

**In the High Court of Judicature at Hyderabad**  
**for the State of Telangana and the State of Andhra**  
**Pradesh**

**Criminal Appeal No.893 of 2010**

**Between:**

**Kavali Chandraiah**

**... Appellant**

**and**

**–**  
**The State of A.P.,**  
**rep. by its Public Prosecutor,**  
**High Court of Judicature at Hyderabad**

**...Respondent**

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**Date of Judgment Pronounced: 28-03-2016**

**Submitted for Approval:**

**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**  
**and**

**The Hon'ble Sri Justice M.S.K.Jaiswal**

1. Whether Reporters of Local newspapers

Yes/No

may be allowed to see the judgments ?

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2. Whether the copies of judgment may be

Yes/No

marked to Law Reporters/Journals

3. Whether Their Ladyship/Lordships wish to

Yes/No

see the fair copy of the Judgment ?

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**(C.V.Nagarjuna Reddy, J)**

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(M.S.K.Jaiswal, J)

\* The Hon'ble Sri Justice C.V.Nagarjuna Reddy  
and  
The Hon'ble Sri Justice M.S.K.Jaiswal

Company Appeal No.893 of 2010

% Date: 28.03.2016

**Between:**

-  
# Kavali Chandraiah

-

**...Appellant**

**And**

-  
The State of Andhra Pradesh  
rep. by its Public Prosecutor  
High Court of Judicature at Hyderabad

**...Respondent**

**! Counsel for the Appellant :** Sri V.Raghu

**^ Counsel for the respondent:** Public  
Prosecutor

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**> HEAD NOTE:**

**? Cases cited:**

(1976) 2 SCR 764  
AIR 1985 SC 416  
AIR 1983 SC 164  
AIR 1976 SC 1994  
(2002) 6 SCC 710

**The Hon'ble Sri Justice C.V.Nagarjuna Reddy**

and  
The Hon'ble Sri Justice M.S.K.Jaiswal

Criminal Appeal No.893 of 2010

–  
Date: 28.03.2016

**Between:**

Kavali Chandraiah

**.. Appellant/accused**

**and**

The State of Andhra Pradesh  
rep. by its Public Prosecutor  
High Court of Judicature at Hyderabad

**.. Respondent**

**Counsel for the Appellant :**                      **Mr.V.Raghu**

**Counsel for the respondent:**                      **Public Prosecutor**

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**The Court made the following:**

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**Judgment :** (Per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This is yet another heart-rending story of a hapless woman, who met her end at the prime of her life, allegedly, at the hands of the appellant, who is no other than her own husband.

The case of the prosecution in brief is that on 19-07-2008 at 18.00 hours, PW.10- Sub-Inspector of Police, Parigi, has recorded the statement of Smt.Kavali Lakshmi (the deceased), W/o.Kavali Chandraiah, at the Government Civil Hospital, Parigi. In the statement, the deceased has stated that her marriage was performed with the appellant, who is a resident of Mitla Kodur Village, about 10 years back; that they were blessed with a son and a daughter; that for the last 5 years, her husband has been subjecting her to harassment both mentally and physically for getting additional dowry from her parents; that the village elders have settled the dispute and sent her to her in-laws' house; that five months back, her husband had burnt her with an iron rod; that the elders intervened, compromised the matter and sent the deceased back to her in-

laws' house; that one month prior to the incident, the appellant quarrelled with the deceased for bringing additional dowry, due to which, she has again gone back to her parents' house; that three days prior to the incident, the appellant went to his in-laws' house and brought the deceased back to his house; that the deceased earned wages under 'Food for Work' Scheme, but the appellant had taken away the said money and used the same for consuming liquor; that on 19-07-2008 at about 18:00 hours, the appellant came to the house in a drunken condition, upon which the deceased picked up a quarrel with him over money; and that following the altercation, the appellant poured kerosene over the deceased and set her ablaze, due to which, she has received burn injuries.

After recording the said statement, PW.10 registered Crime No.147 of 2008 for the offences under Sections 498 (A) and 307 IPC and took up the investigation. During the course of investigation, PW.10 visited the Government Civil Hospital, Parigi, examined and recorded the statement of the deceased. On requisition of PW.10, PW.9- the Judicial First Class Magistrate,

Parigi, recorded Ex.P.9- dying declaration on 19.07.2008. Thereafter, PW.10 proceeded to the scene of offence and examined PW.1, LW.3, PWs.2 to 5 and LW.8 and recorded their detailed statements. PW.10 secured the presence of LWs.12 and 13, conducted Ex.P.12- panchanama, drafted Ex.P.13- rough sketch and seized M.O.1- Plastic Kerosene can and M.O.2- Chavi Company match box in the presence of the same mediators under the cover of Ex.P.12- Panchanama.

On 21-07-2008, PW.10 arrested the appellant and produced him before the Judicial First Class Magistrate, Parigi, for Judicial remand. On 25-07-2008 at 8.30 hours, PW.10 received a telephone message from the Osmania General Hospital, Hyderabad, that the deceased was admitted in the said hospital on 19-07-2008 with burn injuries and that she has succumbed to injuries on 25-07-2008 at 01.00 hours. PW.10 has altered the sections of law from 498 (A) & 307 to 498 (A) & 302 IPC. On 25-07-2008, PW.10 proceeded to the Osmania General Hospital, Hyderabad, examined PW.6, PW.7 and LW.11 and recorded their detailed statements, held inquest in the presence of LWs.14

and 15 and sent the dead body for postmortem examination. PW.12- Doctor held autopsy over the dead body of the deceased and issued Ex.P.16- postmortem examination report wherein he opined that the cause of death was 'Burns'. PW.11- Circle Inspector of Police, Parigi, took up further investigation and filed chargesheet after completion of the investigation.

On appreciation of the oral and documentary evidence, the trial Court convicted the appellant for the offences under Sections 498 (A) and 302 IPC and sentenced him to undergo simple imprisonment for a period of one year and to pay a fine of Rs.600/-, in default to undergo Simple Imprisonment for a period of three months, for the offence under Section 498 (A) IPC and imprisonment for life and to pay fine of Rs.1000/-, in default to undergo Simple Imprisonment for five months for the offence under Section 302 IPC.

At the hearing, Mr.V.Raghu, learned Counsel for the appellant, submitted that PWs.1 to 6 have turned hostile and consequently, they did not support the case of the prosecution and that

therefore, in the absence of corroboration of Ex.P.9- dying declaration, the lower Court ought not to have convicted the appellant.

Opposing the above submission, Mr.C.Pratap Reddy, learned Public Prosecutor, has argued that Ex.P.1- report of the deceased, based on which the case was registered against the appellant and Ex.P.9- dying declaration recorded by the Judicial First Class Magistrate, Parigi, are sufficient to hold the appellant guilty of the offence of murder and that where the dying declaration was not a result of tutoring and its contents are natural and trustworthy, it does not require any corroboration. He further submitted that Ex.P.9- dying declaration having been recorded by a Judicial First Class Magistrate, the same has high evidentiary value and that therefore, there is no reason to doubt the contents of the same.

Having regard to the rival submissions of the learned Counsel for the parties, the point that arises for consideration is whether the prosecution was able to prove the guilt of the appellant beyond all reasonable doubts.

The criminal proceedings were set in motion on the report given by none other than the victim herself. The contents of Ex.P.1 would reveal that the victim has given the relevant background relating to the harassment, to which she was subjected by her husband. She has also narrated the circumstances immediately preceding the occurrence. Regrettably, in this case, all the kith and kin of the deceased including her elder sister (PW.3), her younger brothers (PWs.4 & 7), her mother (PW.6) and her maternal aunt (PW.8) have turned hostile. While men may lie, the circumstances would not lie. The age old criminal jurisprudential principle that a person would not like to meet his maker with a lie in his mouth continues to be relevant even today. If we carefully peruse Ex.P.9- dying declaration recorded by the Magistrate, we find the same is not only crisp but it also looks very natural. Shorn of all embellishments, it contains narration of the incidents in a very crisp manner. We have perused the original version of Ex.P.9- dying declaration wherein the deceased has stated that she has saved a sum of Rs.1100/- from her earnings, out of

which she has kept Rs.20/- at a place in her house and on finding the said money, the appellant questioned the deceased as to why she has retained that money with her. This incident was stated to have occurred at 8.00 a.m. On that day, her mother-in-law chastised her husband by calling him "Bhadkav". Thereafter, the deceased gave Rs.200/- to her mother-in-law and at around 1.00 p.m., the appellant poured kerosene on the deceased and lighted the match stick by removing her blouse and saree, as a result of which, she has suffered extensive burn injuries and the villagers have put out the fire. When the Magistrate asked the deceased as to whether she has anything more to state, she replied in the negative. Before this statement was recorded, the Magistrate has put certain preliminary questions upon which he was satisfied that the deceased was in a fit state of mind to give statement. Both prior to commencement of recording the dying declaration and also after its completion, the Doctor concerned has certified on the fitness of the deceased to make statement. The fact that the victim has died on 25-07-2008 *i.e.*, 6 days after the incident itself shows that she would

have been in a fit condition to make statement on the date of occurrence.

As regards the legal position regarding dying declarations, the law is well settled. In **Munnu Raja and another v. The State of Madhya Pradesh**<sup>[1]</sup>, the Supreme Court held that there is neither a rule of law nor of prudence that dying declaration cannot be acted upon without corroboration.

In **State of Uttar Pradesh v. Ram Sagar Yadav and others**<sup>[2]</sup> and **Ramavati Devi v. State of Bihar**<sup>[3]</sup>, it was held that if the Court is satisfied that the dying declaration is true and voluntary, it can base conviction on it, without corroboration.

In **K.Ramachandra Reddy and another v. The Public Prosecutor**<sup>[4]</sup>, the Supreme Court held that the Court has to scrutinize the dying declaration carefully and must ensure that the declaration is not the result of tutoring, prompting or imagination and that the deceased had an opportunity to observe and identify the assailants and was in a fit state to make the declaration.

In **Laxman v. State of Maharashtra**<sup>[5]</sup>, a Constitution Bench of the Supreme Court dealing with the probatory value to be attached to the dying declaration recorded by the Magistrate, held that the Magistrate being a disinterested witness and a responsible officer and there being no circumstances or material to suspect that he had any animus against the accused or was in any way interested in fabricating the dying declaration, the question of doubt on the declaration, recorded by the Magistrate does not arise.

From the legal position emerging from the judgments referred to above, it is clear that ordinarily the dying declaration recorded by a superior officer has more evidentiary value and also the earliest version given out by the victim deserves more credence.

We have also perused Ex.P.10- statement of the deceased recorded by PW.10. Indeed, the statement contained in Ex.P.10 is more elaborate and almost in line with Ex.P.9 revealing the harassment of the deceased meted out by the

appellant. As regards the manner in which the occurrence has taken place, we do not find any variation between Exs.P.9 and P.10. Ex.P.16- Postmortem report shows that the deceased has suffered 66% of the external burns, which was the cause of her death. PW.8- Doctor, who conducted autopsy over the dead body of the deceased, spoke to Ex.P.16 and reconfirmed the cause of death as certified therein. Thus, the evidence fully supports the statement of the deceased leaving no room for the Court to doubt its veracity.

Though all the material witnesses have turned hostile, as we are convinced from the contents of Ex.P.9- dying declaration that there is nothing to discredit its contents, there is no necessity for its corroboration through oral evidence.

In the above facts and circumstances of the case, we have no hesitation to hold that the prosecution has proved the guilt of the accused beyond all reasonable doubt. Therefore, we do not find any reason whatsoever to interfere with the judgment of the lower Court.

For the above mentioned reasons, the Criminal Appeal fails and the same is, accordingly, dismissed.

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**(C.V.Nagarjuna Reddy, J)**

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**(M.S.K.Jaiswal, J)**

**Date: 28.03.2016**

**Note:**

**Lr copies to be marked**

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[\[1\]](#) (1976) 2 SCR 764

[\[2\]](#) AIR 1985 SC 416

[\[3\]](#) AIR 1983 SC 164

[\[4\]](#) AIR 1976 SC 1994

[\[5\]](#) (2002) 6 SCC 710