
(2008) 02 AP CK 0031

In the Andhra Pradesh High Court

Case No : Criminal A. No. 230 of 2006

Public Prosecutor, High Court of A.P.

APPELLANT

Vs

Mirza Amjad Baig

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Evidence Act, 1872 — Section 113

Penal Code, 1860 (IPC) — Section 302, 304B, 498A

Citation : (2008) 1 ALD(Cri) 545 : (2008) 2 ALT(Cri) 51 : (2008) CriLJ 2335

Hon'ble Judges : L. Narasimha Reddy, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Public Prosecutor, for the Appellant; R. Raghunandan, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—In S.C. No. 503 of 1998, the Court of the Vth Additional Metropolitan Sessions Judge (Mahlla Court), Hyderabad tried the respondent herein for the offences under Sections 302, 304B and 498A of the Indian Penal Code (IPC). Through its judgment dated 13-3-2001, the trial Court acquitted the respondent of the charge u/s 302, I.P.C., but convicted him of the offences punishable under Sections 304B and 498A, I.P.C. Sentences of seven years rigorous imprisonment for the offence u/s 304B, I.P.C. and three years rigorous imprisonment and a fine of Rs. 500/-, in default to suffer simple imprisonment for three months for the offence u/s 498A, I.P.C. were imposed. The sentences were directed to run concurrently. State preferred this appeal challenging the acquittal of the respondent herein of the offence punishable u/s 302, I.P.C.

2. The deceased by name Arun Jyothi was married to the respondent herein. It is said to be a love marriage. The parents of the deceased initially had reservations about it, but, thereafter, they reconciled to the marriage. The deceased started complaining that the appellant was harassing her with a demand to bring money for purchasing of an auto rickshaw and her parents expressed their inability to

comply with the demand. The appellant and the deceased were residing in the same locality where P.W. 1 was also residing. The couple had a male child out of the wedlock.

3. On 19-11-1997 the deceased was said to have come to the house of her mother P.W. 1 at 11.30 p.m., complaining that the respondent beat her severely and that she intends to sleep in the house. At that time, P.W. 2, the sister of the deceased was also there. At about 12 O'clock in the mid night, the appellant is said to have knocked the door of the house of P.W. 1 and when he was questioned as to why he beat the deceased, he was said to have replied that he did not beat her and promised not to harass her any more. The door was opened and at the request of the respondent, P.Ws. 1 and 2 moved to a different place in the same premises, to ensure privacy of the respondent and the deceased. Within ten minutes thereafter, the deceased is said to have come out crying, engulfed in flames. P.W. 1 wrapped her in a blanket and put off the flames with the help of the neighbours. When asked about the reason, deceased said to have informed that the respondent brought two persons to the house on that night and insisted that she must sleep with them. He is also said to have informed that they would get Rs. 1,000/- from them and unable to bear the pressure, she has come to the house of P.W. 1. She is said to have informed them that the respondent poured kerosene and set her on fire. The respondent is said to have run away from the spot.

4. The deceased was shifted to the nearby Police Station by P.Ws. 1 and 2. The police recorded the statement of the deceased, marked as Ex. P11 and thereafter, registered F.I.R. Ex. P13. Soon thereafter, they have shifted the deceased to the Government Hospital. On a requisition given by the police, the IVth Metropolitan Magistrate P.W. 5 recorded the dying declaration of Arun Jyothi, which was marked as Ex. P7. While undergoing treatment, she died. The provision of law mentioned in the F.I.R. was altered. Inquest over the dead body was conducted and thereafter, autopsy was conducted vide Ex. P8 and P12 respectively. The doctor P.W. 9, who conducted autopsy, opined that the cause of the death was burn injuries associated with head injury. Subsequent investigation was conducted by P.Ws. 11 and 12. Charges were framed and the respondent pleaded not guilty.

5. Learned Additional Public Prosecutor submits that there is clinching evidence in this case to prove the charge u/s 302, I.P.C. and the trial Court acquitted the respondent of the said charge, without any basis. He contends that the dying declaration marked as Ex. P7 is corroborated by the evidence of P.Ws. 1 and 2 and in fact, the trial Court has accepted the said evidence in the context of the offence under Sections 304B and 498A, I.P.C. but curiously had refused to take the same into account, while discussing the charge u/s 302, I.P.C. Learned Additional Public Prosecutor further submits that the evidence on record is sufficient to hold the respondent guilty of the offence u/s 302, I.P.C. Sri R. Raghunandan, learned Counsel for the respondent, on the other hand, submits

that the trial Court furnished cogent reasons for acquitting the appellant of the offence u/s 302, I.P.C. and no interference is warranted with the Same. He contends that there are material discrepancies between Ex. P7 on the one hand and the evidence of P.Ws. 1 and 2 on the other. Learned Counsel further submits that a serious infirmity in the form of not obtaining certification of the doctor before recording the dying declaration was noticed and benefit of doubt in this regard was primarily ex-, tended by the trial Court to the respondent.

6. On its behalf, the prosecution examined P.Ws. 1 to 13 and filed Exs. PI to P14. It has already been pointed out that P.Ws. 1 and 2 are the mother and sister respectively, of the deceased. P.W. 3 is an immediate neighbour of the said witness and she has been declared as hostile. P.W. 4 is a witness to the scene of offence panchanama. P.W. 5 is the learned Magistrate, who recorded the dying declaration Ex. P7. The Mandal Revenue Officer, who conducted the inquest, was examined as P.W. 6 and P.W. 7 is the witness to the inquest. P.W. 8 is the Head Constable of Lalaguda Police Station, who was present when P.Ws. 1 and 2 took the deceased to the Police Station. He recorded the statement of the deceased marked as Ex. P11 and took steps to send her to the hospital. P.W. 9 is the doctor, who conducted post-mortem. P.Ws. 10 to 12 are the Investigating Officers at various stages. P.W. 13 is a Civil Assistant Surgeon, who identified the signature of the doctor on Ex. P7.

7. This is one of the rare cases where, not only there existed the dying declaration of the victim but also, an almost eye-witness account of the mother and sister of the victim, who saw her, within seconds after she was set on fire. It is not necessary to refer to the circumstances under which the respondent and the deceased came to be married. Suffice to say that they are living together and had begotten a male child. P.Ws. 1 and 2 have spoken to the repeated complaints by the deceased, about the harassment by the respondent, on pretext or the other. The deceased and the respondent were living in a house, which is about 400 yards from the house, where P.Ws. 1 and 2 were residing. The witnesses stated that at about 11.00 in the night, the deceased came to their house weeping, alleging that the respondent beat her. The deceased does not appear to have elaborated further and all of them slept in the house of P.W. 1. About one hour later, the respondent came and knocked the door. Without opening the door, P.W. 1 asked as to why he has beaten her daughter. Thereupon, the respondent is said to have stated that he did not beat the deceased and that he would maintain good conduct hereafter. The door was eventually opened. After entering the house, the respondent insisted privacy for himself and the deceased and thereupon, P.Ws. 1 and 2 moved to a different place in the same premises. Within ten minutes after P.Ws. 1 and 2 slept, the deceased came out with flames and desperate cries. Having been shocked, P.Ws. 1 and 2 covered the deceased with blanket and with the help of others, proceeded to the nearby Police Station for onward movement to the hospital. The respondent, however, fled away.

8. The statement of the deceased was recorded by P.W. 8. That constitutes the basis for registering a case and shifting the deceased to the hospital. Requisition marked as Ex. P6 was given by the Inspector of Police, to P.W. 5, the IVth Metropolitan Magistrate, Hyderabad, to record the statement of the deceased. Immediately, P.W. 5 proceeded to the hospital and recorded the statement from the deceased after verifying the condition of the patient through the doctor. The relevant portion of the dying declaration reads as under.

My husband Amjad has cheated me that he would marry me. He tied auspicious thread to my neck, I have given birth to a male child. He deceived me. While I am in the house, he brought somebody and asked me to have illicit contact with him. I did not agree to do so. He has beaten me barbarously. He poured kerosene on my body set fire with matchbox and blazed me. This burn is happened because of my husband only so much.

The condition of the patient was certified by the doctor in the same statement as being conscious and coherent.

9. The respondent was not able to point out any serious infirmity in Ex. P7. Though it was pointed out that there was some deficiency in the certification of the condition of the patient, it ultimately emerged that the doctor as well as P.W. 5 were satisfied with the condition of the patient. Further, it is not a case where, the dying declaration is to be treated as a sole basis. Circumstantial evidence in the form of deposition of P.Ws. 1 and 2 is there on record. For all practical purposes, these two witnesses can be treated as eye-witnesses since right before them, the deceased has come out of the room, with flames. Both of them stated that though the deceased was hesitant about furnishing reasons for her coming to the house at 11 p.m., she has stated only while coming out with flames that the respondent brought two persons and asked her to oblige them. This completely accords with what was stated by the deceased herself in Ex. P7. The medical evidence clearly established that the death of the deceased occurred on account of the burn injuries.

10. The trial Court held that the charge against the respondent u/s 304B, I.P.C. was proved. However, it was hesitant to hold the accused guilty of offence punishable u/s 302, I.P.C. We are not inclined to agree with the reasons assigned by the trial Court for accepting the evidence of P.Ws. 1, 2 and Ex. P7 for holding the respondent guilty of the offence on the one hand, and discarding the same, while examining the charge u/s 302, I.P.C. on the other. After undertaking extensive discussion of oral and documentary evidence before it, the trial Court recorded its finding about Ex. P7 as under:

Although a futile attempt has been made by the defence that Section 304B, I.P.C. has no application to the facts of the case as there is no marriage at all, but it does not lend any support to the version of the defence and basing on the evidence available on record. In the dying declaration, the deceased has categorically stated that the accused has married her. It is also borne out from

the evidence that it is a inter-caste love marriage without the knowledge and consent of the elders and, therefore, the testimony of P.Ws. 1 and 2 pleading their ignorance of knowing the particulars and details of the marriage do not no way weaken or improbabilise the version of the prosecution and in fact they are not expected to speak about the marriage particulars which they had no knowledge. Further, there is not even a suggestion to these witnesses about the denial of the marriage of the deceased with the accused, nor the accused came with any statement denying the marriage. Therefore, in the absence of any other suggestion about the denial of the marriage, it cannot be said that there was no marriage at all in order to escape the liability u/s 304B, I.P.C. The counsel for the defence relies upon a stray statement of P.W. 2 in cross-examination about the hearsay evidence through the deceased that she has not married the accused by ignoring the entire evidence as a whole, particularly the very statement of deceased in Ex. P7 is not a healthy argument and it cannot be acceptable. Further, as already discussed earlier the death of the deceased is within 7 years of marriage. Section 113(b) of Indian Evidence Act is squarely applicable to the case and death can be presumed as dowry death with the scope of Section 304B, I.P.C., basing on the evidence and other connected material as discussed supra.

11. Having held the respondent guilty of the offence u/s 304B, I.P.C. on the basis of Ex. P7, the trial Court, however, doubted the very document at a subsequent stage by observing that it suffers from legal infirmity and inherent weakness. The same document cannot be treated as valid for one charge/offence and not for another.

12. The appellate Court no doubt would be somewhat hesitant in enhancing the sentence against an accused or to find him guilty, for the first time, in the appeal. However, if the record discloses that there is sufficient material, there must not be any hesitation to apply correct principles and to inflict appropriate punishment. Hyper-technicalities, or inconsistent reasoning, cannot be the basis to let of an accused, if the record otherwise proves the charge against him.

13. In the instant case, the facts speak for themselves. The respondent married the deceased under the guise of a love marriage. The deceased had chosen him, despite the displeasure of her parents and sister. After that stage, the respondent started treating her as a chattel. For some time, he forced her to bring dowry from the parents to purchase an auto. When the parents of the deceased expressed their inability, the respondent had chosen heinous path of driving the deceased to prostitution. In his desperate attempts, he did not hesitate to kill the deceased right in the house of her parents. In fact this is one of the rarest of rare cases warranting severe punishment. We are convinced that evidence on record establishes a crime u/s 302, IPC against the respondent. As a matter of fact, the element of dowry is virtually insignificant, if the cause on account of which, the respondent had killed the deceased is taken into account.

14. For the foregoing reasons, the Criminal Appeal is allowed and we convert the sentence against the respondent-Mirza Amjad Baig, s/o. Iqbal Baig in S.C. No.

503 of 1998 on the file of V Additional Metropolitan Sessions Judge (Mahila Court) at Hyderabad, from the one u/s 304B, IPC, to the one u/s 302, IPC. We sentence him to undergo imprisonment for life for the offence u/s 302, IPC. We uphold the conviction and sentence imposed by the trial Court against the respondent for the offence u/s 498A, IPC. M.Os. 1 to 3 shall be destroyed after appeal time.