

State of Karnataka Vs. Shankar and Another

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Court : Karnataka

Decided On : Jan-06-2000

Reported in : 2000CriLJ1917; II(2000)DMC43; 2000(2)KarLJ61

Judge : M.F. Saldanha and ;B.S. Sreenivasa Rao, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304-B; [Dowry Prohibition Act, 1961](#) - Sections 3; [Evidence Act, 1872](#) - Sections 32(1)

Appeal No. : Criminal Appeal No. 1134 of 1999

Appellant : State of Karnataka

Respondent : Shankar and Another

Advocate for Pet/Ap. : Sri Mohan Shanthangoudar, State Public Prosecutor

Judgement :

ORDER

M.F. Saldanha, J.

This is one more of the distressing wife-burning cases where the allegation was that due to the non-return of the gold ring and the harassment and cruelty meted out to the deceased wife that she burnt herself. Though the prosecution has alleged that the accused had ill-treated her and were responsible for the incident, the mother and brother of the deceased who are the most important witnesses

have turned hostile and we are left with nothing other than the dying declaration. Normally, a Court would have relied on this document and it could have also formed the sole basis of a conviction but the difficulty that has arisen is that the condition of the deceased was bad, she was not in a position to make any statement on the date of the incident and we do not have any certificate from the doctor, that on the next day when the dying declaration was recorded, that the deceased was in a fit condition, mentally and physically to understand and answer questions. The learned State Public Prosecutor submitted that the doctor has in his evidence indicated that the statement was made before him and that the deceased was in a fit condition. This is not good enough insofar as the law requires a contemporaneous certificate from the doctor which must be endorsed on the dying declaration itself. More so, when there is no other evidence and the conviction is sought to be based on the dying declaration alone, it would be unsafe to record a conviction in the absence of the certificate in question. Having regard to this position, we have no option except to refuse interference with the order of the Trial Court.

The appeal accordingly fails on merits and stands disposed off.

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