

(2000) 10 AP CK 0015
In the Andhra Pradesh High Court
Case No : Criminal A. No. 494 of 1999

Kodadi Srinivasa Lingam and Others

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 23-10-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 294
Penal Code, 1860 (IPC) — Section 302, 307, 498

Citation : (2000) 2 ALD(Cri) 763 : (2001) CriLJ 602 : (2001) 3 RCR(Criminal) 288

Hon'ble Judges : Ramesh Madhav Bapat, J; D.S.R. Varma, J

Bench : Division Bench

Advocate : A. Prabhakar Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. The accused Nos. 1 to 3 in Sessions Case No. 471 of 1995, which was decided by the Second Additional Sessions Judge, Warangal, are the appellants herein. They were facing two charges. The first charge against A-1 to A-3 was u/s 498-A, I.P.C. The learned Judge found them guilty of the said charge and therefore sentenced them to suffer R.I. for one year and to pay a fine of Rs. 200/- each in default to suffer S.I. for one month each. The second charge against A-1 and A-2 was u/s 302, I.P.C. The learned Judge found them guilty of the said charge and therefore sentenced them to suffer imprisonment for life and to pay a fine of Rs. 200/- each in default to suffer S.I. for one month each. The substantive sentences imposed against the accused were made to run concurrently.

2. The gravamen of the charge against the accused was that A-1 to A-3 harassed and ill-treated the deceased named Anitha. A-1 and A-2 poured kerosene on the person of the deceased and set her on fire on 8-3-1994 as a result of which she died in Area Hospital, Godavarikhani on 2-4-1994.

3. The prosecution story can briefly be narrated as follows : A-1 and A-2 are

brothers. A-3 is their mother. A-1 was the husband of the deceased Anitha. P. Ws. 1 and 3 were the parents of the deceased Anitha. P.Ws. 1 and 3 performed the marriage of their daughter Anitha with A-1 in the year 1990. In the year 1992 P. W. 3 went to the house of the accused to see her daughter. After she returned, she complained to P. W. 1 that the accused refused to send their daughter and A-3 quarrelled with her. Again P. W. 1 went to the house of the accused and requested to send their daughter. But they refused to send their daughter viz., the deceased. In the month of December 1992, P. W. 1 along with caste elders i.e., P. W. 4 and others, went to the house of the accused and held a panchayat as to the reasons why the accused refused to send their daughter. At that time the deceased was preparing tea, A-1 pushed her on the kerosene stove and she received burn injuries. When demanded to send the deceased, the accused sent the deceased to the house of P. W. 1. At that time the deceased was carrying third month of pregnancy. In the month of July, 1993, she gave birth to a female child but the accused did not visit the house of P. W. 1 to see the child.

4. It is further stated by the prosecution that A-1 got a job and he was posted at Bhoopalpally Singareni Mines in the year 1993. A-1 alone went to the house of P.W. 1 and requested him to send the deceased. But P.Ws. 1 and 3 refused to send the deceased and asked A-1 to bring his parents. A-1 returned to Bhoopalpally and again went to the house of P. W. 1 along with caste elders to take back the deceased to his house at Bhoopalpally.

5. It is further stated by the prosecution that the deceased was sent along with A-1 to Bhoopalpally where he was employed with a condition that she should not be sent to Ellandu where the parents of A-1 were residing. A-1 and the deceased led happy marital life at Bhoopalpally. On 8-3-1994 A-2 went to the house of A-1 at Bhoopalpally and asked A-1 to send the deceased to Ellandu. When the deceased refused to go, A-1 and A-2 threatened her with dire consequences.

6. On that night when the deceased was sleeping, A-1 and A-2 poured kerosene and set her on fire. Later she was admitted into the Area Hospital, Godavarikhani.

7. On 9-3-1994 P. W. 1 gave a report Ex. P-1 to the Police at Godavarikhani. P. W. 9, the S.I. of Police, Godavarikhani, registered the case in Cr. No. 57 of 1994 against the accused u/s 307, I. P. C. and issued copies of F.I.R. to all concerned. P.W. 9 gave a requisition to the Mandal Revenue Officer, Ramagundam for recording dying declaration of the deceased. The then Mandal Revenue Officer, Ramagundam recorded the dying declaration of the deceased. The dying declaration of the deceased was produced on record as Ex. P-8. Thereafter the C. D. file was transferred to Bhoopalpally Police Station on the point of jurisdiction. P.W. 9 sent the F.I.R. to the J.M.F.C. Manthani, Karimnagar District, which was received by the Court on 15-3-1994.

8. P.W. 7, the S.I. of Police, Bhoopalpally received the C.D. file from the S.I. of Police, Godavarikhani, P.W. 7 registered the case in Cr. No. 16 of 1994 u/s 307,

I.P.C. and issued copies of F.I.R. to all concerned, which is marked as Ex. P-5.

9. The deceased while undergoing treatment died in the hospital on 2-4-1994 at about 10.30 p.m. P.W. 8, A.S.I. of Police, Bhoopalpally on receipt of death intimation, altered section of law from 307 to 302 I.P.C. on 3-4-1994 and issued altered F.I.R. to all concerned, which is marked as Ex. P-6.

10. P.W. 10 is the S.I. of Police, Bhoopalpally. He was on special duty. On the instructions of C.I. of Police, he held inquest over the dead body of the deceased in the presence of P.W. 6. The inquest panchanama is filed on record as Ex. P. 4. Thereafter the dead body was sent for postmortem examination. P.W. 2, the Civil Assistant Surgeon, Government Civil Hospital, Ramagundam, conducted autopsy over the dead body of the deceased and issued postmortem certificate, which is produced on record as Ex. P-2. According to the Doctor, the cause of death was due to shock and septicemia due to extensive deep burns.

11. Thereafter P.W. 10 recorded the statements of P.Ws. 1, 3 and 5. P.W. 11, the C.I. of Police, took up the investigation on 5-4-1994. On 6-4-1994 P.W. 11 recorded the statements of P. W. 4 and others. After completion of investigation, P.W. 11 filed the charge sheet.

12. The defence of the accused is of total denial.

13. In order to bring home the guilt of the accused, the prosecution led the evidence of P.Ws. 1 to 11. They produced certain documents and they were marked as Ex. P-1 to P-8. On behalf of the defence, P.W. 1 was examined and two contradictions were marked as Exs. D-1 and D-2.

14. As stated earlier, the S.I. of Police, P.W. 10, had conducted inquest over the dead body of the deceased in the presence of P.W. 6. P.W. 6 was the attesting witness, who has proved the inquest panchanama Ex. P-4. After the inquest panchanama was over, the dead body was sent to P.W. 2, P.W. 2, the Civil Assistant Surgeon, Government Hospital, Ramagundam, on receipt of requisition, conducted autopsy over the dead body of the deceased and noticed 60 to 70 per cent of burn injuries on the person of the deceased. He further opined that the cause of death was due to shock and septicemia due to extension of deep burns. He further opined that due to burn injuries there was also renal failure. As per his observation, he issued the post-mortem certificate, which is produced on record as Ex. P-2.

15. Considering the evidence relied upon by the prosecution on the point of homicidal death, we hold that the prosecution did prove that the deceased died homicidal death.

16. In order to establish the fact that the accused was responsible for causing the death of the deceased, reliance was kept by the prosecution on the evidence of P.Ws. 1 and 3 and also the dying declaration, which is now produced on record as Ex. P-8.

17. It appears from the record that the dying declaration Ex. P-8 was marked with consent u/s 294 of the Code of Criminal Procedure.

18. While commenting upon the evidence of dying declaration Ex. P-8, the learned counsel Mr. C. Padmanabha Reddy submitted at the Bar that though it is a document in the form of dying declaration, which was marked with consent u/s 294, Cr.P. C., still the conviction cannot be based on the dying declaration. The learned counsel invited our attention to section 294, Cr.P.C, which reads as under :

294. No formal proof of certain documents :-

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed :

Provided that the Court may, in its discretion, require such signature to be proved.

With this provision on record, it was contended by the learned counsel for the appellants herein that Section 294, Cr.P.C. dispenses with the formal proof of execution of the document, but the contents have to be proved by calling the witness concerned. But, in the present case, the Mandal Revenue Officer, Ramagundam, who recorded the dying declaration of the deceased, is no more. The prosecution did not lead the evidence of the Doctor in whose presence the dying declaration was recorded by the Mandal Revenue Officer and therefore, it was contended by the learned counsel that the conviction cannot be based on the sole dying declaration Ex. P-8.

19. We are not in agreement fully with the submission made by the learned counsel for the appellants herein. Section 294, Cr.P.C. is amended with a view to avoid the delay in trial. As a matter of fact, any document produced by the prosecution, it is for the defence to admit or not to admit. Once the defence admits the documents, then no formal proof of execution of the document is required. The said document can be read in evidence for all purposes though the author is not examined before the Court. Such document is not only admissible in evidence only to the execution of the document but also admissible to the contents of the document also. This being the legal position, we hold that this document is a genuine one and it can be read in evidence for all purposes.

20. Now the point arises for consideration in the present case; whether this document by making use of the same, the accused-appellants herein can be convicted for causing the death of the deceased ?

21. The law requires that the dying, declaration must be attested by the medical officer in whose presence the dying declaration is recorded by the Magistrate or any other person. The Doctor is to certify regarding the mental condition of the patient showing that she is mentally fit to give dying declaration. Though Dr. V. Raghuram signs Ex. P-8, he is only certified to show that the deceased had received 70% of the burn injuries but he has not certified the mental condition of the patient. For this purpose, this document cannot be used against the accused though it is admitted by the defence u/s 294, Cr.P.C. If there would have been an endorsement of the Doctor that the patient is mentally fit to give a statement and if that statement would have been admitted by the Doctor u/s 294, Cr.P.C. there would be a sufficient compliance u/s 294, Cr.P.C. The conviction could be based on such document. But one limb in the present case is missing where the Doctor did not certify regarding the mental condition of the patient.

22. If the dying declaration is excluded from the evidence of the prosecution, the evidence of P. Ws. 1 and 3 remains. We have to scrutinize the evidence of P. Ws. 1 and 3 to know whether the accused are responsible for the alleged offences ?

23. P.W. 1 happened to be the father of the deceased. He has given the evidence to the effect that the deceased was his daughter. She married A-1 in the year 1990. After the marriage, the deceased and A-1 lived happily for about a period of three years. He further deposed that in the year 1992 his wife P.W. 3 had gone to the house of the accused to bring their daughter to stay in their house for some time but the accused refused to send the deceased and therefore she had to return back. P.W. 1 further stated that P.W. 3 complained to him that the accused quarrelled with her. Then P.W. 1 went to the house of the accused with a request to send their daughter to stay for some days in their house but P.W. 1 also did not succeed in the matter. Again in the month of December 1992 he went to the house of the accused along with caste elders and held a panchayat. At that time the deceased was preparing tea. A-1 went behind the deceased and pushed her on the burning stove in which she received some injuries. This is all that happened in the presence of P.W. 1. Thereafter, P.W. 1 had to call caste elders and with the help of caste elders, he was successful in bringing back their daughter to stay with them for some time.

24. The evidence of P.W. 1 further discloses that the deceased gave birth to a female child but no body from the house of the accused visited the house of P.W. 1 to see newly born baby. The evidence of P.W. 1 further discloses that A-1 got a job at Bhoopalpally and he went alone to Bhoopalpally. Later A-1 had gone to the house of P.W. 1 with a request to send his wife (the deceased) along with him to Bhoopalpally. P.W. 1 further stated that on the assurance given by A-1 to the caste elders, he sent his daughter to the house of A-1 at Bhoopalpally. On the same lines the evidence is given by P.W. 3 and therefore it is not necessary for

us to repeat the entire evidence of P.W. 3. But suffice it to say that the evidence of P.W. 3 corroborates the evidence of P.W. 1 in all respects.

25. The evidence of P.Ws. 1 and 3 discloses that they received the intimation that their daughter was admitted in the hospital with burn injuries. Therefore, they rushed to the hospital and they had a talk with their injured daughter, who was suffering with burn injuries. When they questioned her, she informed that A-2 visited their house and A-2 wanted the deceased to accompany him to Ellandu but the deceased refused to go along with him to Ellandu. Thereupon A-1 and A-2 got wild. She further stated that while she was sleeping, A-1 and A-2 poured kerosene on her and set her on fire and thus she received burn injuries.

26. The evidence of P.Ws. 1 and 3 further discloses that the deceased made a dying declaration in their presence disclosing the cause of injuries sustained by her. On getting this information from the mouth of the deceased, P.W. 1 went to the Police Station and lodged the complaint Ex. P-1. On the strength of which, the offence in question was registered against the accused. Ex. P-1 gives corroboration to the oral testimony of P.Ws. 1 and 3 in all respects. Therefore, we have the evidence before us, which is in the form of oral dying declaration made by the deceased to her parents, immediately after its occurrence. Both the witnesses were cross-examined at length but nothing is elicited in the cross-examination so as to discredit the evidence of P.Ws. 1 and 3.

27. Now we have to see as to what role is played by each of the accused by committing the offences. As discussed earlier, A-3 used to harass the deceased and she was refusing to send the deceased to her parents' house. This was a mental torture and agony created by A-3 to the deceased and therefore that can be a set of act punishable u/s 498-A I.P.C. A-1 and A-2 were also harassing the deceased on many occasions. Therefore, we have no hesitation in holding that all the three accused-appellants herein are guilty of an offence punishable u/s 498-A I.P.C.

28. We have already discussed that A-1 and A-2 in furtherance of a common intention poured kerosene on the person of the deceased and set her on fire causing her death. Therefore, they are responsible for causing the death of the deceased punishable u/s 302, I.P.C.

29. Considering the entire evidence on record, we do not find any reason to interfere with the order of conviction and sentence recorded by the learned Judge. Therefore, the conviction and sentence passed against the accused in Sessions Case No. 471 of 1995 by the Additional Sessions Judge, Warangal are hereby confirmed.

30. Hence the Criminal appeal is dismissed.

31. A-3 is directed to surrender bail bond forthwith.