
(2002) 01 AP CK 0038

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 80 of 2000

Bommiseti Anjaneyulu

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2002) 2 APLJ 91

Hon'ble Judges : Gopalakrishna Tamada, J

Bench : Single Bench

Advocate : K. Suresh Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Gopalakrishna Tamada, J.—The petitioner, the sole accused in Sessions Case No.511 of 1996 on the file of the Additional Sessions Judge, Guntur, was tried for the alleged offences punishable under Sections 498-A and 306 of the Indian Penal Code.

2. The trial Judge after discussing the evidence of P.Ws.1 to 16 and also taking Exs.P-1 to P-20 marked on behalf of the prosecution, held the petitioner guilty of the offence punishable u/s 498-A of the I.P.C. and sentenced him to suffer rigorous imprisonment for a period of one year and also to pay a fine of Rs.100/- in default to suffer simple imprisonment for a period of four months. Similarly, he found the petitioner guilty of the offence punishable u/s 306 of the Indian Penal Code and accordingly sentenced him to undergo rigorous imprisonment for five years and also to pay a fine of Rs.500/- in default to suffer simple imprisonment for six months. He, however, maintained that both the sentences should run concurrently.

3. In appeal, the learned IV Additional Sessions Judge, Guntur, confirmed the said conviction and sentence imposed against the petitioner. Hence, this revision.

4. The case of the prosecution in brief is that the deceased is the daughter of

P.Ws.1 and 2 and her marriage with the petitioner was solemnized three years prior to the date of offence. Though initially the petitioner who was working as a Cleaner in a private bus at Peda Kakani looked after the deceased well, subsequently he developed ill will towards her and subjected her to cruelty and harassment. In the year 1994, the marriage of the brother of the deceased i.e., P.W.3 was performed and in that connection the deceased went to her parents house and there she narrated the harassment meted out by her to her brother Koteswara Rao (P.W.3). The petitioner also attended the marriage and according to the case of the prosecution, he beat the deceased blue and black before the relatives and thereafter he left the village. As the petitioner has not chosen to take his wife, one week prior to the date of offence, the parents of the deceased took her and left her at the petitioner's house and there, he started harassing her. One day prior to the date of offence also, the deceased was beaten by the petitioner. Not being able to bear the torture at the hands of the petitioner, the deceased decided to do away with her life. Accordingly on 8-4-1995, when all the inmates of the house were absent in the house, at about 12.00 noon, the petitioner doused her body with kerosene and lit fire herself. On being taken to the hospital with burn injuries, the IV Additional Munsif Magistrate, Guntur (P.W.6) on a requisition, went to the hospital and recorded the dying declaration of the deceased in the presence of P.W.10 (Doctor). In the evening while undergoing treatment, the deceased succumbed to the injuries at about 5 P.M. Subsequently, the police officials have investigated into the matter and filed charge sheet against the petitioner for the alleged offences punishable under Sections 498-A and 306 of the Indian Penal Code.

5. The contentions of Sri T. Bali Reddy, learned senior counsel appearing for the petitioner, are two-fold. According to him, P.Ws.1 to 3, who are the parents and brother of the deceased, turned hostile and there is no evidence to establish the guilt of the petitioner, except the dying declaration recorded by P.W.6, which was marked as Ex.P-8, certified by P.W.10. He further submits that in the endorsement made by P.W.10 on Ex.P-8, which is marked as Ex.P-14, the Doctor (P.W.10) has not stated that the patient is in a fit condition to make the dying declaration. According to him, mere using of the words that "the patient is conscious and coherent" is not sufficient to establish that the dying declaration is genuine.

6. The second submission of the learned senior counsel is that at the time of examination of the accused u/s 313 Cr.P.C., the trial court did not put all the incriminating circumstances to the petitioner-accused and thereby deprived him from explaining the alleged incriminating circumstances. In the light of the above two defects, according to the learned senior counsel, the petitioner-accused is entitled to benefit of doubt. In support of his submissions, the learned counsel relied on the Judgments of the apex court reported in Paparambika Rosamma & Ors v State of A.P.1999 Criminal Law Journal 4321; Sharad Birdhichand Sarda Vs. State of Maharashtra ; Thota Panduranga Rao v. State of A.P., 1998 (1) ALD (Crl.) 641 and Galaveli Venkateswara Rao v. State of A.P. 1999 (1) ALD (Crl.)

443.

7. Heard the learned Public Prosecutor.

8. In the light of the above submissions, this court has given its anxious consideration to the question whether the conviction and sentence awarded by the courts below is sustainable or not.

9. Coming to the first submission made by the learned senior counsel with regard to the dying declaration (Ex.P-8), the learned Magistrate, who was examined as P.W.6, after noting down the particulars of the deceased in the beginning and after having satisfied himself that the deceased was in a fit state of mind, asked the deceased to narrate the events. The deceased then narrated the events in the following manner:

" Today in the afternoon, after taking my lunch I set myself on fire after pouring kerosene on my body. My husband is harassing me. Last year in the month of August, I went to Vijayawada to attend my brother's marriage. Since then, my husband started harassing me by attributing illicit intimacy with others. He used to beat me daily laughingly. When I told about this to my parents, he quarreled with them. About a month back, I went to my parents' house. My parents left me in my inlaws' house about a week back. He used to beat me by fisting. Not being able to bear his harassment, I decided to put an end to my life. Nobody was present in the house when I poured kerosene on myself. My husband went to attend to his duties. I studied upto 6th Class. Our house is situate in front of Peda Kakani "Gudi" (temple). " (translated version)

10. At the bottom of the dying declaration, the Doctor who was examined as P.W.10, made an endorsement that the patient was conscious and coherent while recording the dying declaration. It is no doubt true that in order to sustain conviction on the basis of the dying declaration, the prosecution should establish that the patient was in a fit state of mind and was conscious through out. In the judgment of the apex court reported in Paparambaka Rosamma & Ors. v State of A. P. (supra), the apex court has explained it in the following manner:

" (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.Vishnupriya Devi (Public witness 10) who was attached to Tenali government Hospital examined Smt. Venkata Ramana on 4/03/1994 at 1.30 p.m. She then sent a requisition (Ex.P9) to the Magistrate Shri K.Lakshamana Rao (Public witness 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 that Smt. Venkata Ramana had sustained 90% bum injuries. K. Lakshamana Rao (Public witness 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: -

"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 of circumstantial evidence and only circumstance relied upon by the prosecution is dying declaration.

(9) It is true that the medical officer Dr. K.Vishnupriya Devi (Public witness 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 (Public witness 9) who performed the post-mortem stated that injured had sustained 90% 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 (Public witness 10) 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." 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 a 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. If we attach the little meaning of the statement in the dying declaration, 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 raised 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. I do not think that the ratio laid down in the aforementioned judgment of the apex court lends any support to the facts of the instant case. In the case before the apex court, the endorsement of the Doctor was only to the effect that the patient was "conscious", but there was no endorsement in the dying declaration recorded in that case that the patient was "coherent" or was "in a fit state of mind". However, in the instant case, the Doctor has categorically endorsed at the bottom of the dying declaration that the patient was "conscious" and "coherent". According to the dictionary meaning given in Chambers Dictionary (New Edition of the year 2001), the word "coherent" is defined to mean as "consistent or orderly in thought or speech". When there is a specific endorsement by the Doctor in the instant case that the patient was "coherent", it clearly suggests that the patient was consistent in her speech and according to my considered view, it is not necessary for the Doctor to again certify that "the patient is in a fit state of mind to make the statement". Apart from that, the Doctor (P.W.10) in her cross-examination has further categorically stated that the patient was able to give the answers. She further stated that the word "coherent" denotes that the patient is able to give answers. In the light of the above, I do not find force in the first submission made by the learned senior counsel and accordingly, this contention is rejected.

12. The next submission is that incriminating circumstances spoken to by the witnesses including the dying declaration was not put to the petitioner-accused in his examination u/s 313 Cr.P.C.. The apex court in a case reported in Sharad v. State of Maharashtra (supra), held that when once the incriminating circumstances are not put to the accused, the same cannot be used against him. In the said judgment, the apex court held thus -

" Apart from the aforesaid comments there is one vital defect in some of the circumstances mentioned above and relied upon by the High court, viz., circumstances Nos. 4, 5, 6, 8, 9, 11, 12, 13, 16 and 17. As these circumstances were not put to the appellant in his statement under S. 313 of the Criminal Procedure Code, 1973 they must be completely excluded from consideration because the appellant did not have any chance to explain them. This has been consistently held by this court as far back as 1953 where in the case of Hate Singh Bhagat Singh v. State of Madhya Pradesh" this court held that any circumstance in respect of which an accused was not examined under S. 342 of the Criminal Procedure Code cannot be used against him. Ever since this decision, there is a catena of authorities of this court uniformly taking the view that unless the circumstance appearing against an accused is put to him in his examination under S. 342 of the old Code (corresponding to S. 313 of the Criminal Procedure Code, 1973), the same cannot be used against him. In Shamu Balu Chaugule v. State Of Maharashtra this court held thus :

" The fact that the appellant was said to be absconding, not having been put to

him under S. 342, Criminal Procedure Code, could not be used against him."

To the same effect is another decision of this court in Harijan Megha Jesha v. State of Gujarat where the following observations were made:

" In the first place, he stated that on the personal search of the appellant a chedi was found which was blood stained and according to the report of the serologist, it contained human blood. Unfortunately, however, as this circumstance was not put to the accused in his statement under S. 342, the prosecution cannot be permitted to rely on this statement in order to convict the appellant.... "

It is not necessary for us to multiply authorities on this point as this question now stands concluded by several decisions of this court. In this view of the matter, the circumstances which were not put to the appellant in his examination under S. 313 of the Criminal Procedure Code, 1973 have to be completely excluded from consideration. "

"No question has been put to the appellant in the course of his examination under S. 313 Criminal Procedure Code about any ill-treatment of Manju by the appellant or his parents. My learned brother Fazal Ali. J. has referred in paras 143 and 144 of his judgment to this court's decisions in Hate Singh Bhagat Singh v. State of Madhya Pradesh, Shamu Balu Chaugule v. State of Maharashtra and Harijan Megha Jesha v. State of Gujarat and has observed in para 145 of his judgment that circumstances not put to the appellant in his examination under S. 313 Criminal Procedure Code have to be completely excluded from consideration in view of those decisions. Therefore, since no question has been put to the appellant in this regard in the course of his examination under S. 313 Criminal Procedure Code, even if there is any evidence about any ill-treatment of Manju by the appellant or his parents it has to be completely excluded from consideration. I felt it necessary to say this in my judgment since I think that in fairness to the appellant it has to be done."

13. Following the said judgment, a Division Bench of this Court in Thota Panduranga Rao v. State of A.P. (supra) held thus:

" It is not disputed by the learned Public Prosecutor that the incriminating evidence available against the accused as contained in Exs.P-7 and P-9 has not been put to the accused when he was examined u/s 313 of Cr.P.C. However, it is contended that some minor mistakes in the prosecution case cannot enure to the benefit of the accused. It is further contended that the incriminating evidence has been supplied to the accused in advance and the accused must have been aware of the incriminating material against him in the prosecution case and as such, this minor defect cannot vitiate the prosecution case, more so when the two dying declarations Exs.P-7 and P-9 are proved by the independent witnesses P.Ws.12 and 15. We are not inclined to accept the submissions of the learned Public Prosecutor for the simple reason that we are not on the question of deciding the authenticity of the dying declarations Exs.P-7 and P-9 but we are totally on a different question as to the implication of not putting the

incriminating evidence in Exs.P-7 and P-9 to the accused in his examination u/s 313 of Cr.P.C. As held by the Supreme Court in the decision (1) cited supra, we are inclined to hold that the incriminating evidence available against the accused in Exs.P-7 and P-9 and whose contents are not put to the accused when he was examined u/s 313 of Cr.P.C. has to be eschewed and the conviction of the accused based on such incriminating evidence has to be invalidated. "

14. To the same effect is another judgment of a Division Bench of this Court in Galaveli Venkateswara Rao v. State of A.P. (supra).

15. In the light of the law laid down in the aforementioned judgments on the point, it is for this court to look into the statement of the accused u/s 313 Cr.P.C. Following are the questions put to the accused in his examination u/s 313 Cr.P.C.: -

" Q. NO.2: P.W.6-Sri K. Srinivasarao, Judl. Magistrate of I Class has stated that on 8.4.95 at 1.20 p.m. he left the Government General Hospital, Guntur on receipt of requisition (Ex.P7) from Casualty Medical Officer, GGH, Guntur to record statement of Smt. B. Adilakshmi wife of Anjaneyulu and he reached the hospital at 1.40 p.m. and he commenced recording of the statement of the deceased-B. Adilakshmi before duty doctor-Smt.S. Vanisree around 1.45 p.m. Do you know this?

Ans : I do not know.

Q.No.3: P.W.6 has further stated that he put some preliminary questions to the deceased as above to know whether she is in a fit state of mind or not and on her answers he is satisfied that she is in a fit state of mind to make a statement and he proceeded to record her statement and he also states that the deceased mentioned in her statement (Ex.P.8) that she set herself to ablaze as she was unable to bear harassment meted out by her husband, i.e., you, the accused. What do you say?

Ans: I do not know. "

16. The very purpose of examining the accused u/s 313 Cr.P.C., is to enable the accused to defend himself and explain in a proper manner the incriminating circumstances, which are spoken to by witnesses in their evidence. When once the incriminating evidence is not put to the accused at the time of 313 Cr.P.C. examination and the accused is not given an opportunity to explain the circumstances, it can safely be concluded that prejudice is caused to the accused. In this case, no doubt, the learned trial Judge has put the evidence of the official witnesses to the accused in his examination u/s 313 Cr.P.C., but he did not put the entire incriminating evidence adduced by the prosecution, including the dying declaration that was recorded in this case. As per the said dying declaration, the deceased has spoken in so many words about the ill-treatment, suspicion etc. But, the said incriminating evidence does not find place in the examination of the accused u/s 313 Cr.P.C. As such, the said dying

declaration that is recorded in this case cannot be used against the accused. When once the dying declaration is not taken into consideration in view of the fact that it was not put to the petitioner-accused in his examination u/s 313 Cr.P.C. in the manner in which it was to be put, it can safely be concluded that much prejudice is caused to the petitioner-accused, in the light of the judgment of the Division Bench in Thota Panduranga Rao v. State of A.P. (supra). There is no other incriminating material or circumstance which proves the guilt of the accused in this case, as the material witnesses i.e., parents and the brother of the deceased, who are examined as P.Ws.1 to 3, did not support the case of the prosecution and were declared hostile. Therefore, I have no hesitation to hold that the petitioner is entitled to benefit of doubt on this ground.

17. Accordingly, this criminal revision case is allowed and the judgments of both the courts below are hereby set aside. The petitioner-accused is accused of all the charges framed against him. The fine amount, if any, paid shall be refunded to the petitioner forthwith.