

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.1119 OF 2008

Between:

Kotha Srinivas

... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad.

... Respondent

Criminal Appeal No.1218 OF 2008

Between:

Todusu Alivelu

... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad.

... Respondent

DATE OF JUDGMENT PRONOUNCED: 21.07.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.1119 of 2008

% Dated 21.07.2022

Kotha Srinivas

... Appellant

And

\$ The State of Andhra Pradesh,
rep. by its Public Prosecutor,
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... Respondent

! **Counsel for the Appellant:** N.Avaneesh

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

>HEAD NOTE:

? Cases referred

¹ 2003 (2) ALD (Cri) 344

² 2002 (1) ALD (Cri) 667

³ AIR 2010 SC 408

HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL Nos.1119 and 1218 of 2008****COMMON JUDGMENT:**

1. Since both the appeals arise out of judgment in S.C.No.316 of 2006 dated 08.09.2008, they are being heard together and disposed off by way of this Common Judgment.
2. Criminal Appeal No.1119 of 2008 is filed by A1. The appellant died on 07.06.2019 and in proof of the same, the death certificate dated 22.06.2019 is filed on 25.02.2020 before this Court. The learned Public Prosecutor sought time to verify the same and report.
3. The learned Public Prosecutor is not denying the death certificate filed, as such, the appeal abates as against A1.
4. Criminal Appeal No.1218 of 2008 is preferred by A3, who is the sister of A1, convicted for the offence under Section 498-A of IPC and sentenced to SI for three years, in default, to suffer six months imprisonment. Aggrieved by the same, present appeal is filed.

5. A.2 is the mother of A1 who was acquitted by the trial Court and no appeal is preferred by the State against her acquittal.

6. The case of the prosecution is that A1 and deceased's marriage was love marriage. She lived happily for six months and thereafter, A1 to A3 started harassing the deceased to bring dowry as no dowry was given at the time of marriage. A1 incurred debts of nearly Rs.63,000/- and he used to beat the deceased frequently insisting her to get dowry. Though a panchayat was held, there was no change in the attitude of the accused and they continued harassment. On 13.06.2004, A1 came to the house in a drunken condition and beat the deceased. Both A2 and A3 also abused the deceased for not getting any money from her mother. Vexed with the attitude of the accused, the deceased poured kerosene on herself and set fire. She died with burn injuries on 07.08.2004 while being treated in the hospital.

7. Learned counsel for the appellant-A3 would submit that P.W1, the mother of the deceased P.W.2, the father of the

deceased, P.W.3, the brother of the deceased and P.W.4 cousin of the deceased stated that it was A1 who was beating the deceased. Further the witnesses stated that it informed by the deceased. Therefore there is no direct evidence that A3 harassed the deceased.

8. It is further argued that the main basis for recording the conviction against this appellant was the statement of the deceased marked as Ex.P4, which is a statement made to the police and also Ex.P8, which is the dying declaration given to the Magistrate. Under Ex.D5, which is requisition for recording dying declaration, it was mentioned by the Doctor around 3.15 p.m that the patient is not in a fit state to give dying declaration. However, the dying declaration was recorded. He relied upon the judgment of this Court in the case of **G.M.Ravi v. State of A.P**¹ wherein at paragraphs 6 and 7 it was mentioned that allegations of harassment was stated by the deceased and witnesses did not have any personal knowledge, in those circumstances, accused were acquitted.

¹ 2003 (2) ALD (Cri) 344

9. The learned counsel for the appellant also relied upon the case of **Kosipalli Satyanarayana v. State of A.P²**, in which it was found that the statements made in the dying declaration cannot be relied upon unless the statement was made coherently and in a fit state of mind. However, in the present case, as per Ex.D5, she was not in a fit state of mind, as such, the statement against this appellant cannot be considered and made basis to convict.

10. Learned counsel for the appellant also relied on **Sharda v. State of Rajasthan³**. The Hon'ble Supreme Court held that the Court before relying upon a dying declaration should be satisfied that the deceased was in a fit state of mind to make such statement and only in such circumstances, the dying declaration can be relied upon.

11. On the other hand, learned Assistant Public Prosecutor would submit that specific allegations were made by the

² 2002 (1) ALD (Cri) 667

³ AIR 2010 SC 408

witnesses that this appellant was also complicit in demanding for dowry.

12. As seen from Ex.P8, the deceased stated that it was A1, who quarreled and was beating the deceased, for which reason, she poured kerosene on herself. The previous day due to the beating she broke her hand.

13. As seen from the postmortem examination report, hand of the deceased was not broken, for which reason it can be reasonably inferred that as stated in Ex.D5, the deceased was not in a fit state of mind to give dying declaration.

14. Further, a vague allegation that this appellant was also harassing her as stated in Ex.P8 and the statement under Ex.P5 that this appellant abused and went away on the date of incident are not enough to find the appellant guilty of the offence under Section 498-A of IPC. In the circumstances, the conviction recorded against this appellant/A3 is liable to be set aside

15. In the result, the judgment of the trial Court in S.C.No.316 of 2006 dated 08.09.2008 is set aside. Since the appellant/A3 is on bail, her bail bonds stand cancelled.

16. Accordingly, the Criminal Appeal is allowed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

Date: 21.07.2022
kvs

K.SURENDER, J

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL Nos.1119 & 1218 OF 2008

Date: 21.07.2022.

kvs

