
(2007) 11 AP CK 0071
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 44 of 2005

K. Amarnath

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 22-11-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 174
Evidence Act, 1872 — Section 113A, 32, 32(1)
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2008) 1 ALD(Cri) 429 : (2008) 1 ALT(Cri) 244

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; The Addl. Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Gopala Krishna Tamada, J.—The appellant-accused was tried in S.C. No. 143 of 2004 on the file of the Court of the Special Judge for trial of offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Hyderabad, at Secunderabad, for the offences punishable under Sections 498A, 304B and 306 of the Indian Penal Code, 1860 (IPC), and ultimately, the trial Court while acquitting him of the offence punishable u/s 304B IPC, convicted him for the offences punishable under Sections 498A and 306 IPC. Questioning the said conviction, the appellant-accused filed this appeal.

2. The case of the prosecution, in brief, is that the appellant married the deceased on 17.11.2000 and at the time of marriage an amount of Rs. 40,000/- was paid by way of cash, ten tulas of gold jewellery, one hero Honda motorcycle and other household articles were given to the appellant towards dowry. After marriage initially the appellant and the deceased were residing in the house of the appellant's brother at Kawadiguda, and thereafter, on account of some

misunderstandings they shifted their place of residence to the opposite building of the appellant's brother. They both lived happily for a period of one month. Thereafter, the appellant was coming late to the house in the night, and the deceased started questioning him and thus disputes arose between them. The appellant started harassing the deceased saying that he lost mental peace by marrying her and he also demanded her to obtain a loan by pledging her study certificates in a bank or to bring an amount of Rs. 50,000/- from her parent's house. The deceased was informing all these aspects to her brother-P.W. 1, and the mother-P.W.2. On 25.08.2001 when the appellant went to the house late in the night, the deceased questioned him about his late arrival and the appellant beat her severely, and on 26.08.2001 he brought her to her paternal home and left her there. Thereafter, the deceased narrated the incident to P.Ws. 1 and 2. On 27.08.2001 the appellant went to his in-law's house and brought back the deceased to his house. While so, on 29.08.2001 the appellant informed P.Ws. 1 and 2 over telephone that his wife was in a serious condition and he is taking her to Gandhi hospital, Secunderabad, and requested them to come to the hospital. When P.Ws. 1 and 2 rushed to the hospital, they found the dead body of the deceased. As the deceased was informing P.Ws. 1 and 2 about the alleged harassment and demand for more money, suspecting that the appellant is alone responsible for the death of the deceased, they gave Ex. P18 report to Gandhinagar Police, which was registered as a case in Crime No.204 of 2001 u/s 174 Cr.P.c, and issued first information report to all concerned. Later, the Sub-Inspector of Police, Gandhinagar police station (P.W. 13) took up investigation, recorded the statements of P.W. 1 and others. He conducted scene observation panchanama in the presence of P.Ws. 7 and 8, and prepared Ex. P4-rough sketch of the scene of offence. On receipt of requisition, the Revenue Divisional Officer deputed the Mandal Revenue Officer-P.W. 11 to conduct inquest over the dead body of the deceased and accordingly P.W. 11 conducted inquest in the presence of P.W.9 and another under Ex. P20-inquest report. Thereafter, the Associate Professor, Department of Forensic Medicine, Gandhi Medical College, Hyderabad-P.W. 10, conducted postmortem over the dead body of the deceased on 30.08.2001 from 4.15 P.M., to 5.30 P.M., and issued Ex. P2 postmortem report opining that the cause of the death was due to asphyxia due to hanging. Thereafter, after receipt of Ex. P2, P.W. 13 altered the section of law from Section 174 Cr. P.C, to Section 304B IPC. Later, the Assistant Commissioner of Police-P.W. 12, took up further investigation and on 31.08.2001 he examined the neighbours of the deceased and other witnesses and recorded their statements u/s 161 Cr. P.C. He arrested the appellant on 04.09.2001 and sent to the Court for remand. After completion of investigation P.W. 12 filed charge sheet.

3. To bring home the guilt of the appellant, the prosecution examined P.Ws. 1 to 13 and got exhibited Exs. P1 to P22 and M.Os. 1 to 3. On an analysis of both oral and documentary evidence, though the trial Court acquitted the appellant of the charge punishable u/s 304B IPC, convicted him for the offences punishable under Sections 498A and 306 IPC, and sentenced him to undergo rigorous

imprisonment for a period of two years and also to pay a fine of Rs. 200/-, in default, to suffer simple imprisonment for a period of one month for the offence punishable u/s 498A IPC, and to undergo five years rigorous imprisonment and to pay a fine of Rs. 200/-, in default, to suffer simple imprisonment for a period of one month for the offence punishable u/s 306 IPC. Aggrieved thereby, the appellant/accused preferred this Criminal Appeal.

4. Heard Sri C. Praveen Kumar, learned Counsel for the appellant and the learned Additional Public Prosecutor.

5. Learned Counsel for the appellant submits that as the death of the deceased occurred within a period of nine months from the date of her marriage, a false case has been foisted against the appellant, that if really there was harassment and the death of the deceased was on account of the said harassment, all the facts about the harassment would have been spoken to by P.Ws. 1 and 2, who are none other than the brother and mother of the deceased, at the time of giving report and also in the statements recorded by the police, but they failed to state any such facts, and therefore, the learned Counsel tried to impress upon this Court that the deposition of P.Ws. 1 and 2 is a subsequent development and this Court need not give any credence to the said evidence of P.Ws. 1 and 2. He further submits that when the said evidence of P.Ws. 1 and 2 is discarded, there is absolutely no other evidence connecting the appellant with the said offence.

6. On the other hand, supporting the judgment of the Court below, the learned Additional Public Prosecutor submitted that the trial Court validated the entire evidence and came to the conclusion that though the appellant is not guilty of the offence punishable u/s 304B IPC, he is guilty of the offences punishable under Sections 498A and 306 IPC, and it does not require interference by this Court.

7. Before dealing with the rival submits, it is apt to refer to the substance of the charge framed by the trial Court against the appellant and it is that prior to 29.08.2001 the appellant subjected the deceased to cruelty by abusing and beating her till she committed suicide.

8. On a perusal of the evidence of P.W. 1, it is no doubt clear that P.W. 1 has stated that he was informed by the deceased that the appellant was coming late in the nights and he was also abusing her saying that because of marrying her he has to take loans. It is also mentioned in Ex. P18 complaint that the appellant was harassing the deceased frequently and asking her to bring money from her paternal home or to pledge her certificates for taking bank loan, so that he can do business. But, when it came to the evidence of P.Ws. 1 and 2, they have stated that the appellant was harassing the deceased to bring an additional amount of Rs. 50,000/- towards dowry and he was also beating the deceased frequently. No doubt, the death of a woman i.e., the deceased herein, occurred otherwise than under normal circumstances that too within seven years of marriage. However, the stray incidents like the ones spoken to by P.Ws. 1 and 2

that on two or three occasions the deceased and the appellant quarreled with each other cannot be said to be attracting the definition of Section 304B IPC, and that is the reason why the trial Court rightly acquitted the appellant of the charge punishable u/s 304B IPC.

9. Similarly, incidents like quarrel between the husband and wife are very common in any house and it cannot be said that the said quarrel alone abetted the deceased to commit suicide. In fact, to attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is very much necessary. Neither in Ex. P1 nor in the evidence of P.Ws. 1 and 2 it came to light that the appellant threatened the deceased with dire consequences or he aided or instigated or abetted the deceased to commit suicide. May be it is true that on two or three occasions the appellant expressed his unhappiness about the dowry he received and he was coming late in the nights, but from that it cannot be inferred that it was solely on account of the same the deceased committed suicide.

10. Further, the evidence of P.ws. 3 to 6 is to the effect that on 29.08.2001 at about 2.30 P.M., they observed lot of commotion outside the house of the deceased and when they went there, they found the appellant with the body of his wife in his lap and he was weeping. From this also it can be said that the appellant was having love towards the deceased.

11. One crucial aspect, which was not discussed by the trial Court is the non-compatibility between the wife and husband. It came in the evidence of P.Ws. 1 and 2 that the deceased is a graduate having studied B.Com., whereas the appellant studied only 4th class. From this it can be definitely said that there was no compatibility between them and similar circumstances must have forced her to take the extreme step of committing suicide, for which this Court is of the view that the appellant cannot be faulted. No doubt, P.Ws. 1 and 2 have stated that the appellant was demanding further money towards dowry. But, it is not the case of P.Ws. 1 and 2 that the appellant approached her and asked her for more dowry. Similarly, they have not stated in their evidence that they have seen the appellant beating the deceased. Their evidence is only to the effect that the deceased was informing them that the appellant was demanding more dowry and was beating her. From this a presumption, as provided for u/s 113-A of the Indian Evidence Act, 1872, cannot be drawn because the said provision of law clearly envisages that the court may presume as to the abetment of suicide by a married woman, having regard to other circumstances of the case. Keeping in mind the said provision of law and other circumstances of the case, this Court is unable to draw a presumption that the suicide of the deceased was solely on account of the harassment meted out by her in the hands of the appellant.

12. Further, the evidence of P.Ws. 1 and 2 is only hearsay and the same would not come within the definition of Section 32 of the Indian Evidence Act. In fact, in the judgment in *Interpal v. State of M.P.* 2003 S.C.C. (CrI.) 1049 in which the facts are akin to the facts on hand, the Supreme Court has taken the view that

unless the statement of a dead person would fall within the purview of Section 32(1) of the Indian Evidence Act, 1872, there is no other provision under which the same can be admitted in evidence. In the said case, except the evidence of the father i.e., P.W. 1, mother P.W. 8, sister P.W. 4, and a close relative P.W. 5 of the deceased, and the letters marked as Exs. P7 and P8, there was no other evidence connecting the appellant therein with the said offence punishable under Sections 498A and 306 IPC. Despite the said evidence and exhibits, the Supreme Court has taken the view that the said evidence is not sufficient to convict the accused therein for the offence punishable u/s 498A IPC.

13. Coming to the facts on hand, as there is no evidence connecting the appellant with any of the offences alleged against him and as the prosecution miserably failed to establish the guilt of the appellant beyond all reasonable doubt, this Court is of the view that the trial Court erred in convicting the appellant for the offences punishable under Sections 306 and 498A IPC.

14. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant-accused by the learned Special Judge for trial of offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-cum-VI Additional Metropolitan Sessions Judge-cum-XX Additional Chief Judge, Hyderabad at Secunderabad, in Sessions Case No.143 of 2004, vide judgment dated 20.01.2005, are hereby set aside. The appellant shall be set at liberty forthwith, if he is not required in any other case. The fine amount, if any, paid by the appellant shall be refunded to him forthwith.