
(2011) 08 AP CK 0089

In the Andhra Pradesh High Court

Case No : Criminal Revision Case NO. 1076 of 2005

Ambaipudi Parasuramudu

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 05-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 306, 365, 366

Citation : (2011) 08 AP CK 0089

Hon'ble Judges : K.G. Shankar, J

Bench : Single Bench

Advocate : M. Sreeramulu Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Hon'ble Sri Justice K.G. Shankar

1. Dola Rupa Devi, who is quite a young girl, committed suicide by pouring kerosene over herself and immolating her on 29.03.2001. The deceased Rupa Devi was admitted to the Government Hospital, Markapur with burn injuries. PW. 8, the then Junior Civil Judge, Markapur, recorded Ex. P. 12-dying declaration of the deceased at the hospital. In her dying declaration, Rupa Devi alleged that the accused kidnapped her on 11.01.2001 and that the deceased, who was unable to withstand the disgrace, had attempted to commit suicide. Unfortunately, Rupa Devi breathed her last thereafter. The statement of the deceased was registered as First Information Report (FIR). The statement of the deceased was subject to altered FIR under Ex. P. 11.

2. PW. 7, Sub-Inspector of Police, Markapur Police Station received intimation at the outset from the hospital under Ex. P.4, went to the hospital and recorded the statement of the deceased under Ex. P. 7 and issued Ex. P.9-FIR u/s 174 of the Criminal Procedure Code (Cr.P.C). On account of altered FIR, police investigated the case and laid the charge sheet.

3. Police lodged charge sheet against the sole accused alleging that the accused was guilty of the offences under Sections 365 and 306 of the Indian Penal Code (IPC). The learned Assistant Sessions Judge, Markapur framed charges u/s. 366 and 306 IPC against the sole accused and conducted trial as the accused pleaded, not guilty. As many as eight witnesses were examined by the prosecution. 12 exhibits were marked by the prosecution. The learned Assistant Sessions Judge considered that the offences of kidnap and abetment to commit suicide were made out against the accused. The accused was sentenced to undergo Rigorous Imprisonment) for three years and fine of Rs. 300/- for the offence u/s. 366 IPC. He was also sentenced to undergo R.I. for five years and fine of Rs. 500/-. The fines attracted appropriate default sentences. The learned trial Judge directed the sentence to run concurrently. Assailing the judgment of conviction, the sole accused preferred an appeal before the Sessions Court. The learned VI Additional Sessions Judge, Markapur dismissed the appeal and confirmed the conviction and sentence recorded against him. The sole accused consequently preferred the present revision.

4. The point for consideration is whether the prosecution brought home the guilt of the accused beyond reasonable doubt.

5. The offence u/s. 306 IPC contemplates abetment to commit suicide. Every incidence of suicide is not an offence u/s. 306 IPC. There must be evidence that the accused abetted the commission of suicide by the deceased. There must be some utterances like an inducement to the deceased that he/she should commit suicide. Unless there is abetment by way of inducement, the offence u/s. 306 IPC would not be made out. While so, there is no whisper in Ex. P.7 statement of the deceased before PW. 7 and in Ex. P. 12 dying declaration of the deceased before PW. 8 that there was inducement directly or indirectly from the accused. The case of the deceased herself is that the accused left the deceased at Hubli. Thus, the accused deserted the deceased at Hubli. There was no quarrel at any point of time between the accused and the deceased. There was no occasion for the accused to express a view that the deceased should commit suicide. I, therefore, consider that the trial Court and the appellate Court erred in concluding that the offence u/s. 306 IPC was made out.

6. The deceased stated in Ex. P.7 as well as Ex. P. 12 that she committed suicide, as she could not bear the insult. Such a conduct on the part of the deceased would not be a tantamount to commission of the offence u/s. 306 IPC by the accused. Where it is not the case of even the deceased that she committed suicide on account of direct or indirect inducement from the accused, no case is made out against the accused. The accused deserves to be acquitted for the offence u/s. 306 IPC.

7. It is the case of the prosecution that on 11.01.2001, PW. 2, mother of PW. 1 went to work as an agricultural labourer and that the deceased left the house at about 10 a.m. to go over to her mother (PW. 2) to procure money for purchasing vegetables. It is the further case of PWs. 1 to 4 that while the deceased was

returning from her mother, the accused along with two other unknown persons kidnapped the deceased and took her away in an auto. PW. 1 admitted that Cambam Road where from the deceased was kidnapped was a busy locality. Nevertheless, the deceased did not raise any alarm that she was being kidnapped. It is the case of the deceased as can be seen from Ex. P. 12 that after kidnapping her, she was taken to Hubli in a train. Again, the deceased did not raise any alarm in the train. It is the case of the deceased as can be seen from Ex. P. 12 that the accused administered sedative to the deceased incapacitating the deceased from reacting sharply for the conduct against her.

8. The subsequent conduct of parents of the deceased would show that there was no alarm or reaction from the parents of the deceased that the accused deserted the deceased 10 days after the kidnap. The deceased went to the house of PWs. 3 and 4 at Kadra, Karnataka State on 22.01.2001. In between 11.01.2001 and 22.01.2001, neither PW. 1, father of the deceased nor PW. 2, mother of the deceased lodged any complaint. They merely deposed that they suspected that the deceased eloped with the accused on account of the information furnished by the wife of the deceased. ? Although the deceased reached the house of PWs. 3 and 4 on 22.01.2001, PW. 3 informed PW. 1 about the same two days thereafter only. It may be noticed that PW. 3 is the elder brother of PW. 1 and PW. 4 is the wife of PW. 3. Kadra would appear to be at a distance of 5 hours from Hubli. PW. 4 deposed that the bus charges were Rs. 50/- from Hubli to Kadra. The deceased allegedly reached Kadra after the accused deserted her at Hubli. How did the deceased reach Kadra and where did she get the money to go over to Kadra? The deceased had not offered any explanation either in Ex. P. 7 or through Ex. P. 12 as to how she reached Kadra. She merely stated that after the accused deserted her at Hubli, she went over to the house of her paternal uncle at Kadra.

9. As already pointed out, PWs. 3 and 4 informed PW. 1 a couple of days after the deceased reached their house as to the whereabouts of the deceased. Again, PW. 1 did not react immediately by going over to Kadra to bring her daughter. He could leisurely proceed to Kadra and bring the deceased back to the house in March, 2001. This conduct of PWs. 1 and 2 would appear to show that it has been the habit of the deceased to abscond from the house now and then.

10. The deceased offered explanation as to why she did not lodge police complaint after return to Markapur. It is her case that the accused promised to marry her. The accused is not a stranger to the family of the deceased. The accused was a distant relative of the deceased. He admittedly was visiting the house of deceased now and then. It is impossible to believe that the deceased was not aware that the accused was already married to for her to believe the representation of the accused that he would marry her. From the fact that the deceased knew the accused on account of his visits to the house of the deceased, it appears to be a case where the deceased voluntarily went away with the accused.

11. There is no evidence for the alleged administration of sedation to the deceased by the accused to keep her quiet from raising alarm. If so, when the deceased went to the house of PWs. 3 and 4, she ought to have lodged a complaint against the accused. The deceased should at least have lodged a complaint with police after her return to Markapur. The accused did not choose to do so. This is obvious because of her consortium with the accused, lest, she should not have kept quiet without lodging any complaint to the police. From the facts and circumstances of the case, it is quite possible to cull out that this is a case where the deceased eloped with the accused rather than was kidnapped by the accused.

12. As already noticed, the alleged kidnap occurred in broad daylight in a busy locality. Nevertheless, the prosecution did not examine anyone to support its case that the accused kidnapped the deceased. I, therefore, consider that it is a case of the deceased running away with the accused by way of elopement. It is unfortunate that the deceased ultimately committed suicide. Perhaps, she lost her hope about marrying the deceased and committed suicide.

13. In any event, so far as the offences are concerned, I am constrained to conclude from the evidence that the offence of kidnap was not made out, in view of the fact that at no point of time the deceased or PW. 1 lodged a complaint about the kidnap till the demise of the deceased. Thus, the prosecution failed to make out either the offence u/s. 366 IPC or the offence u/s. 306 IPC. The accused is liable to be acquitted of the two offences.

14. The revision, consequently, is allowed. The accused is found not guilty of the offences u/s. 366 and 306 IPC and is acquitted of the charges levelled against him. His bail bonds stand discharged. The fine amount, if already paid by the accused, shall be refunded.