

(1993) 07 AP CK 0021

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 648 of 1991

Kishan Bahadur

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Evidence Act, 1872 — Section 113(A)
Penal Code, 1860 (IPC) — Section 306, 498(A)

Citation : (1994) 1 ALT(Cri) 620 : (1994) CriLJ 1418

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : P. Raghava Reddy, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. The present Criminal Appeal is preferred against the conviction and sentence awarded in S.C. No. 65 of 1990 on the file of the II Additional Metropolitan Sessions Judge, Hyderabad dated 29-1-1991.

2. On committal the following two charges have been framed.

1. That you on or about the 5th day of September, 1989 at about 4.00 p.m. at your house in plot No. 36, Bapu Bagh Colony, Secunderabad, abetted the commission of suicide by your wife, Smt. Durga Devi as you have abused her in filthy language in a drunken condition and that you thereby committed an offence punishable u/s 306 of the Indian Penal Code, and within cognizance of this Sessions Court.

2. That you being the husband of the deceased Smt. Durga Devi on the 5th day of September, 1989 at about 4.00 p.m. and on the previous occasions subjected her to cruelty and that you thereby committed an offence punishable u/s 498A of the Indian Penal Code, and within the cognizance of this Session Court.

3. In support of the charges, the prosecution has examined in all 13 witnesses and got marked Exs. P1-P14 and M.O. 1 and M.O. 2.

4. P.W. 1 is the mother of the deceased, P.W. 2 is the brother of the deceased. PW 3 is the owner of the house where the deceased and accused were working. PW 4 is the panch witness to the inquest panchanama. EX. P2 is the inquest report. PW 5 is the Doctor who conducted post-mortem examination on the body of the deceased. EX. P3 is the post-mortem certificate. PW 6 is the Photographer who took photos of the deceased. Exs. P4 and P5 are the photos and EXS. P6 and P7 are the corresponding negatives of EXS. P4 and P5. PW7 is the panch witness who was taken to the scene of offence when panchanama was conducted. M.O. 1 is the kerosene tin and M.O. 2 is the match stick recovered from the scene of offence under Ex. P8-panchanama. PW 8 is the Doctor who gave first aid to the deceased and EX. P9 is the statement recorded in the Accident Register. PW 9 is the Mandal Revenue Officer who conducted inquest on the dead body of the deceased on 3-10-1988 in the presence of PW 4. Ex. P5 is the inquest panchanama. PW 10 is the S.I. of Police who, on receipt of the telephone message went to the hospital on 5-9-1989 and recorded Ex. P10, statement of the deceased and obtained the signature and sent the same to the police station, PW 11 is the Magistrate who recorded the dying declaration of the deceased. PW 12 and PW 13 are examined to speak about the investigation that has been made.

5. The prosecution case is that on the day in question, the accused came in a drunken state and abused his wife and caught hold of her and pressed her neck. Due to that reason she poured kerosene on herself and burnt herself. The prosecution mostly relied upon the dying declaration recorded by the competent Magistrate-PW 11 which is marked as Ex. P11 and also the statement recorded by the S.I. of police, P10, and the oral dying declaration made before PW 1 and PW 2. The dying declaration made before the Magistrate was duly certified by the Doctor to effect that the patient (deceased) was in a conscious state and was in a position to make the statement. The Magistrate also in his report mentioned that she was in a fit state of condition to give the statement. The dying declaration made by the deceased at the earliest point of time before the competent Magistrate PW 11 is to the effect that she poured kerosene on herself and lighted a match stick on account of the conduct of the accused. The same finds corroboration from Ex. P10 and also from the evidence of PW 1 and PW 2. PW 1 and PW 2 are none other than the mother and the brother of the deceased. PW 3 is the person in whose house the accused was doing watchman job and the deceased was doing the servant maid job. It is in evidence that the deceased was fair and beautiful and a suggestion was made that he (PW 3) tried to commit rape on her. That suggestion has no basis at all. If really, an attempt to rape on the deceased has been made by the owner, definitely she would have made a statement that the owner has attempted to commit rape on her.

6. The object of dying declaration is to find out that at the earliest point of time from the victim the real version and the person who committed the offence. Atleast at the fag end of her life, the deceased would not have suppressed the truth that resulted in pouring kerosene on herself and lighting a match stick. So

if we analyse the (dying) dying declaration with the oral testimony, it is clear that due to the ill-treatment and beating by her husband she committed suicide. For an offence u/s 306, I.P.C. the Court is entitled to draw a presumption as is evidenced by Section 113A of the Evidence Act. So also with regard to Section 498A, I.P.C. where under cruelty has been defined. Cruelty may be in physical or mental form. In this case, the deceased had expressed to PWs 1 and 2 that she was being ill-treated for a sufficiently long period by the accused. So it is a case where the accused was alleged to be responsible for the commission of suicide by the wife on the day in question. The Sessions Court has, therefore, to find out whether a case u/s 306, IPC & 498 (A) is made out.

7. The Doctor who conducted post-mortem examination found that the death of the deceased was due to burns. The burns as admitted are only due to the result of pouring kerosene and setting fire to herself. The inquest which has been conducted by the Panch and also the Mandal Revenue Officer shows that the injuries found on the body of the deceased were due to pouring kerosene and lighting a match stick and death is due to burns. Therefore, the accused is liable for the offence u/s 306 and Section 498A. However, I feel that instead of 7 years R.I. 5 years R.I. for the offence u/s 306, IPC would meet the ends of justice and u/s 498A), IPC 2 Years RI as awarded by the Trial Court can be retained. Both the sentences shall run concurrently. The appeal is dismissed with the modification in the sentence for the offence u/s 306, IPC.

8. Appeal dismissed.