
(2011) 11 AP CK 0032

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1809 of 2007

Sambangi Tirupathi @ Tirupathirao

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 02-11-2011

Acts Referred:

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

Citation : (2012) 2 ALT(Cri) 92

Hon'ble Judges : R. Kantha Rao, J;A. Gopal Reddy, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R. Kantha Rao

1. Appellant/A1 and her mother A2 were tried for the offences under Sections 498A, 304B and 302 IPC by the II Additional Sessions Judge, (Fast track Court), Visakhapatnam. At the conclusion of the trial, the learned Sessions Judge acquitted A1 and A2 of the charges under Sections 498A and 304B IPC and found the appellant/A1 guilty for the offence u/s 302 IPC and convicted him for the said charge and sentenced him to undergo imprisonment for life and also to pay a fine of Rs.5,000/- and in default to undergo rigorous imprisonment for six months. Challenging the said order of conviction, the appellant/A1 preferred the present appeal.

2. The case of the prosecution, in brief, is stated as follows:

One Lakshmi (hereinafter referred to as, "the deceased"), was the wife of appellant/A1. A2 is the mother of A1. The marriage of A1 with the deceased took place on 18.06.1999 and both of them lead conjugal life happily for some time and blessed with a son and a daughter. As per the version of the prosecution the parents of the deceased gave an amount of Rs.55,000/- to the appellant as dowry, 4 tulas of gold ornaments and other bridal articles. The appellant was an auto driver. His auto met with an accident and thereafter the appellant and A2

started harassing the deceased to get an amount of Rs.15,000/- from her parents for conducting the repairs of the auto. The demand of additional amount in this case is not of much consequence because the learned trial court acquitted the appellant as well as A2 for the offences under Sections 498A and 304B IPC.

Further, it is the case of the prosecution that the deceased developed illicit intimacy with L.W.3 and the appellant who came to know about this was suspecting her fidelity. On 01.11.2003, the deceased gave a report against the appellant and her mother about the harassment caused to her by them. On that it is said that there was a compromise between the parties in the presence of elders in the police station and the police advised the appellant and the deceased to live amicably. While so, on the morning of 18.11.2003 the deceased went to agricultural field. The appellant, who was suspecting her fidelity, followed her and saw her with L.W.12 Vemakoti Rama Sastry. On seeing both of them together, the appellant grew wild and demanded both of them to attend before the Panchayat. Vemakoti Ramasastry stated that there was no truth in the allegations made by the appellant, refused to attend the panchayat and went away from that place. Thereafter the appellant forcibly took away the deceased towards the village through Konda Gorja way, and in the midway he brutally killed her by hacking her on the neck with knife. Subsequently, P.W. 1, who is the sarpanch of the village, on coming to know about the existence of the dead body near Kond Gorja sent a written report through the village Talyari to Rajam police station, which is at a distance of 7 1/2 kilometres from the village. Basing on the said report P.W. 11 registered a case in crime No.153 of 2003 of Rajam Police Station u/s 302 IPC and issued express F.I.R. The C.I. of police P.W. 12 took up investigation. After completing the investigation he filed charge sheet.

3. In order to establish the guilt of the accused, the prosecution examined P.Ws.1 to 13, marked Es.P1 to P22 and M.Os.1 to 3. The accused did not propose to examine any defence witness, but they marked Exs.D1 and D6 on their behalf.

4. Upon considering the entire evidence on record, the learned trial court acquitted the appellant and A2 for the offences u/s 498A and 304B IPC, but convicted the appellant/A1 for the offence u/s 302 IPC and sentenced him to punishment as aforementioned.

5. We have heard the Learned Counsel for the appellant and the learned Additional Public Prosecutor representing the State

6. There being no direct witnesses to the actual occurrence, the entire case of the prosecution rested on the circumstantial evidence. One of the circumstances the prosecution sought to establish was that the appellant was harassing the deceased to get some amount from her parents and that he was also harassing her by suspecting her fidelity on the ground that she developed illicit intimacy with L.W.12 Vemakoti Rama Sastry. Another circumstance the prosecution wanted to prove was that on the date of incident i.e., on 18.11.2003, the appellant, deceased and L.W.12 were last seen by P.W. 3 on the morning and the

deceased was found dead in close proximity thereof. The other circumstance the prosecution sought to establish was that M.O.1 knife was recovered by P.W. 13 the Investigating Officer in the presence of P.W. 10 and L.W.18, the mediators, in pursuance of the disclosure statement made by the appellant. The learned trial court arrived at the conclusion that the prosecution could be able to establish all the circumstances and they are enough to draw a presumption of guilt against the appellant and, accordingly, convicted the appellant for the offence u/s 302 IPC and sentenced him to punishment.

7. Now in this appeal it has to be seen whether the prosecution could be able to establish the circumstances, which are mentioned herein above, and whether they are enough to establish the guilt of the accused.

8. In a case which rests on circumstantial evidence all the circumstances which the prosecution seeks to establish should be conclusive and should point only towards the guilt of the accused without there being any scope for the presumption of innocence of the accused.

9. P.W. 2, who is the junior paternal uncle of the deceased, and P.W. 6, the father of the deceased, however, stated in their depositions before the trial court about the appellant harassing the deceased to bring some amount from her parents' house and also his suspecting her fidelity and that a panchayat being convened in the police station in the presence of elders. However, the independent witness who is said to be one of the elders according to the prosecution namely P.W. 4, did not support the prosecution version. He stated in his deposition before the trial court that his house is situated opposite to the house of A1, but he did not know whether there were any disputes between the appellant and the deceased about six months prior to the incident. He also stated that P.Ws.2 and 3 did not raise any dispute in his presence about the alleged harassment caused by the appellant to the deceased. This witness is treated hostile by the prosecution. However, P.W. 7, who was a lecturer in GNR College, Rajam, supported the prosecution version and he stated in his evidence before the trial court that there was a compromise in the presence of elders in Rajam Police station where at a document was reduced to writing evidencing the compromise between the appellant and the deceased and he signed in the said document.

10. From the evidence forthcoming on this aspect, it seems that there were disputes between the appellant and the deceased. But we are of the view that merely because there were some disputes between the appellant and the deceased, who are wife and husband, it is highly difficult to presume that the appellant had a strong motive to do away the deceased, unless there is some convincing material on record evincing such motive. Therefore, unless the said circumstance was proved by the prosecution beyond reasonable doubt, it will not be appropriate to presume that on account of the differences between the appellant and the deceased the appellant might have killed the deceased.

11. As regards, the other circumstance, that the deceased was last seen in the

company of the appellant, P.W. 3, who was examined to prove the said circumstance, stated in his evidence that about three years back on one day he noticed A1 and L.W.12 pushing each other near gedda at a distance of 25 yards from his land. He further deposed that he did not notice any other person except A1 and L.W.12. This witness is treated as hostile by the prosecution. However, in the cross-examination this witness stated that during the altercation between the appellant and L.W.12 the deceased was not present and subsequently she came to the said place from their field. Even if P.W. 3 witnessed the appellant, deceased and L.W.12 together, it cannot be said that just prior to the death of the deceased, she was last seen in the company of the appellant by P.W. 3. P.W. 3 did not mention about the date or time when he saw the said three persons together. Further, according to the evidence of P.W. 3, the deceased came after the altercation between A1 and L.W.12 and from the evidence of P.W. 3 it is highly difficult to presume that the appellant had taken away the deceased towards gedda on the date of incident. Therefore, in our view the prosecution failed to establish that the deceased was last seen in the company of the appellant in close proximity of time prior to her death on the date of incident.

12. The next aspect to be dealt with is the recovery of M.O.1 knife, which according to the prosecution was used by the appellant in the commission of the offence. On this aspect, the evidence of P.W. 10 the mediator discloses that on 19.11.2003 he was called to the police station, he went to the police station and there he found A1 in the custody of police. Thereafter he states that the police personnel and the appellant proceeded to nearby culvert from where the appellant picked up a knife and produced the same before the Inspector of Police, which was seized under the cover of a mediators report. But the evidence of P.W. 10 is inconsistent with that of the prosecution story. P.W. 13, the investigating officer, stated that he secured P.W. 10 and another mediator-L.W.18 and on receiving prior information about the movements of the appellant he along with P.Ws.10, L.W.18 and the police personnel proceeded to Balakaya valasa junction where he arrested the appellant and thereafter on interrogating the appellant he took the mediators and the police personnel to the culvert situated near the place of arrest where the appellant picked up a knife M.O.1 and the same was recovered under a cover of mediators report.

13. This version of the prosecution as could be seen from the above referred evidence is totally inconsistent on the aspect of recovery of M.O.1. Therefore, the prosecution in our view utterly failed to prove the factum of recovery of M.O.1, which according to the prosecution is said to be the weapon of offence.

14. Another serious anomaly in the prosecution version is the factum of setting the criminal law into motion. According to P.W. 1 on receiving the information about the existence of a dead body at Konda gorja at 09:30 AM he went to the place, saw the dead body and sent a written report through the village Talyari to Rajam police station and basing on the said report, the S.I. of police-P.W. 11 registered the case. The evidence of P.W. 11 is that he received the report at

09:30 A.M. and that P.W. 1 himself personally came to the police station and presented the report. According to the prosecution the incident took place at 09:30 A.M. on 18.11.2003 and the distance between the place of occurrence and the police station, Rajam is 7 1/2 kilometers. If that is so, it is impossible for P.W. 1 to go personally to the police station or send the written report to the police station at 09:30 AM. From this what all we can understand is that after knowing about the incident and visiting the venue of offence, the police got prepared the report by anti timing, which is evident from the evidence of P.Ws.1, 11 and in the F.I.R., P.W. 11 mentioned that he obtained the signature of P.W. 1 simultaneously on the F.I.R. at 13:30 hours.

15. From the analysis of the above referred evidence, we are of the considered view that the learned trial court had fallen into grave error in arriving at the conclusion that the prosecution could be able to establish the circumstances relied upon by it and the circumstances are enough to arrive at a decision that the accused alone is the perpetrator of the crime. We therefore hold that the prosecution failed to establish any of the circumstances relied upon by it. Even otherwise, the circumstances are not enough to establish the guilt of the accused when they are put together. The judgment of the trial court convicting the appellant is, thus, cannot be sustained and is liable to be set aside.

16. In the result, the Criminal Appeal is allowed. The conviction and sentence passed by the II Additional Sessions Judge, (Fast Track Court) at Visakhapatnam in S.C.No.56 of 2004, dated 31.10.2007, are hereby set aside. The appellant is found not guilty for the offence u/s 302 of IPC and he is acquitted of the same. He shall be set at liberty forthwith, if not required in any other crime. The fine amount, if any, paid by the appellant/A1 shall be refunded.