302/114 and 498-A of the Penal Code, 1860 solely on the basis of the dying declaration of the deceased. The High Court confirmed the conviction. Hence this appeal.

According to the prosecution, the deceased was married and was staying in a hut along with her husband (acquitted accused No. 4) and other close relatives (accused Nos. 1 to 3). On the fateful day the deceased was rushed to the hospital with extensive burn injuries. In her dying declaration the deceased had stated:-

(a) that the accused poured kerosene on her and thereafter she also poured kerosene on herself;

(b) that the accused burnt her with a lighted matchstick;

(c) that she had not taken food for days;

(d) that accused No.3 had tried to extinguish the fire by pouring water on her;

(e) that she wanted to live separately but her husband was opposed to it and on this score had beaten her on the previous day and

(f) that her grandmother disliked her.

The Magistrate who recorded the dying declaration of the deceased opined that she was in a fit state of mind while making the declaration. The doctor certified that the patient was conscious while recording the statement. On an earlier occasion the deceased had tried to commit suicide.

Allowing the appeal, the Court

**HELD:** 1.1. If the conviction is solely based upon the dying declaration, court is required to consider carefully the dying declaration, and the evidence of the witnesses, namely, the Magistrate who recorded it and the doctor who examined the deceased. [333-B]

1.2. The deceased had sustained extensive burn injuries on her person and the doctor who performed the post-mortem stated that she had sustained 90 per cent burn injuries. The prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration as being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. [336-G]

- A** 1.3. In the absence of medical certification that the injured was in a fit state of mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration. [337-E]
- B** 2. The certificate appended to the dying declaration at the end by the doctor did not comply with the requirement inasmuch as she has failed to certify that the injured was in a fit state of mind at the time of recording the dying declaration. The certificate of the said expert at the end only says that “patient is conscious while recording the statement”. [336-H]
- C** 3. Apart from these serious lacunas, there are some more infirmities in the dying declaration. In the dying declaration the deceased had stated that A-1 to A-3 poured kerosene on her and thereafter she also poured kerosene on herself. Then she stated “they have burnt me with a lighted matchstick”. It is difficult to understand as to why she poured kerosene on herself and why three persons poured kerosene and again all the three persons burnt her with a lighted matchstick. On an earlier occasion she had tried to commit suicide. In her dying declaration she had stated “I had not taken food for days”. These circumstances are pointer to the fact that she was disappointed and frustrated in her married life. The above statements in the dying declaration raise a reasonable doubt as to whether she was in a fit state of mind at the time when the dying declaration was recorded. In these circumstances it is difficult to accept the dying declaration wherein all the three appellants are alleged to have committed the crime. [337-D-E]
- D**
- E**
- F** 4. The incident in question occurred in a thatched hut. There is nothing to indicate in the dying declaration that the deceased was held by any of these appellants and/or she was prevented from running out of the hut or prevented from raising shouts. Several huts were situated adjacent to each other. There was sufficient opportunity and time to the injured to escape from the hut and also to raise shrieks. The conduct of A-3 is also relevant as he tried to extinguish the fire by putting water. [337-G]
- G** 5. There is also no evidence on record to indicate that the deceased was meted out any ill treatment or there was any dowry demand. The only grievance made in the dying declaration was that she wanted to live separately but her husband was not prepared and on that score, the husband (acquitted) had beaten her on the previous day. It was then stated therein that her grandmother disliked her. These statements in the dying declaration are not
- H** sufficient to substantiate the prosecution case that the deceased was meted

out with ill treatment, an offence punishable under Section 498-A of the Penal Code, 1860. [338-B-C] A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1175 of 1998

From the Judgment and Order dated 26.3.97 of the Andhra Pradesh High Court in CrI.A. No. 662 of 1996. B

S.K.C. Pasi and Anand Singh Berwal for the Appellants.

G.Prabhakar and Ms. T. Anamika for the Respondent. C

The Judgment of the Court was delivered by

**S.P. KURDUKAR, J.** The three appellants, namely, Paparambaka Rosamma (A-1), Baduru Sashi @ Sashikala (A-2) and Baduru Venkatesarlu (A-3) have filed this criminal appeal after obtaining the leave of this Court, challenging the legality and correctness of the judgment and order of conviction for offences punishable under Sections 498-A, 302 and 302/114 IPC passed by the Andhra Pradesh High Court, Hyderabad. Originally A-1 to A-3 and acquitted accused A-4 were put up for trial for the aforesaid offences. The appellants, the acquitted accused and Venkata Ramana (since deceased) are closely related to each other. A-1 is the maternal grand mother of Venkata Ramana, A-2 is the daughter of A-1 and is married to A-3. A-4 is the son of A-1. A-4 was married to Venkata Ramana and he happened to be the real maternal uncle of Venkata Ramana. A-3 is also the son of sister of A-1. D E

2. The marriage between A-4 and Smt. Venkata Ramana was solemnised some time in 1990 and since then she was residing at her matrimonial home. A-4 was working as a coolie in a steel company and had constructed a thatched hut at Tenali. The hut of parents of Smt. Venkata Ramana was situated at a short distance from the hut of A-4 at Tenali. A-2 and A-3 after their marriage had come to stay with A-1. It was not liked by Smt. Venkata Ramana and, therefore, she was instigating A-4 to live separately or A-2 and A-3 should be asked to leave the hut. It is the prosecution case that A-2 and A-3 were residing in a separate portion in the same hut. It is then alleged by the prosecution that there used to be frequent quarrels between Smt. Venkata Ramana on one side and A-1 to A-4 on the other as Smt. Venkata Ramana was insisting that she should stay along with her husband separately. A-1 to A-4 were not prepared to concede to her demand and as a result thereof, F G H

A they meted out ill treatment to Smt. Venkata Ramana. It has come on record that Smt. Venkata Ramana on the earlier occasion tried to commit suicide, but, however, failed in her attempt.

B 3. The incident in question which gave rise to the present prosecution occurred on March 4, 1994 at about 12.30 noon. It is alleged by the prosecution that when Smt. Venkata Ramana was in her hut, A-2 and A-3 came there and picked up a quarrel with Smt. Venkata Ramana. A-2 and A-3 then at the instigation of A-1, poured kerosene on Smt. Venkata Ramana and thereafter they threw a lighted matchstick on her. Within a short time, the clothes of Smt. Venkata Ramana caught fire. A-3 then poured the water and tried to extinguish the fire. The injured was then taken to the government hospital at Tenali where Dr. K. Vishnupriya Devi ( PW 10) examined her and found to be in a serious condition. She sent a requisition to K. Lakshmana Rao (PW 13), the Addl. Munsiff Magistrate, Tenali, for recording the dying declaration. K. Lakshmana Rao (PW 13) reached the hospital at about 2.30 p.m. and recorded the dying declaration (Ex.P-14). The injured was then shifted to Guntur Medical College, Guntur, for further treatment. The injured succumbed to her injuries on March 9, 1994 in the hospital. Vaitheru Sambaiah (PW 2)-the father of Smt. Venkata Ramana, lodged the first information report at Tenali police station as regards the incident and on the basis thereof, a crime came to be registered for the offences punishable under Sections 498-A, 307 read with Section 34 IPC. After receipt of the information about the death of injured, offence punishable under Section 307 IPC read with Section 34 IPC came to be altered to one under Section 302/114 and 498-A IPC. After completing the investigation, charge sheet came to be filed against all the four accused for the offences punishable under Sections 498-A, 302, 302/114 IPC. The trial court framed the charges against all the four accused, but they denied all these charges. According to them, they are innocent and have been falsely implicated in the present crime.

G 4. All the close relatives of Smt. Venkata Ramana, who could have deposed to the ill-treatment meted out to her did not support the prosecution and turned hostile. This list included the parents, brother and other relatives of Smt. Venkata Ramana. Consequently, the trial court as well as the High Court could not rely upon the evidence of these witnesses and had to consider and rely upon the dying declaration (Ex.P- 14) and the evidence in that behalf. The dying declaration of Smt. Venkata Ramana is at Ex. P-14 and was sought to be proved by the prosecution through the evidence of Shri H K. Lakshamana Rao (PW 13), the then Addl. Munsiff Magistrate, Tenali, and

Dr. K.Vishnupriya Devi (PW 10). It is, therefore, admitted position that the judgments and order of convictions passed by the courts below is solely based upon the dying declaration Ex.P-14. We are, therefore, required to consider carefully the dying declaration Ex.P-14 and the evidence of two witnesses, namely, K. Lakshamana Rao (PW 13) and Dr. K. Vishnupriya Devi (PW 10).

5. We are conscious of the fact that the trial court and the High Court accepted the evidence of Dr. K. Lakshamana Rao (PW 13) and Dr. K.Vishnupriya Devi (PW 10) and held that the dying declaration Ex.P-14 is a true and voluntary and was made by the injured while in a fit state of mind and free from any tutoring or prompting.

6. The original dying declaration of Smt. Venkata Ramana was recorded in vernacular (Telugu) and during the course of hearing, an admitted translation thereof was produced before us. Since the conviction and sentence is solely based upon the dying declaration, we deem it proper to reproduce the same:-

#### DYING DECLARATION

Declaration of Paparabaka Venkata Ramana, W/o Srinu, Ravinder Nagar, resident of Tenali village, Taluk-District recorded by me in the presence of Duty Doctor Sri Dr. Vishnu Priya of Government Hospital, Tenali.

Received a requisition to record a dying declaration from the Medical Officer, Government Hospital, Tenali at 1.57 p.m. and at once I proceeded to the Hospital and reached the same at 2.20 p.m. on 04.03.1994.

I send away all persons from the patient's room except the Medical attendants with a view to secure privacy. I put the following single questions to the declarant to elicit answers from him with a view to know her state of mind.

Q: What is your name?

A: Ramana-Venkata Ramana.

Q: What is your Father's/Husband's name?

A: Srinu.

Q: Which village do you belong to?

A: Tenali.

A Q: Do you know where you are?

A: I am in the hospital.

Q: Do you know that I am the Magistrate? If not then understand that I am the Magistrate?

B A: I was told so. I came to know.

Q: Can you make the statement?

A: Yes, I will tell.

On the basis of answers elicited from the declarant to the above questions I am satisfied that she is in a fit disposing state of mind to make a declaration.

C Q: What happened to you?

A: Venkateswarlu Boduru and Boduru Sashi are wife and husband. Paparambaka Rosamma my grand mother poured kerosene on me. I also poured kerosene on myself. They have burnt me with a lighted matchstick. They poured water.

D Q: When, where and what happened-give details.

A: Around 12.30 p.m. in the afternoon, Venkateswarlu and Shashi came into my house with an electric tester used in electric repairs, threatening to stab. Venkateswarlu came and poked me on the chest. Shashi beat me. Both beat me. Rosamma abused me and told me to leave the house. Everyday she used to get into same sort of quarrel. She also made others to beat me. Venkateswarlu is my grandmother's sister's son. Shashi is his wife. They live in our house. Both Shashi and Venkateswarlu poured kerosene on me.

E

F They threw lighted matchstick on me. My grandmother instigated them to burn me. Everything was done at her instance. Kerosene was poured on me and when lit, I went in flames. Venkateswarlu poured water. My husband was not there. He had gone to work in the steel company. They say that I wanted to live separately. Due to this, my husband beat me yesterday afternoon. All of them did not want us to live separately. I have not taken any food for days. My grandmother did not come to my rescue. I was married in 1990 when cyclone had come. I have two children.

H Both are daughters. My husband is my maternal uncle. My

grandmother disliked me. Since the day of our marriage Venkateswarlu and his wife are living with us. A

Q: Do you have anything further to add?

A: Nothing. My children were not present in the house, they had gone out. There is nothing more. They used to instigate my husband to beat me. Venkateswarlu is engaged in putting up tents. B

Q: Would you like to put thumb impression or signatures?

A: I will put thumb impression.

Certified that the patient is in consciousness state and has sound of mind to give her declaration. She understood about the contents of her dying declaration given before me. C

Certified that the contents of dying declaration of the deponent have been read over and explained to her in Telugu and she admitted that the contents of dying declaration are to be true and correct. D

Certified that except myself and duty Doctor no others were present at the patient-deponent at the time of recording this statement from her.

Closed the proceedings at 2.55 p.m. on 04.03.1994. E

Sd/-

K. Lakshmana Rao, 04.03.1994.

Patient is conscious, while recording the statement.

Sd/- F

K. Vishnu Priya,

04.03.1994 at 3.00 p.m.

7. After going through the evidence of K. Lakshmana Rao (PW 13) and Dr. K. Vishnupriya Devi (PW 10) and on very careful perusal of the said document, there are some inherent defects and improbabilities which could not persuade us to accept the said dying declaration as a truthful and voluntary for the reasons set out hereinafter. G

8. The main question is as to whether she was conscious and was in a fit mental condition to make a voluntary disclosure of the incident. Dr. K. H

A Vishnupriya Devi (PW 10) who was attached to Tenali Government Hospital examined Smt. Venkata Ramana on 4th March, 1994 at 1.30 p.m. She then sent a requisition (Ex. P9) to the Magistrate Shri K.Lakshamana Rao (PW 13) to record the dying declaration of the injured. All that Dr. K.Vishnupriya Devi has stated is that injured was conscious but she has not deposed that the injured was in a fit state of mind to make a statement. It has come on record

B that Smt. Venkata Ramana had sustained 90 per cent burn injuries. K. Lakshamana Rao (PW 13) who recorded the dying declaration has made a note in Ex.P-14-the dying declaration after putting some preliminary questions to the injured and it reads as under:

C “On the basis of answers elicited from the declarant to the above questions I am satisfied that she is in a fit disposing state of mind to make a declaration.”

Thereafter, the learned Magistrate proceeded to record the dying declaration. At the end, Dr. K.Vishnupriya Devi (PW 10) has appended a certificate saying

D “patient is conscious while recording the statement.” The question that needs to be considered is as to whether the Magistrate could have come to a definite conclusion that the injured was in a fit state of mind to make a declaration in the absence of a certificate by the doctor certifying the state of mind that existed before recording the dying declaration? In our opinion, in the absence of medical certification that the injured was in a fit state of

E mind at the time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in a fit state of mind at the time of making a declaration. It is a case of circumstantial evidence and only circumstance relied upon by the prosecution is dying declaration.

F 9: It is true that the medical officer Dr. K.Vishnupriya Devi (PW 10) at the end of the dying declaration had certified “patient is conscious while recording the statement.” It has come on record that the injured Smt. Venkata Ramana had sustained extensive burn injuries on her person. Dr. P. Koteswara Rao (PW 9) who performed the post mortem stated that injured had sustained

G 90 per cent burn injuries. In this case as stated earlier, the prosecution case solely rested on the dying declaration. It was, therefore, necessary for the prosecution to prove the dying declaration being genuine, true and free from all doubts and it was recorded when the injured was in a fit state of mind. In our opinion, the certificate appended to the dying declaration at the end by Dr. Smt. K.Vishnupriya Devi (PW 10) did not comply with the requirement

H inasmuch as she has failed to certify that the injured was in a fit state of mind

at the time of recording the dying declaration. The certificate of the said expert at the end only says that "patient is conscious while recording the statement." In view of these material omissions, it would not be safe to accept the dying declaration (Ex.P-14) as true and genuine and was made when the injured was in a fit state of mind. From the judgments of the courts below, it appears that this aspect was not kept in mind and resultantly erred in accepting the said dying declaration (Ex.P-14) as a true, genuine and was made when the injured was in a fit state of mind. In medical science two stages namely conscious and a fit state of mind are distinct and are not synonymous. One may be conscious but not necessarily in a fit state of mind. This distinction was overlooked by the courts below.

10. Apart from these serious lacunas, mentioned herein above, we find some more infirmities in the dying declaration (Ex.P-14). In the dying declaration, Smt. Venkata Ramana had stated that A-1 to A-3 poured the kerosene on her and thereafter she also poured kerosene on herself. Then she stated "they have burnt me with a lighted match stick." It is difficult to understand as to why she poured the kerosene on herself. It has also come on the record that on the earlier occasion, Smt. Venkata Ramana (since deceased) had tried to commit suicide. In her dying declaration (Ex.P-14) she had stated "I had not taken food for days." These circumstances again are pointer to the fact that Smt. Venkata Ramana (since deceased) was disappointed and frustrated in her married life. It is in these circumstances, we find it difficult to accept the dying declaration wherein all the three appellants alleged to have committed the crime. It is difficult to understand as to why three persons poured the kerosene and again all the three persons burnt her with a lighted matchstick. The above statements in the dying declaration raises a reasonable doubt as to whether she was in a fit disposing state of mind at the time when the dying declaration was recorded.

11. The incident in question occurred in a thatched hut. There is nothing to indicate in the dying declaration that Smt. Venkata Ramana (since deceased) was held by any of these appellants and/or she was prevented from running out of the hut or prevented from raising the shouts. Several huts were situated adjacent to each other. There was sufficient opportunity and time to the injured to escape from the hut and also to raise shrieks. This we are saying so after taking into account the sequence and the time factor, which has been narrated, in the dying declaration. The conduct of A-3 is also relevant as he tried to extinguish the fire by putting water.

12. It is unfortunate for the prosecution that the parents of the deceased

A as well as other close relatives have turned hostile. A-1 is although a mother in law, also happened to be the real grand mother of the victim. A-2 is the daughter of A-1 and also happened to be sister of mother of the deceased. As stated earlier, there were number of huts around the hut in question but nobody has come forward to support the prosecution. There is also no evidence on record to indicate that Smt. Venkata Ramana (since deceased) was meted out any ill treatment or there was any dowry demand. The only grievance made in the dying declaration was that she wanted to live separately but her husband was not prepared and on that score, the husband (acquitted) had beaten her in the after-noon on the previous day. It was then stated therein that her grand mother disliked her. These statements in the dying declaration, in our opinion, are not sufficient to substantiate the prosecution case that Smt. Venkata Ramana (since deceased) was meted out with ill treatment, an offence punishable under Section 498-A of the Indian Penal Code.

D 13. We are thus unable to share the view and reasoning given by the courts below. Consequently, we are unable to uphold the conviction and sentence inflicted upon A-1, A-2 and A-3 by the courts below. The conviction and sentence of each of A-1, A-2 and A-3 is accordingly quashed and set aside.

E 14. In the result, the appeal is allowed. The order of conviction and sentence dated 17th June, 1996 passed by the Second Addl. Sessions Judge, Guntur and on appeal confirmed by the High Court of Andhra Pradesh vide its judgment and order dated of 26th March, 1997 are quashed and set aside and the appellants (A-1 to A-3) are acquitted of all the charges. The appellants be set at liberty forth with, if not required in any other case. It appears that F the first appellant was ordered to be released on bail by this Court vide order dated 18th January, 1999. If she is released on bail, her bailbond to stand cancelled.

V.S.S.

Appeal allowed.