

(1991) 07 AP CK 0026

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 499 of 1990

Maddala Venkateswara Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 18-07-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 221(2), 386(1), 397, 401
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (1992) 2 DMC 95

Hon'ble Judges : Jagannadha Raju, J

Bench : Single Bench

Advocate : E. Ella Reddy, for the Appellant; None, for the Respondent

Judgement

Jagannadha Raju, J.—This revision is filed by the three accused who were convicted originally by the trial Court viz., the II Additional Assistant Sessions Judge, Vijayawada in SC No. 85 of 1986. They were convicted for offence u/s 306 IPC-abetment of suicide and u/s 498A IPC-cruelty caused to a women by husband or relatives of husband. They were sentenced to suffer RI for a period of three years under each count and they were also ordered to pay a fine of Rs. 50/- each under each count and in default in payment of fine to suffer simple imprisonment for seven days. In Crl. Appeal No. 93/88 which was disposed of by the III Additional Sessions Judge, Vijayawada on 10-8-1990, the convictions for offences Under Sections 306 and 498-A IPC were set aside and instead the accused were convicted for an offence u/s 304B IPC, an offence popularly known as "dowry death".

2. In this revision, Sri Ella Reddy contends that the judgment of the appellate Court is vitiated because the accused are convicted for an offence for which no charge was framed. They are convicted of an offence u/s 304B IPC which came into statute book No. 19.11.1986 while the alleged occurrence of the offence took place on 9.5.1986. This is a case of conviction under an expost facto law. He further contends that an offence u/s 304B IPC is a much graver offence when

compared to the offences under Sections 306 and 498A IPC. The Appellate Court has no power to convict these accused for the graver offence especially when no charge was framed for the graver offence.

3. The learned Public Prosecutor relies u/s 386(b) Cr. P.C. and tries to justify that this is a case of the Sessions Judge altering the finding maintaining the sentence. He frankly stated that the proper course for the appellate Judge would have been to remand the case for a fresh trial acting under Sub-clause (1) of Section 386(b).

4. The point for consideration is what is the proper course of action that has to be taken by this Court while exercising its revisional powers in this Case ?

5. A perusal of the appellate Court Judgment clearly indicates that the Sessions Judge did not bear in mind the provisions of Chapter XVII of the Code of Criminal Procedure, nor did he look into the provisions of Section 386 Cr. P.C. which deal with powers of an appellate Court. The judge does not appear to have noticed that an offence u/s 304B IPC popularly known as "dowry death" has come into the statute book by reason of Section 10 of Act 43/86 which came into force on 19.11.1986. The Sessions Judge appears to have forgotten the fact that he was dealing with an incident which took place nearly 6 1/2 months prior to this offence being created by way of an amendment to the IPC. No Court has power to convict an offender for an offence which was not in existence in the statute book on the date of offence. The judgment of the Sessions Judge violates the principles of conviction for an offence created by ex post facto law. On this sole ground itself, the Judgment of the Appellate Court is liable to be set aside.

6. A reading of the Judgment also indicates that the Judge was not aware of the quantum of punishments prescribed for the three offences viz., 306 IPC-abetment of suicide, 498-A cruelty caused to a woman by husband or relatives of husband and the punishment for the offence u/s 304B IPC-dowry death. In this case, charges were framed for the lesser offences of 498-A and 306, Section 498A is punishable with imprisonment which may extend to three years and shall also be liable to fine Section 306 IPC is punishable with imprisonment of either description which may extend to ten years and shall also be liable to fine. There is no statutory minimum sentence contemplated for the offences under. Sections 306 and 498A, while for an offence u/s 304-B the punishment is a statutory minimum sentence of seven years and the punishment may also extend upto imprisonment for life. Obviously the Sessions Judge was not conscious of the fact that he was convicting the accused for the graver offence while they had faced the trial for the lesser offence.

7. The Judge was not conscious of the fact that what he was doing offends the provisions of Chapter XV11 of the Cr. P.C. even if he were to be presumed to act u/s 221. Invoking Section 221(2) is permissible only cases in which charges could have been framed for different offences of a similar character u/s 221(2). As indicated earlier, the nature of the three offences is totally different and

distinct. In such circumstances, the Judge is not entitled to call-in-aid Section 221(2). Of course, in this particular case the Sessions Judge has nowhere referred to any provisions of Chapter XVII of the Cr. P.C. in his Judgment. If he had taken pains to look into the provisions of Chapter XVII, he would have known that by reason of Section 218 there should be separate charges for distinct offences.

8. The powers of the appellate Court hearing an appeal from a conviction are prescribed under Clause (b) of Section 386. If the Judge felt that the offences for which charges were framed and the accused were convicted by trial Court are not made out and that a different offence is established, then he should have acted under Sub-clause (i) of Section 386(b) and remanded the case for re-trial. He has not done so. On the other hand, presumably acting under Sub-clause (ii) he convicted the accused for a graver offence for which no charge was framed and maintained the sentence imposed by the trial Court. This is against the provisions of law.

9. The further question that arises for consideration is what is the proper course of action this Court can adopt in this revision? In a Criminal . Revision Case, the High Court is certainly entitled to act u/s 397 or u/s 401 of the Cr. P.C. u/s 397 in a suo motu revision, the Court is entitled to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior Court. u/s 401, Cr. P.C. which deals with High Court powers conferred on a Court of Appeal by Sections 386, 389, 390, 391 or on a Court of Session by Section 307. The only inhibition is that no order should be passed to the prejudice of the accused or other person unless he has an opportunity of being heard. The High Court is also precluded from converting a finding of acquittal into one of conviction. A perusal of the Judgment of the appellate Court clearly shows that the Judge in para 26 of the Judgment recorded a finding in the following terms :

"The conviction and sentence passed u/s 306 and 498-A IPC are set aside".

In view of this, there is absolutely no power for this Court to restore the convictions recorded by the trial Court even if this Court comes to the conclusion that the evidence justifies the conclusions and the convictions of the accused recorded by it. So far as the appellate Court's finding is concerned, it is quite certain that the conviction is illegal and it is against the provisions of law. In such circumstances, the only proper course that is open to this Court is to set aside the conviction and remand the case for re-trial.

10. In the result, the Crl. P.C is allowed. The conviction of the accused for an offence u/s 304B IPC is set aside. SC No. 85/86 is remanded to the Court of the II Addl. Assistant Sessions Judge, Vijayawada for a fresh trial. The Assistant Sessions Judge shall first peruse the record, frame charges and then proceed with the trial.

11. As the case is nearly five years old, the re-trial shall be conducted

expeditiously and at any rate it should be concluded within a period of four months from today.