
(2016) 06 AP CK 0059

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1237 of 2010

Moithe Seetharam

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 29-06-2016

Acts Referred:

Evidence Act, 1872 — Section 32(1)

Penal Code, 1860 (IPC) — Section 302, Section 498A

Citation : (2016) 3 ALTCrI 470 : (2017) 1 AndhLDCriminal 302 : (2017) 1 HLT(CrI) 144

Hon'ble Judges : Sri C.V. Nagarjuna Reddy and Sri G. Shyam Prasad, JJ.

Bench : Division Bench

Advocate : Mr. Penjuri Venugopal, Advocate, for the Appellant; Public Prosecutor (TG), for the Respondent

Final Decision : Partly Allowed

Judgement

Sri C.V. Nagarjuna Reddy, J. - This is yet another case of husband burning his wife. The appellant herein and his sister, arraigned as accused Nos.1 and 2, respectively, in Sessions Case No.285 of 2008 on the file of the learned District and Sessions Judge, Adilabad, were charged for the offences under Sections-302 and 498-A of the Indian Penal Code (for short ?IPC?).

2. The case of the prosecution, in brief, is that the appellant, who is a coolie, is the husband of the victim and a resident of Ramnagar, H/o Jatharla Village; that accused No.2, who is also a coolie, is the sister of the appellant and also a resident of the same Village as the appellant is. The marriage of the appellant and the victim was solemnized in the year 2003; that after living happily for one month after marriage, disturbances cropped up in their marital life; that the appellant became addicted to alcohol and started harassing the victim physically and mentally on the ground that she could not beget children; that on 23.12.2007, at about 7.00 pm., the appellant picked up a quarrel with the victim in a drunken state, poured kerosene oil on her body and set her on fire, on the

instigation of accused No.2; and that on the victim raising hues and cries, P.W-4-one of her neighbours rescued her from flames. Later, the appellant and accused No.2 shifted the victim to the Government Head Quarters Hospital, Adilabad, for treatment and informed the matter to P.Ws-1 and 2 through telephone.

3. That the victim gave a statement in Marathi language, which was translated by L.W-10-Pendur Krishna and recorded by P.W-16- Sub-Inspector of Police, Bazarhathnoor, in Telugu; that the same was read over to the victim and that after admitting the contents to be correct, she has put her thumb impression on it (marked as Ex.P-13). P.W-16 sent Ex.P-13 to the Station House Officer, Police Station, Bazarhathnoor, through a Police Constable with an endorsement to register a case and that basing on the same, P.W-15 registered a case in Crime No.60 of 2007 under Section-307 read with 34 IPC and sent the file to P.W-16, who was at Camp at Government Head Quarters Hospital, Adilabad, for further investigation through P.C-93 of Police Station, Bazarhathnoor.

4. During the course of investigation, P.W-16 examined all the witnesses connected to the case, who include P.Ws.1 to 7, proceeded to the scene of offence, observed the same minutely in the presence of the mediators-P.W-8 and L.W-17-Sidam Maruti, drafted Ex.P-5-scene of offence panchanama and Ex.P-14-rough sketch in the presence of mediators and seized M.O-1-a plastic can and M.O-3-pieces of burnt saree of the victim under the cover of panchanama.

5. On 09.01.2008, at 10.30 hours, P.W-16 received the file from P.W-17-Sub-Inspector of Police, Yavathmal City with the death memo of the victim and the inquest report. As per the records received from P.W-17, P.W-16 altered the Sections of Law into Sections 302 and 498-A read with 34 IPC and issued memos to all the concerned. On 10.01.2008, P.W-18-Inspector of Police, Adilabad, received the C.D file from P.W-16 and took up the investigation of the case. On 10.01.2008, at 14.30 hours, P.W-16 and his men arrested the appellant and accused No.2 at their Village by informing them and their relatives, brought them to Adilabad and produced them before P.W-18 who sent them to judicial custody.

6. It is stated in the charge sheet that the investigation revealed that P.Ws.1 and 2 have four daughters and two sons including the victim, who was the elder daughter; that they performed the marriage of the victim with the appellant in the year 2003 as per their customs and rites; that after their marriage, they enjoyed their marital life for one month; that later, the appellant got addicted to alcohol and started harassing the victim by beating her; that after some time, the appellant started abusing the victim in filthy language saying that she was not having children so far; and that, the same was informed by the victim to her parents, who came to the house of the appellant and the victim and tried to pacify them. That on 08.12.2007, the victim went to her parents' house due to unbearable torture by the appellant; that on 21.12.2007, the appellant visited the house of his in-laws, made false promises to the victim and her parents and brought her back to his village on 23.12.2007; that on the same day, the appellant came to the house in a drunken state, started abusing and beating the

victim; and that meanwhile, accused No.2 visited the house of the appellant and on her instigation, the appellant took a plastic can containing kerosene oil available in his house, poured the same on the victim, set her on fire and left the house after bolting it from outside; and that on the victim raising hue and cry, P.W-4 came to the spot and rescued her. Meanwhile, the appellant and accused No.2 also came to the spot and shifted the victim to Government Head Quarters Hospital, Adilabad for treatment. Later, the victim was shifted to Yavathmal Government Hospital for better treatment and on 29.12.2007, at 21.00 hours, she died due to burn injuries while undergoing treatment at Shri V.N.Medical College/Hospital, Yavathmal, Maharastra.

7. As both the accused denied the charges, the prosecution examined PWs.1 to 19, got Exs.P.1 to P.18 marked and produced MOs.1 to 3. On behalf of the accused, no evidence was produced.

8. On appreciation of oral and documentary evidence, the trial Court has acquitted accused No.2 and convicted the appellant for the offences under Sections 302 and 498-A IPC and sentenced him to life imprisonment and to pay a fine of Rs.200/- and in default to suffer Simple Imprisonment for one month for the offence under Section 302 IPC and to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.200/- and in default to suffer simple imprisonment for one month for the offence under Section 498-A IPC. Both the sentences were directed to run concurrently.

9. We have heard Mr.Penjuri Venugopal, learned Counsel for the appellant, and Mr.C.Pratap Reddy, learned Public Prosecutor for the State of Telangana.

10. This case is based on circumstantial evidence. However, the prosecution has produced two statements of the victim, recorded by PWs.11 and 16 and got them marked as Exs.P.10 and 13. If these statements of the victim are accepted as true, even in the absence of corroboration by the witnesses, the Court can safely convict the accused. It is therefore, necessary to refer to these statements and the evidence of PWs.11 and 16, who recorded the same.

11. The earlier statement-Ex.P.13 was recorded by PW.16-Sub-Inspector of Police, Bazar Hathnoor. A perusal of Ex.P.13 shows that the same was recorded in English; that at the bottom of the statement, it is written that the injured/victim has made the statement in Marathi; and that the same was translated by one Pendur Krishna, S/o Gangadhar, R/o Indervelli (not examined). It is stated in Ex.P.13 that the same was recorded at 13.00 hours on 24-12-2007. Its contents reveal that the victim has referred to her family history in brief, her marriage with the appellant, her leading happy marital life for one month and the appellant being addicted to alcohol and beating her daily. She has further stated that the appellant used to quarrel with her by coming home in drunken condition and stating that she has no chance of bearing children; that she has brought the matter to the notice of her parents, who used to pacify her and send her back by to her in-laws' house; that fifteen days prior to the incident, PW.1 met the

appellant at Indervelli, during which also, he has advised the appellant to live amicably with the victim; that about seven days prior to the incident, the victim went to her parents' house; that the appellant also accompanied her; that both of them attended to coolie work for two days; and that later i.e., on 23-12-2007 at about 2.00 p.m., they came to Ramnagar as per the appellant's wish; that at about 7.00 p.m. on that day, the appellant came in drunken condition and quarreled with the victim by saying "I am issueless and no chance of having children" that then, accused No.2-sister of the appellant prompted her brother to pour kerosene and light fire; and that accordingly, the appellant has taken the kerosene tin available in the house, poured the same on her, lit fire and locked the house from outside. That on hearing the cries, PW.4-Sandeep lifted the wooden door of her house and tried to extinguish the flames; that in that process, he had also received injuries to both hands; and that after some time, the appellant and his sister brought the victim to the Government Hospital, Adilabad, and they also informed her parents. She further stated that except the hair on head and heels, her entire body was burnt and that the appellant and accused No.2 committed the above mentioned act with an intention to kill her.

12. PW.16, who has recorded Ex.P.13, stated that on 24.12.2007 at 11.30 a.m., he received message from the Government Head Quarters Hospital, Adilabad, regarding admission of the patient by name Smt.Moithey Meena, wife of Seetharam with burn injuries; that he has immediately rushed to the Headquarters Hospital, recorded Ex.P.13-statement of the victim and dispatched the same through PC.93 for registering FIR; and that after registration of the FIR, he has also recorded the statements of PWs.1 and 2. He has also deposed that PW.11-Tahsildar, Adilabad, recorded the dying declaration on 24-12-2007; that on 09.01.2008, he has received information that the victim died on 29-12-2007; and that thereafter, he had altered the Sections of Law into Sections 302 and 498-A r/w Section 34 IPC. In the cross-examination, the only suggestion put to PW.16 regarding Ex.P.16 was that the same was not correctly recorded. No suggestions such as the victim not being either conscious or in a fit condition to give statement were put to this witness.

13. Coming to Ex.P.10, the same was recorded by PW.11 in English. It does not contain the family history of the victim as recorded in Ex.P.13. However, the details such as the victim marrying the appellant three years prior to the incident, her not having children and the appellant quarrelling with her have been narrated. The victim has also stated that her body was burnt to the extent of 90%.

14. PW.11, who recorded Ex.P.10, testified inter alia the fact of his recording the statement of the victim. In his cross-examination, he has stated that there were corrections in Ex.P.10 at two places, which included correction of date mentioned on its top. Nothing worth mentioning could be elicited from this witness.

15. The serious inconsistency between Exs.P.10 and P.13 is that in the former document, the presence of accused No.2 was not mentioned and instead, the

presence of the parents?-in-law of the victim was mentioned. In both these statements, the victim has asserted that the appellant has poured kerosene oil on her body and set her on fire with a match stick with an intention to kill her.

16. Mr.P.Venugopal, learned Counsel for the appellant, submitted that it was not possible for a person, who has suffered 90% burn injuries, to make a statement as she would not have been conscious and in a fit state of mind to make such statement. However, we find from the cross-examination of PWs.11 and 16 that no such suggestion was made to either of them. No evidence has been let in by the defence to show that a person, who has suffered burn injuries to the extent of 90%, would be in a position to make a statement.

17. In *Vijay Pal v. State Government of NCT of Delhi* (2015) 4 Supreme Court Cases 749 , the Supreme court rejected a similar plea that when the victim sustained 100% burn injuries, she could not have made any statement to her brother. While relying upon its earlier judgment in *Mafabhai Nagarbhai Raval v. State of Gujarat* (1992) 4 SCC 69 , the Supreme Court held that a person suffering 99% burn injuries could be deemed capable enough for the purpose of making a dying declaration and that unless there existed some inherent and apparent defects, the trial Court should not have substituted its opinion to that of the Doctor. The Supreme Court also relied upon the judgment in *State of M.P. v. Dal Singh* (2013) 14 SCC 159 , wherein it has upheld the credibility of the dying declaration of a person, who has suffered 100% burn injuries. In the face of the aforementioned judgments, the submission of the learned Counsel for the appellant is not worthy of acceptance.

18. As regards the credibility of the two dying declarations, we feel that Ex.P.13, which is the earliest version of the victim, deserves higher credibility, though the same was recorded by a Police Officer. However, the trial Court appeared to have acquitted accused No.2 as her name did not find place in Ex.P.10 recorded by PW.11. In any event, when there are inherent contradictions between the two statements, it is always desirable to accept the earliest version of the victim. Since no appeal is filed against the acquittal of accused No.2, it is not necessary for us to examine the correctness or otherwise of the statement of the victim to the extent of involvement of accused No.2 in the commission of offence. Ex.P.13 is corroborated by the oral testimony of PWs.1 and 2, who deposed that the appellant used to harass the victim on the ground that she was not capable of bearing children. They have also testified that a few days before the occurrence, both the appellant and the victim visited their house during which PW.1 has counseled them to live amicably. The version of PWs.1 and 2 completely supports the statement of the victim made in Ex.P.13. Being the wife of the appellant, we do not find any reason what-so-ever for her to falsely implicate her husband if he was not responsible for her death. Hence, taking into consideration the overall facts and circumstances of the case, we have no reason to doubt that it is the appellant, who has caused the death of the victim, and hence, he was liable to be and rightly convicted by the trial Court for the offence under Section 302 IPC.

19. As regards the charge under Section 498-A IPC, the only accusation against the appellant was that he was harassing the victim for not bearing children. Under Clause (a) of Section 498-A IPC, the cruelty must be such that there must be a wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of a woman (whether mental or physical). Under Clause (b) thereof, the harassment of the woman must be with a view to harassing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The prosecution did not let in any evidence which shows that either the appellant or any of his family members have made unlawful demand for any property or valuable security. Therefore, Clause (b) of Section 498-A IPC is not attracted. With regard to Clause (a), the only evidence that is brought on record by the prosecution is that the appellant was continuously harassing the victim for not bearing children. In our opinion, such harassment cannot be treated as wilful conduct, for, it is not uncommon for rustic villagers such as the appellant to point out the inability of their wives to bear children and every such harassment cannot be treated as the cruelty arising out of wilful conduct. Merely because the appellant has set fire to his wife, it cannot be concluded that his conduct, prior to such incident, in pointing out that the victim was unable to bear children constituted 'cruelty' within the meaning of the explanation to Section 498-A IPC. Therefore, to this extent, we are unable to agree with the finding of the trial Court that the appellant is guilty of 'cruelty' under Section 498-A IPC. Hence, the judgment of the trial Court to the extent of conviction and sentence of the appellant for the offence under Section 498-A IPC is liable to be set aside.

20. Accordingly, the Criminal Appeal is partly allowed. The conviction and sentence recorded against the appellant/accused No.1 in judgment, dated 04.02.2010, in Sessions Case No.285 of 2008, on the file of the learned Sessions Judge, Adilabad, for the offence punishable under Section 498-A IPC alone is set aside while confirming the conviction and sentence recorded against him for the offence under Section 302 IPC. The fine amount, if any, paid by the appellant for the offence under Section 498-A IPC shall be refunded to him after expiry of the appeal time.