
(2014) 04 AP CK 0010
In the Andhra Pradesh High Court
Case No : Criminal. A. No. 270 of 2010

Karingula Anjaneyulu Goud	Vs	APPELLANT
The State of Andhra Pradesh		RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 109, 302, 304-B, 498-A

Citation : (2014) 04 AP CK 0010

Hon'ble Judges : M.S.K. Jaiswal, J; L.N. Reddy, J

Bench : Division Bench

Advocate : C. Vasundhara Reddy, Advocate for the Appellant

Final Decision : Partly Allowed

Judgement

L. Narasimha Reddy, J.—The Court of IV Additional District and Sessions Judge (Fast Track Court), Mahabubnagar, tried A-1 and A-2 in S.C. No. 529 of 2008. While A-1 was tried for the offences punishable under Sections 498-A, 302, 304-B I.P.C., and Sections 3 and 4 of the Dowry Prohibition Act (for short "the Act"), A-2 was tried for the offences punishable u/s 302 read with Section 109 of I.P.C. Both the accused were found not guilty of committing offences punishable u/s 302 I.P.C. A-1 was found guilty of the offences punishable under Sections 3 and 4 of the Act, Sections 498-A and 304-B I.P.C. For the offences punishable under Sections 3 and 4 of the Act, the trial Court sentenced A-1 to undergo imprisonment of 5 years u/s 3 of the Act, and to pay a fine of Rs. 15,000/-. He was also awarded the sentence of imprisonment for 6 months, and to pay a fine of Rs. 5,000/-, in default to suffer simple imprisonment for one month, for the offence punishable u/s 4 of the Act. Similarly, A-1 was sentenced to undergo imprisonment for three months, and to pay a fine of Rs. 500/-, in default to suffer simple imprisonment for one month, for the offence punishable u/s 498-A I.P.C. The major punishment was, for the offence punishable u/s 304-B I.P.C., and A-1 was sentenced to undergo imprisonment for life, for the said offence. All

the sentences were directed to run concurrently. A-2 was acquitted. This appeal is filed by A-1.

2. The prosecution was set at motion with the submission of complaint, Ex. P-1 by PW-1. It was stated that PW-1 is the father of one Yadamma (deceased), and within one year from the marriage of Yadamma with one Mr. Balraj, the latter died and thereafter Yadamma was married to A-1, by name, Karingula Anjaneyulu Goud of Saroornagar Mandal of Hyderabad. It was alleged that A-1 used to harass and physically assault Yadamma, by demanding dowry and he used to consume liquor, frequently. Two years prior to the marriage, A-1 is said to have demanded Rs. 1,50,000/-, and that the same was paid after selling the land. The money so given is said to have spent away by A-1 and his companion, A-2. Both of them are said to have sold away the ornaments of Yadamma. PW-1 and his wife, PW-3 are said to have got constructed a house for their daughter and A-1.

3. At about 11:00 p.m. on 15-02-2008 A-2 is said to have come to the house of P.Ws. 1 and 3, and asked them as to why they kept their daughter in their house and why they did not send her to the house of A-1, and on that, PW-1 is said to have sent Yadamma to the house of A-1. On the next day, A-1 is said to have gone on duty as Driver, and the son and daughter of A-2 are said to have informed PW-1 that Yadamma is found in her house in an immobile condition and on that, P.Ws. 1 and 3 have gone to the house of A-1 and found that Yadamma died with ligature mark around her neck. PW-1 requested the Station House Officer, Shadnagar, to take action against A-1 and A-2.

4. Crime No. 65 of 2008 was registered, citing Sections 302 and 109 I.P.C., and the investigation was taken up. PW-9, the Inspector of Police filed the charge-sheet alleging offences punishable under the provisions referred to in the previous paragraphs.

5. Both the accused pleaded not guilty. On behalf of the accused, P.Ws. 1 to 9 were examined and Exs. P-1 to P-12 were filed. MOs 1 and 2 were taken on record. On behalf of the defence, Exs. D-1 to D-3, the relevant portions in the statements recorded u/s 161 Cr.P.C., of P.Ws. 1 and 3, were marked. The nature of disposal given by the trial Court has already been mentioned.

6. Smt. C. Vasundhara Reddy, learned counsel for the appellant-A-1 submits that the trial Court convicted A-1, just on the basis of the corroborated statements of P.Ws. 1 and 3, the parents of the deceased. She contends that there is any amount of contradiction between Ex. P-1, on the one hand, and the evidence of P.Ws. 1 and 3, on the other hand. She contends that the prosecution did not take any steps to examine the son and daughter of A-2, who are said to have informed P.Ws. 1 and 3, about the incident and failure to do so, would certainly have its impact.

7. She further submits that an attempt made by the prosecution to depict as though PW-2 is an independent witness, and acquainted with the episode, did

not fructify, and the net result is that barring P.Ws. 1 and 3, no other witness has spoken about the incident.

8. Learned counsel submits that it was elicited from PW-7, the Medical Officer that the ligature mark around the neck of the deceased can be the result of hanging, and that there exists sufficient material to demonstrate that the deceased was prone to commit suicide for various reasons, such as that she was found to be unfit to beget children, and suspected of having positive symptoms of HIV.

9. Learned Additional Public Prosecutor, on the other hand, submits that the circumstantial evidence on record is sufficient to hold that A-1 had a definite motive to do away with the deceased and that in a planned manner, he procured the presence of the deceased on the preceding night, though the deceased was living in the house of her parents, due to fear. She further submits that the factors, such as non-availability of A-1 immediately after the incident, his having been seen last together in the company of the deceased, the repeated demands made by him for dowry, do point out to his involvement in the crime, and that the trial Court has taken the correct view of the matter.

10. The deceased is the daughter of P.Ws. 1 and 3, and she was married to A-1 about six years prior to the date of incident. Before her marriage with A-1, she was married to another person, but he died within one year. It was her second marriage with A-1. Though A-1 was from Hyderabad, he settled at the native place of P.Ws. 1 and 3. The house where A-1 and the deceased were living was said to be just opposite to the house of P.Ws. 1 and 3. While P.Ws. 1 and 3 stated that they not only gave a sum of Rs. 1,50,000/- to A-1 and the deceased, but also got constructed a house with their own funds, the plea of A-1 was substantially different. According to him, a piece of assigned land was purchased by them and house was constructed with his own funds. This is evident from the purport of the cross-examination made on behalf of A-1. In the cross-examination of PW-1, it was elicited that the houses of A-1, on the one hand, and PW-1, on the other hand, are in close proximity, and were constructed almost contemporaneously, and that A-1 supervised the construction of both the houses. The attempt of the defence was to show the harmonious relation between A-1 and the family of PW-1.

11. What happened on the preceding day of the incident is important. A-1 is a driver on heavy vehicles and used to go for weeks together on trips, and whenever he is back, he used to stay for two or three days, and spend with his wife. On 15-02-2008, A-1 is said to have returned, and on finding that his wife is not there in the house, himself and A-2 are said to have gone to the house of P.Ws. 1 and 3, with a view to take his wife with him. There is no consistency between the evidence of P.Ws. 1 and 3, as to what happened on that occasion. Even PW-1 is not consistent in this behalf.

12. In Ex. P-1, it was mentioned that at about 11:00 p.m. on 15-02-2008 A-1

and A-2 came to the house of PW-1 and asked him to send the deceased, and accordingly, he sent her along with A-1. In his evidence, however, he stated that a semblance of altercation has taken place in that process, and when asked by A-2, as to why the deceased was living in the house of PW-1, he stated that unable to bear the harassment caused by A-1, the deceased is living in their house, and no one has any right to question her. Thereupon, A-2 is said to have held the hand of the deceased, pulled her and handed over to A-1 and that the three have left the house of PW-1. This is at variance with what is stated in Ex. P-1. Further, if a person other than the husband of a woman holds her hand, that too in the presence of her parents, nobody would keep quiet, and even the lady is expected to protest. PW-3 stated almost on the same lines, may be with slight variation.

13. PW-2 is said to be an immediate neighbour of PW-1. His presence was not at all spoken to by either of PW-1 or PW-3. The prosecution, however, examined him to prove that it was he, who knocked the door of PW-1, when approached by A-1 and A-2. In his chief-examination itself, PW-2 stated that, he was reluctant to knock the door, and thereafter, the verbal exchange took place between A-1 and A-2, on the one hand, and P.Ws. 1 and 3, on the other hand, he has seen A-1 and A-2 going away from the house of PW-1, without taking the deceased with them. From the upstairs of the building he is said to have seen the deceased voluntarily going to the house of A-1 and sleeping in the verandah, and when her mother, PW-3, went to ask her to come back, the deceased is said to have refused. Though this witness was declared hostile at the instance of prosecution, no cross-examination was made to belie, what was stated by him in the chief-examination.

14. In Ex. P-1 itself, it was mentioned that A-1 left his house in the morning, for his duty and it is thereafter, that the son and daughter of A-2 are said to have gone to the house of A-1, found the deceased in an immobile condition and informed the same to PW-1. Curiously enough, those two persons were not examined. They were not included in the list of witnesses at all. The sister, brother and maternal aunt of the deceased, who are shown as LWs 4, 5 and 6 were not examined. The distance between the Police Station and the place of occurrence is 4 kilometers. While the incident is said to have been noticed at around 8:00 a.m., Ex. P-1 was submitted at 11:00 a.m. PW-1 is not the author of Ex. P-1, and he did not even state the name of the person, who scribed it. A suggestion was made to the effect that the complaint was fabricated in the Police Station itself, at a later point of time.

15. It has already been mentioned that the house of A-1, where the incident occurred, is situated right opposite to the house of P.Ws. 1 and 3. It is interesting to note that PW-3, in her chief-examination, stated that she came to know about the death of her daughter only when the Police reached the Village. Thereafter, she stated that the information was received by her from the son and daughter of A-2. In the extensive cross-examination of P.Ws. 1 and 3, it was elicited that

the deceased was taken to the diagnostic centers at Hyderabad, in relation to her fertility, and that she was taking medicines, though reluctantly. A suggestion was made to the effect that traces of HIV were found in the deceased, and that she committed suicide by hanging herself. PW-7 is the Medical Officer, who conducted the post-mortem. It was elicited from him that the ligature mark, that was found on the dead body of the deceased; can be the result of hanging or strangulation. The prosecution failed to adduce even circumstantial evidence, leave alone direct evidence, to show that any attempt was made by A-1, to strangle the deceased.

16. It has already been mentioned that PW-2, the neighbour of PW-1, was declared hostile. Barring P.Ws. 1 and 3, the other witness, who spoke about the incident is, PW-4. Even in the chief-examination, he has just stated that on hearing the news about the death of the deceased, at 8:30 a.m., when he was about to leave for another place, he went and saw the dead body. By the time, he went there, the Police is said to have already gathered there. He has simply depicted the state of affairs that was present at that time, and he has signed on the scene of offence panchanama.

17. PW-5 is another panch witness and he admitted in the chief-examination that he was allotted a house site in the village, but he sold the same. Several contradictions were elicited, to doubt the veracity of this witness. Even if this evidence is taken as true, it would account for the event, which is subsequent to the death of the deceased. PW-6 is the Tahsildar, in whose presence inquest was conducted. PW-7 is the Medical Officer. PW-8 is the S.I. of Police, who received the complaint. He admitted that he did not record the statements of neighbours, nor did he try to enquire about their presence. He has also admitted that he did not make any efforts to enquire about the accused, in the Village. He stated that PW-1 did not state before him that the deceased had asked him to give amount/dowry on the ground that A-1 was demanding it. Similar information was elicited about the statement recorded from PW-3. The relevant contradictions were marked as Exs. D-1 to D-3. PW-9, the Investigating Officer stated, as under:

"...I have not mentioned about my observing the house of A1 and informing the parents of the deceased to take care of the house of A1 specifically in my CD. There are no surrounding houses to the house of A1 and hence I have not examined. I have not examined any independent witness as they were not available. But I have not mentioned the same in my CD file..."

18. With this nature of investigation and evidence on record, it is difficult to hold that A-1 has either demanded dowry, or has caused the death of the deceased. Though the death of the deceased has taken place within 7 years from the date of her marriage with A-1, the prosecution did not discharge its initial burden, to require A-1 to prove his innocence, as required under the relevant provisions of law. Therefore, it is difficult to sustain the conviction handed out by the trial Court for the offences punishable under Sections 3 and 4 of the Act and Section 304-B of I.P.C. We, however, feel, though a bit of reluctance, that the deceased

was subjected to a semblance of inconvenience, amounting to harassment, referable to Section 498-A I.P.C., but not to the extent of cruelty, mentioned in Section 304-B I.P.C., and accordingly uphold the conviction and sentence awarded by the trial Court against A-1 for the offence punishable u/s 498-A I.P.C.

19. In the result, the appeal is partly allowed, setting aside the conviction and sentence ordered against A-1, in S.C. No. 529 of 2008 on the file of the IV Additional District and Sessions Judge (Fast Track Court), Mahabubnagar, through judgment dated 20-01-2010, for the offence punishable u/s 304-B I.P.C., as well as those, for the offences punishable under Sections 3 and 4 of the Dowry Prohibition Act. However, the conviction and sentence imposed by the trial Court against A-1, for the offence punishable u/s 498-A I.P.C., are upheld.