
(2004) 08 AP CK 0125

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 164 of 2002

Kokkiligadda Veeraswamy

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 26-08-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Penal Code, 1860 (IPC) — Section 107, 306, 376

Citation : (2004) 2 ALT(Cri) 588 : (2005) CriLJ 869

Hon'ble Judges : K.C. Bhanu, J

Bench : Single Bench

Advocate : G. Krishna Murthy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Bhanu, J.

1. This criminal revision case filed under Sections 397 and 401, Cr. P.C. is directed against the judgment, dated 30-11-2001 in CrI. A. No. 4 of 1999 on the file of I Addl. District and Sessions Judge, Machilipatnam, who confirmed the conviction and sentence passed against the accused in the judgment, dated 30-12-1998 in S.C. No. 3 of 1998 on the file of the Asst. Sessions Judge, Machilipatnam, The trial Court convicted the accused for the offence u/s 376, IPC and sentenced to undergo Rigorous Imprisonment for a period of 7 years and to pay a fine of Rs. 10,000/-, in default to suffer Simple Imprisonment for a period of one year and also convicted the accused for the offence u/s 306, IPC and sentenced to undergo Rigorous Imprisonment for a period of five years and to pay a fine of Rs. 1000/-, in default to suffer Simple Imprisonment for a period of 6 months.

2. The brief facts that are necessary for the purpose of disposal of this revision case may be stated as follows :

It is the case of the prosecution that on 1-7-1997 at about 10.00 p.m., the

accused, who is closely related to the deceased Gadi Annapurna came and requested her to serve him food. When she was about to serve food the accused forcibly closed her mouth by putting clothes and committed rape on her and threatened her that she would be insulted if she disclosed the same to anyone. On the next day at 5.00 p.m. the deceased having felt ashamed of the incident, poured diesel oil on her and set fire to herself. Meanwhile, her husband Gadi Dhanunjayarad came to the house and took her to hospital for treatment. While undergoing treatment she died on 6-7-1997. After the deceased was admitted into hospital, the Sub-Inspector of Police, Bandar received Ex. P11 intimation, proceeded to the hospital and recorded Ex. P14 statement. He returned to the police station and registered a case u/s 376, IPC and informed the Inspector of Police about the registration of the case. Again he went to the hospital and recorded the statement of the deceased and her husband, Gadi Dhanunjayarao. Thereafter, he prepared observation report and seized material objects. On 2-7-1997, at about 9.55 a.m., P.W. 11 III Addl. Judicial Magistrate of I Class, Machilipatnam received requisition from the duty Medical Officer with a request to record the statement of the deceased and the learned Magistrate proceeded to the Government Hospital and recorded Ex. P17 statement from the deceased, P.W. 7 is the Doctor, who examined the deceased Annapurna and after receipt of F.S.L. report, she gave her opinion stating that there are no signs of rape on the deceased. After completion of investigation, the police filed charge-sheet.

3. To substantiate its case, the prosecution examined P.Ws. 1 to 14 and got marked Exs. P1 to P25 besides making case properties M.Os. 1 to 9.

4. The trial Court, believing the dying declaration of the deceased recorded by P.W. 11 came to the conclusion that the accused committed rape on the deceased and the next day morning, the deceased committed suicide for the commission of act of rape on her by the accused and found the accused guilty of the offence for which he was charged and accordingly he was convicted and sentenced. Against the aforesaid conviction and sentence, Crl. A. No. 4 of 1999 was filed before the I Addl. District and Sessions Judge, Machilipatnam, who confirmed the conviction and sentence recorded by the trial Court. Assailing the same, this criminal revision case is filed.

5. The learned counsel appearing for the revision petitioner contends that the deceased died due to torture of her husband. The evidence of P.Ws. 1 to 5 including children of the deceased would clearly go to show that the deceased committed suicide Unable to bear the torture of her husband, and there was no evidence to show that the deceased Was subjected to rape. On the other hand, the Doctor, who treated the deceased categorically stated that there was no evidence of rape. Therefore, the conviction is illegal. Owing to civil disputes between the accused and the husband of the deceased, a false case is foisted against the accused; and there is variance in the two dying declarations, one recorded by the Sub-Inspector of Police and another by the Magistrate contradicting each other with regard to the place of incident. Therefore, he prays

to set aside the conviction and sentence confirmed by the appellate Court.

6. On the other hand, the learned counsel appearing on behalf of the learned Public Prosecutor contends that basing on the two dying declarations, the trial Court as well as the appellate Court came to the right conclusion; and that there is no other reason for the deceased to implicate the accused falsely. If the statement of the deceased is found to be true and correct, then the accused can be convicted and the medical evidence is only an evidence of opinion and no implicit reliance can be placed upon such evidence so as to disbelieve the statements of the deceased and, therefore, there are no grounds to interfere with the concurrent findings given by the Courts below.

7. The revisional jurisdiction of this Court is circumscribed. Unless there is an illegal or perverse finding or that the findings are not based upon any evidence, then normally, this Court will not interfere with the conviction and sentence. To test whether the trial Court or the appellate Court gave any illegal or perverse findings, it is necessary to refer to the evidence adduced on behalf of the prosecution.

8. P.Ws. 1 and 2 are no other than the children of the deceased-Annapurna and Dhanunjayarao and they did not support the case of the prosecution. Therefore, they were declared hostile by the prosecution. On the other hand, they stated that there were disputes between the accused and their father and their father threatened the deceased-mother to give a statement against the accused. Therefore, their evidence cannot be accepted as true. They are child witnesses and for the first time, they stated in the Court that their mother committed suicide unable to bear the beating and the threat of their father and their mother gave a false statement against the accused. The reason is obvious. So, the statements made by them for the first time in the Court cannot be given undue importance. P.W. 3 is the brother of the deceased. He also did not support the case of the prosecution. P.W. 4 is the sister of the husband of the deceased. She also did not support the case of the prosecution. P.W. 5 is the brother of the husband of the deceased. He also did not support the case of the prosecution. Therefore, the only evidence remains on record is that the statement recorded by P.W. 11 as in Ex. P17 and Ex. P14 is the statement recorded by P.W. 13.

9. P.W. 6 is one of the mediators who was present at the time of Ex. P6 -- observation report scribed by the police and seizure of M.Os. 1 to 7. He was also one of the mediators who was present at the time of the inquest. P.W. 7 is the Doctor, who examined the deceased and found no external or internal injuries. P.W. 8 is the Doctor, who sent intimation to the police and also requisition to the Magistrate to record the statement of the deceased. P.W. 9 is the Doctor who sent death intimation to the police.

10. When the police conducted inquest on the dead body of the deceased in the presence of P.W. 6, the inquestdars opined in Ex. P7 that the cause of the death of the deceased was due to burn injuries. The evidence of P.W. 6 and the recitals

in Ex. P7 with regard to the cause of the death of the deceased are not specifically dented or disputed in the cross-examination. P.W. 10 is the Doctor who conducted autopsy on the dead body of the deceased and found the following injuries :

Blebs on knuckles of both hands which appeared probably of 24 to 40 hours of age." He opined that the cause of the death of the deceased was due to 50 to 60% of deep burns over the body. The cause of the death as spoken to by P.W. 10 and as recited in Ex. P15 remained unchallenged. So, the death of the deceased as a result of burn injuries was established beyond all reasonable doubt. Now, it is to be seen whether the accused committed rape on the deceased or not and whether such an act comes within the meaning of "Abetment" u/s 107, IPC so as to punish the accused u/s 306, IPC.

11. P.W. 7 examined the deceased on 2-7-1997 at 9.00 a.m. and found the burn injuries on external side present on the body. No burns are seen on the external genitalia and no other injuries are seen. She reserved her opinion pending Ex. P9 report of the chemical examiner; and after receipt of Ex. P9, she gave final opinion to the effect that there were no signs of rape. Basing on the medical evidence, the learned counsel for the revision petitioner contends that a false case is foisted against the accused.

12. The learned counsel for the revision petitioner has relied upon a decision reported in Mahendra Singh and Another, Gayatribai Vs. State of M.P., wherein their Lordships held as follows (at page 894 of Cri LJ) :

Abetment has been defined in Section 107, IPC to mean that a person abets the doing of a thing who firstly investigates any person to do a thing, or secondly, engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing, or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Neither of the ingredients of abetment are attracted on the statement of the deceased. The conviction of the appellants u/s 306, IPC merely on the allegation of harassment to the deceased is not sustainable. The appellants deserve to be acquitted of the charge."

There is no dispute about the proposition of law and the ratio laid down by the Apex Court. If really the accused committed rape on the deceased, then it must be abetment because the deceased, unable to bear the insult committed suicide. It would attract Section 107 of the Indian Evidence Act because there was a nexus between committing a rape and commitment to commit suicide. According to the prosecution, the incident took place at 10.00 p.m. and on the next day morning at 5.00 a.m. she committed suicide by pouring diesel oil and setting fire to herself. Though the accused may not be present at the time of the deceased committing suicide, the deceased, unable to bear the insult on her, committed suicide.

13. The learned counsel for the petitioner has relied upon a decision reported in *Mudavath Hema Naik and Another Vs. State of A.P.*, This decision has no application to the facts of the case because there was no ratio laid down by this Court. On appreciation of facts, this Court came to the conclusion that the prosecution failed to prove the guilt of the accused beyond all reasonable doubt. Hence, the accused therein were acquitted. In support of the contention that there are inconsistencies in the two dying declarations, the learned counsel for the petitioner has further relied upon a decision of this Court in the case of *Yerramsetti Subbalakshmi v. State of A. P.* 2002 (1) ALD (Cri) 671 (AP) : 2002 Cri LJ 313. In that case, the deceased suffered 100% burn injuries and there were some inconsistencies in between the statements, one recorded by the Magistrate and another by the Police Officer. So, in those circumstances, the accused therein was acquitted. This Court laid down no ratio in the aforesaid decision, which has no application to the facts of the case.

14. The law is well settled that if the dying declaration is found to be true and correct, then the question of corroboration does not arise. As a matter of law, dying declaration can be acted upon without corroboration but before accepting the same, it is the reliability of the dying declaration the Court has to keep in view. The circumstances like the opportunity of a dying man for observation, for example, whether the capacity of the person to remember the facts stated had not been impaired at the time she/he was making the statement and that the statement has been consistent throughout if she/he has several opportunities to make the statement apart from the official record of it; and that the statement had been made at the earliest opportunity and was not the result of tutoring of interested persons should also be taken into consideration.

15. In a leading decision reported in *Khushal Rao Vs. The State of Bombay*, , it is held by their Lordships that in order to pass the test of reliability, a dying declaration has to be subjected to very close scrutiny keeping in view the fact that the statement has been made in the absence of the accused who had no opportunity to cross-examine. But, once the Court has come to the conclusion that the dying declaration is the truthful version as to the circumstances of the death and assailant of the victim, there is no question of corroboration. In a decision reported in *Dastagir Sab v. State of Karnataka* AIR 2004 SCW 518 : AIR 2004 SC 2884, the Apex Court held to the following extent :

"Injury on the body of the person of the victim is not a sine qua non to prove a charge of rape. Absence of injury having regard to overwhelming ocular evidence cannot, thus, be the sole criteria for coming to a conclusion that no such offence had taken place." Therefore, the absence of any injuries on the person of the deceased may not by itself discredit the statement of the deceased if the deceased has no reason to implicate the accused falsely; and if the statement of the deceased is found to be reliable and trustworthy, the accused can be convicted even in the absence of injuries which is not a sine qua non to prove the charge of rape.

16. The earliest statement recorded by P.W. 13, which is marked as Ex. P14 and incidentally which is the basis for registration of the case goes to show that the accused committed rape on her by gagging her mouth and went away. After committing rape, the accused also threatened her not to reveal the incident to anybody. The statement was recorded on 2-7-1997 at 9.30 a.m. A suggestion was given to P.W. 13 to the effect that he obtained a thumb impression of the deceased person on Ex. P14 and the accused was implicated falsely and the deceased Annapurna was not in a conscious state of mind at the time when P.W. 13 proceeded to record her statement, but the same was denied. It is not suggested to him that the deceased gave a statement on tutoring by somebody. The fact that he went to the hospital and recorded Ex. P14 statement is not specifically denied but what all the accused contended is that the deceased was in a state of unconsciousness. No suggestion was given to P.W. 7 -- Doctor, who examined the deceased at 9.00 a.m. on 2-7-1997 to the effect that the deceased was unconscious and not in a position to give statement because of burn injuries. The Doctor also made an endorsement to the effect that the patient was conscious and fit to give Ex. P14 -- statement. Therefore, the contention of the accused that the deceased was in a state of unconsciousness cannot be accepted as true.

17. P.W. 11 recorded Ex. P17 -- statement after obtaining certificate from the duty Doctor and after satisfying the fit state of mind of the declarant. It is not specifically suggested to him that the deceased was not in a fit state of mind to give any statement or that the statement as recorded by him in Ex. P17 is not true and correct. Practically, the evidence of P.W. 11 and the recitals in Ex. P17 remain unchallenged. The learned Magistrate also after subjective satisfaction of the fit state of mind of the patient recorded the statement on 2-7-1997 at 10.00 a.m. Therefore, Ex. P17 is the true and correct statement given by the deceased. A perusal of the Ex. P.17 shows that at about 10.00 p.m. on the previous day, the accused came and asked her to give dinner and when she was about to provide dinner, the accused gagged her mouth and committed rape on her. Unable to bear such insult, she committed suicide by pouring engine oil on her. It is not suggested to any one of the witnesses including the Magistrate that the deceased was made to give a statement against the accused so as to implicate him falsely due to some disputes. Therefore, the element of tutoring was not there. Within; four or five hours after the incident, the earliest version has been clearly made by the deceased to the learned Magistrate stating that the accused committed rape on her. Before recording Ex. P17 -- statement by P.W. 12. P.W. 10 also recorded Ex. P14, which contained details of the incident. The only discrepancy that was pointed out is that as per Ex. P14, the incident is said to have taken place at prawns tank whereas in Ex. P17, it is stated that the incident took place at her house. This discrepancy, in my considered opinion, will not in any way affect the case of the prosecution. The prawns tank is located by the side of the house of the deceased as seen from Ex. P22 -- rough sketch. There are no inconsistencies insofar as the act of committing rape by the accused is

concerned. The house and the prawns tank are located side by side as seen from the evidence. It is stated that as the accused is no other than the maternal uncle's son, he requested the deceased to provide food. While she was about to provide food, the accused committed rape on her. There is no other reason for the deceased to implicate the accused falsely. There must be strong motive or ill-will for the deceased against the accused to implicate him, who is closely related to her in a case of this nature, but there is no such ill-will or motive for the deceased to implicate the accused falsely. The trial Court as well as the appellate Court, after elaborate consideration of the evidence on record, relied upon Exs. P14 and P17 which are true and voluntary statements made by the deceased and found the accused guilty of the offence of rape and also u/s 306, IPC. The appreciation of evidence is not shown to be perverse or contrary to law. No illegal or improper findings are given by the trial Court as well as the appellate Court. After going through the record and both the oral and documentary evidence, I am of the considered view that the prosecution established its case beyond all reasonable doubt for the charge u/s 376. IPC.

18. Insofar as Section 306, IPC is concerned, though there was no direct abetment, committing of rape can be said to be an insulting act. Unable to bear such insult, the deceased must have committed suicide. The prosecution, therefore, proved its case beyond reasonable doubt.

19. In view of the facts and circumstances of the case, I am of the view that there are absolutely no grounds to interfere with the conviction and sentence recorded by the trial Court as confirmed by the Appellate Court.

20. Accordingly, the Criminal Revision Case is dismissed.