

(2013) 12 KAR CK 0257
In the Karnataka High Court
Case No : Criminal Appeal No. 432 of 2006

G.V. Guddappa and Saraswathamma

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428
Penal Code, 1860 (IPC) — Section 306, 498-A

Citation : (2013) 12 KAR CK 0257

Hon'ble Judges : N. Ananda, J

Bench : Single Bench

Advocate : D.C. Jagadeesh, for the Appellant; B.T. Venkatesh, SPP-II, for the Respondent

Final Decision : Partly Allowed

Judgement

N. Ananda, J.—The appellants No. 1 & 2 (hereinafter referred to as accused No. 1 and 2) were tried and convicted for offences punishable under Sections 498-A and 306 IPC. Therefore, they are before this court. I have heard Sri. D.C. Jagadeesh, learned counsel for accused and learned Additional SPP for the State.

2. In brief, the case of prosecution and relationship of prosecution witnesses and accused is stated thus:

Accused No. 1 is the son of accused No. 2; P.W. 4-Prahlada is the elder brother of accused No. 1. Accused No. 1 had married deceased Shobha about two years prior to 13.04.2004. P.W. 1-Nagarathnamm is the mother of deceased Shobha; P.W. 2-Narasimha Murthy is the father of deceased; P.W. 3-Seethalakshmi is the elder sister of deceased and P.W. 5-Balakrishna is a neighbor of accused.

3. It is the case of prosecution that after the marriage, deceased was living in the house of accused No. 1 and 2 and P.W. 4 in Shiralakoppa village, Shikaripura Taluk. Accused No. 1 and 2 were taunting the deceased that she does not know how to cook the food and she should support accused No. 1 in hotel business.

The, deceased who had completed TCH was interested in teaching profession. She was trying to get a job. The first accused and deceased had a child by their marriage. The child was aged about 7 months.

4. On 12.04.2004, accused No. 1 and 2 had quarreled with deceased and accused No. 1 had beaten her. The deceased and her child were sleeping in a room and accused No. 1 was sleeping in another room. During the intervening night of 12/13.04.2004, at about 2.00 a.m., the deceased who was disgusted with cruel conduct of accused No. 1 and 2 doused kerosene and set herself on fire. The kerosene spilled on the child. Both deceased and the child were engulfed by flames. P.W. 4 on hearing hue and cry raised by deceased shifted the deceased and her child to the hospital. The child died in the hospital. On the following day i.e., on 13.04.2004 at about 9.30 a.m., the deceased succumbed to injuries in Mc Gann Hospital at Shimoga. The postmortem examination of deceased and the child revealed that their death was due to shock as a result of burn injuries.

5. It is the case of prosecution that deceased was given preliminary treatment in Community Health Center at Shiralakoppa. P.W. 7-Dr. Gangibai had examined the deceased. P.W. 12-K.S. Duggappa Gowda, the then Head Constable of Shiralakoppa Police Station on receiving the message rushed to the hospital and met P.W. 7 and enquired her regarding mental condition of deceased to give statement. P.W. 7-Dr. Gangibai examined the patient (deceased) and found that she was conscious, well oriented and capable of speaking. P.W. 12 recorded the statement of deceased (as per Ex. P7) in the presence of P.W. 7-Dr. Gangibai. At the first instance, first information was registered against the accused for an offence punishable u/s 498-A IPC. After the death of deceased at about 9.30 a.m., on 13.04.2004, an offence u/s 306 IPC was included. After completion of investigation, final report was filed.

6. In order to bring home the guilt of accused, the prosecution has relied on the following:

1. Dying declaration of the deceased (marked as Ex. P7)
2. Evidence of close relatives of deceased
3. The conduct of accused before and after the incident

7. The prosecution has relied on the statement of deceased (dying declaration marked as Ex. P7) which was recorded by P.W. 12 in the presence of P.W. 7-Dr. Gangibai at about 3.30 a.m., on 13.04.2004 in Community Health Center at Shiralakoppa.

8. P.W. 7-Dr. Gangibai has deposed; that she had examined the deceased at about 3.00 a.m., on 13.04.2004 and found that she was conscious, well oriented and capable of speaking. P.W. 12 recorded the statement of deceased as per Ex. P7, which would reveal that she was frequently beaten by her husband (accused No. 1) at the instance of her mother-in-law (accused No. 2). She has stated that

on the date of incident, first accused had quarreled with her, she became disgusted and she poured kerosene on herself and also on her child and set herself on fire. The child also caught fire.

The contents of postmortem examination reports would reveal that death of deceased was due to shock as a result of burn injuries.

9. The learned counsel for accused referring to the evidence of P.W. 6-Dr. S. Rudramurthy who had conducted postmortem examination would submit that, deceased had suffered 85% -90% burns, in the circumstances, she was not in a position to give her statement. The investigation officer had concocted the statement after the death of the deceased. The learned trial judge should not have placed reliance on the contents of this statement.

10. P.W. 6-Dr. S. Rudramurthy has deposed; that he had conducted the postmortem examination of dead body of Shobha between 4.50 p.m. - 5.50 p.m., on 13.04.2004 in Mc Gann Hospital at Shimoga and found 85% to 90% burn injuries on the total area of body of the deceased. P.W. 6 has deposed; that even after suffering 85%-90% burns, the deceased could have affixed her thumb impression as buns suffered by deceased were second and third degree bums.

The deceased succumbed to burn injuries at 9.30 a.m., on 13.04.2004. The first information had reached the jurisdictional Magistrate at 8.05 a.m., on 13.04.2004. Thus, the contention of defence that the statement of deceased was concocted after her death cannot be accepted.

11. It is relevant to state that the parents and close relatives of deceased had come to Shimoga from Davangere. By the time they reached Shimoga, the deceased was dead and the dead body was in the Mortuary of Mc Gann Hospital at Shimoga. When the statement of deceased was recorded, there was none to tutor the deceased or P.W. 12 to concoct the statement of deceased. P.W. 7-Dr. Gangibai has certified that the patient (deceased) was conscious and well oriented. P.W. 7 did not know the accused or the deceased. She did not have grudge or ill-will against the accused to falsely implicate him. Therefore, the learned trial judge was justified in placing reliance on the statement of deceased (marked as Ex. P7)

12. P.W. 1-Nagarathnamma is the mother of deceased. P.W. 1 has deposed; that she had performed the marriage of accused No. 1 and deceased about two years prior to the date of incident. Thereafter, the deceased was living in the house of accused at Shiralakoppa. Accused No. 1 was running a hotel. P.W. 4. Prahlad and C.W. 9-Vijaylaxmi were also residing in the same house. After the marriage, deceased committed suicide by setting herself on fire and her 7 months child also suffered burn injuries and died of burn injuries. The accused were not properly looking after the deceased. Whenever the deceased used to visit her parental house, she used to tell her parents about ill-treatment meted to her by the accused. Accused No. 1 was frequently beating the deceased and accused No. 2 used to often find faults with the deceased even on small matters.

P.W. 1 has deposed; that about 20 days prior to the date of incident, accused No. 1 and deceased had visited the house of P.W. 1. Probably it was the last visit of deceased and accused No. 1. P.W. 1 had requested accused No. 1 to leave the deceased in her house for few days however, accused No. 1 refused to leave her in her parental house and he took her with him.

During cross-examination, P.W. 1 has deposed; that before the marriage of accused and deceased, accused was not related to them. Before the marriage of first accused and the deceased, accused No. 1 was running a flourmill. There were 8-10 persons in the house of accused. She has admitted that deceased had decided to become a teacher. She had undergone teacher's training. The accused were telling that she should work as a Teacher in Government school and not in a private school. P.W. 1 has deposed; that accused No. 1 was insisting the deceased to assist him in the hotel business and the deceased had refused to assist accused No. 1 in his hotel business. P.W. 1 had visited the house of accused during naming ceremony of the child. Once she had advised accused No. 1 to properly look after the deceased.

From the evidence of P.W. 1, we find that her evidence does not suffer from exaggerations or embellishments. P.W. 1 is the mother of deceased. It looks probable that deceased had told P.W. 1 about the cruelty meted to her by the accused.

13. P.W. 2-Narasimhamurthy is the father of deceased. P.W. 2 has deposed; that accused were subjecting the deceased to ill-treatment alleging that she was not good in cooking and accused No. 1 was pressurising the deceased to bring money from her parental house. The evidence of P.W. 2 that accused were pressuring the deceased to bring money from her parental house is an improvement. Therefore, it can safely be held that P.W. 2 has not deposed the whole of truth yet, the evidence of P.W. 2 that accused were ill-treating the deceased cannot be discarded.

14. P.W. 3-Seethalakshmi is the elder sister of deceased. P.W. 3 has deposed; that accused No. 1 and 2 were subjecting the deceased to mental and physical cruelty. Accused No. 2 was scolding the deceased saying that she does not know how to cook food. P.W. 3 has deposed; that accused No. 1 was demanding the deceased to bring dowry of Rs. 30,000/- to Rs. 3,00,000/- from her parental house. The prosecution has not alleged dowry related cruelty. Therefore, it can safely be held that P.W. 3 has given exaggerated version.

15. P.W. 4-Prahlada is the elder brother of first accused. P.W. 4 has deposed; that at the relevant time, accused No. 1 was running a hotel near Shiralakoppa bus stand, which is at a distance of half a kilometer from their house. On the date of incident, accused No. 1-Guddappa and the deceased Shobha were sleeping in different rooms. On the date of incident, deceased slept at 11.00 p.m. He heard hue and cry raised by the deceased at about 2.15 a.m. He rushed to the room where the deceased was sleeping and he found that deceased and child were on

flames. He extinguished the flames and shifted the deceased and child to Community Health Center at Shiralakoppa. They reached the hospital around 2.45 a.m., or 3.00 a.m., on 13.04.2004. He had not enquired the deceased why she had taken extreme step of setting herself on fire. He has deposed about presence of police and Doctor in the Shiralakoppa Government Hospital. He has deposed; as advised by the Doctor deceased was shifted to Mc Gann Hospital at Shimoga. From the evidence of P.W. 4, we find that first accused had not accompanied the deceased to hospital. In the normal circumstances, after finding that deceased had set herself on fire and she had also set her child on fire, accused No. 1 would have made efforts to shift the deceased and also the child to hospital and he would have accompanied her to hospital. The records do not disclose that accused had accompanied the deceased to Government Hospital at Shiralakoppa and thereafter to Mc Gann Hospital at Shimoga.

16. P.W. 5-Balakrishna is the neighbor of accused who was also running a canteen. He has not supported the case of prosecution. Therefore, his evidence is not of much avail to the prosecution.

17. As already stated, P.W. 6-Dr. S. Rudramurthy who had conducted postmortem examination report has given his opinion as to cause of death.

18. In the discussion made supra, I have referred to the evidence of P.W. 7-Dr. Gangibai

19. P.W. 8-Chandrashekarappa, the then Tahsildar had held the inquest.

20. P.W. 9-Manjammna was working as an Aaya in C.G. Hospital at Davangere. She was a neighbor of parents of the deceased. She has not supported the case of prosecution. She was declared as a hostile witness.

21. P.W. 11-K.S. Shivannagowda the then Sub-inspector of Police of Shiralakoppa Police Station has given evidence relating to investigation of the case.

22. P.W. 12-K.S. Duggappa Gowda, the then Head Constable of Shiralakoppa Police Station who had recorded the statement of deceased at about 3.00 a.m. to 3.15 a.m., in Shiralakoppa Hospital.

P.W. 12 has deposed; that on learning about the incident, he rushed to the hospital and contacted P.W. 7- Dr. Gangibai and enquired about the mental condition of deceased to give statement. P.W. 12 has deposed about receipt of medico-legal report. P.W. 12 has deposed; that after enquiring with P.W. 7 that deceased was in a fit condition to give her statement, P.W. 12 recorded the statement of deceased, which would reveal that accused were subjecting the deceased to cruelty, the deceased became disgusted in life and set herself on fire.

In the discussion made supra, I have assigned reasons for accepting the statement of victim.

23. On overall appreciation of evidence, we find that accused No. 1 was frequently beating the deceased and he was scolding the deceased. As regards

accused No. 2, the evidence adduced by prosecution and statement of deceased are rather vague. It is stated by the deceased that her husband (accused No. 1) was assaulting her at the instigation of her mother-in-law (accused No. 2). Accused No. 1 was running a hotel. He wanted the deceased to help him in his hotel business whereas, the deceased was interested to become a teacher. Accused No. 1 was frequently quarrelling with the deceased and he was frequently assaulting the deceased. Though the cruelty alleged by prosecution is not dowry related cruelty yet, the fact remains that harassment by accused No. 1 would fall within Section 498A IPC. As regards complicity of accused No. 2, we find that accused No. 1 was the husband of deceased and he was looking after the affairs of the family. In the circumstances it is not possible to hold that accused No. 2 was instigating accused No. 1 to torture the deceased. The statement of deceased and evidence of prosecution witnesses that accused No. 2 was scolding the deceased that she does not know how to cook food. Such utterances are common in matrimonial homes. Therefore, it is not possible to hold that accused No. 2 was subjecting the deceased to cruelty.

The learned trial judge without noticing these discrepancies has held accused No. 2 guilty of an offence punishable u/s 498-A IPC. The evidence adduced by prosecution is hardly sufficient to hold accused No. 2 guilty of an offence punishable u/s 498-A IPC. Therefore, the impugned judgment as it relates the conviction of accused No. 2 for an offence punishable u/s 498-A IPC is liable to be set aside. As regards accused No. 1, the prosecution has adduced ample evidence to prove that he has committed an offence punishable u/s 498-A IPC.

24. The next point for consideration is: whether the accused by subjecting the deceased to cruelty had instigated the deceased to commit suicide.

25. The law is fairly well settled that whenever the prosecution has proved an offence punishable u/s 498-A IPC, the court need not jump to conclusion that accused has committed an offence punishable u/s 306 IPC. In order to attract an offence an offence punishable u/s 306 IPC, it is necessary for prosecution to prove that accused had necessary mens-rea to abet or instigate the deceased to commit suicide.

26. In the case on hand, the deceased had a child of 7 months. When the deceased doused kerosene on her person, she was aware of the fact that flames could take away the life of child. Thus, we find that deceased was in a state of desperation. She did not have compassion for her child aged about 7 months. In the circumstances, it can safely be held that mental state of the deceased was totally unpredictable. Even if the deceased was disgusted with her life, she had no right to take the life of her child aged about 7 months. The deceased was totally oblivious to gruesome pain and suffering of the child due to burn injuries. The evidence on record does not reveal that accused had any aversion towards his child. Therefore, the evidence adduced by prosecution is hardly sufficient to prove that accused No. 1 had treated the deceased with cruelty with an intention to abet the deceased to commit suicide. Therefore, the case of prosecution that

accused No. 1 had instigated the deceased to commit suicide cannot be accepted.

27. The facts and circumstances of the case do not suggest that accused No. 1 had motive to instigate the deceased to commit suicide.

28. The learned trial judge ignoring the evidence and facts and circumstances of the case, has held the accused guilty of an offence punishable u/s 306 IPC. Therefore, the impugned judgment as it relates to conviction of accused for an offence punishable u/s 306 IPC cannot be sustained. In the result, I pass the following:

ORDER

The appeal is accepted in part.

The impugned judgment as it relates to conviction of accused No. 1 and 2 for an offence punishable u/s 306 IPC is set aside.

The impugned judgment as it relates to conviction of accused No. 2 for an offence punishable u/s 498-A IPC is set aside.

The impugned judgment as it relates to conviction of accused No. 1 for an offence punishable u/s 498-A IPC is confirmed. Considering the facts and circumstances of the case, the sentence of imprisonment imposed by the trial court is reduced to one year. Accused No. 1 is sentenced to undergo imprisonment for a period of one year and pay fine of Rs. 5,000/- in default to undergo simple imprisonment for a period of 3 months for an offence punishable u/s 498-A IPC.

The bail bond of accused No. 2 stands cancelled. The fine amount, if any, deposited by accused No. 2 shall be refunded to her.

The period of detention undergone by accused No. 1 during trial is given set off as provided u/s 428 Cr.P.C.