
(2013) 12 KAR CK 0457
In the Karnataka High Court
Case No : Criminal Appeal 3641 of 2010

State-by Wadi Police Station

APPELLANT

Vs

Iswar

RESPONDENT

Date of Decision : 03-12-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2013) 12 KAR CK 0457

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : Sanjay A. Patil, Addl. SPP, for the Appellant; Sharanagouda V. Patil, for the Respondent

Final Decision : Dismissed

Judgement

Huluvadi G. Ramesh, J.—Appeal is by the State challenging the order of acquittal passed by the IV Addl. Sessions Judge, Gulbarga in SC 39/2009 on 26.3.2010). Accused being the husband of the deceased was charge sheeted for the offence under S. 498A and 306, IPC on the complaint filed by one Amaresh, the younger brother of the deceased Padmavati that his sister was given in marriage about three years prior to the incident. Out of the wedlock there was a child born. When Padmavati was leading her life in the matrimonial home doing her daily work, it is alleged, accused used to abuse and assault demanding additional dowry and insulting her and this was informed to him by her sister whenever she visited the house of the complainant. Despite advice by the parents and other relatives not to ill-treat the deceased, accused continued to ill-treat her. On 1.2.2008 around 4:30 p.m. it is alleged, Padmavati being unable to tolerate the ill-treatment meted out to her, committed suicide by pouring kerosene on her body and lit fire herself. Thereafter, the villagers shifted her to Government Hospital. While under treatment, on 15.2.2008 around 8.00 p.m., she succumbed to the injuries. A case came to be registered in Crime 19/2008 and police, after investigation, filed charge sheet. During the course of investigation, the

statement of the Taluk Executive Magistrate was recorded and the dying declaration of the deceased was also recorded. Charges were framed against the accused for the offence under S. 498A and 306, IPC. Since the accused pleaded not guilty and claimed to be tried, witnesses were examined and certain documents were got marked. Thereafter, accused was examined under S. 313, Cr.P.C.. His defense was total denial. The reasoning given by the trial court while acquitting the accused is, the deceased had given a dying declaration before the Taluk Executive Magistrate as per which, there is no such alleged harassment as against the accused or any other person. However, on the ground that there is positive evidence on record of other witnesses, this appeal is filed by the State urging various grounds.

2. Heard the counsel representing the counsel.

3. After hearing the arguments, the points that arise for consideration are:

Whether the deceased Padmavathi committed suicide being unable to tolerate the ill-treatment meted out to her in the matrimonial house by the accused demanding dowry and due to assault and abuse;

Whether the prosecution is able to prove the case against the accused beyond reasonable doubt;

Whether the trial court is justified in acquitting the accused;

What order.

4. So far as the evidence of the complainant who is the brother of the deceased is concerned, he has deposed to the effect as is stated in the complaint. However, as could be seen from the evidence of B Sharanappa, Tahsildar, at the request of PSI, Wadi to record the dying declaration, he went along with the medical officer of government hospital to Burns Ward and found Padmavati mentally fit and she gave a statement before him which was recorded in the form of dying declaration at Ex. P2. The inquest was conducted in the presence of panchas and the dead body was identified as that of deceased Padmavati. It is also noted during inquest, statement of PW 5 was recorded and he has admitted, so also PW 2, that Padmavati was attacked by evil power like Banamati and due to illusions she herself set fire and committed suicide. The deceased has admitted, except herself, nobody is responsible for her death. The evidence of Dr. Devendra is to the effect that he conducted post mortem on the deceased and she had sustained 95% burns all over the body and also pus formation was there. The cause of death was due to cardio-respiratory failure as a result of septicemia. The evidence of PW 5 Amaresh, brother of the deceased is to the effect that accused was addicted to drinks and demanding money from the deceased as she was earning wages. According to this witness, his sister has disclosed about the ill-treatment meted out to her by the accused due to which, she committed suicide by pouring kerosene on her. However, he has admitted that his sister was suffering from illusion of evil power i.e., banamathi. However,

the suggestion that there is no ill-treatment or harassment by the accused has been denied. PW 6 is the mother of the deceased. She has also spoken about the ill-treatment meted, out to the deceased by the accused and also advised the accused not to ill-treat and assault the deceased. She came to the hospital and identified that Padmavathi was under treatment due to burn injuries. PW9 is the ASI/police witness regarding recording of the statement by the Tahsildar and also had requested the Tahsildar to conduct inquest on the dead body of Padmavathi. PW 10 is the owner of the adjacent house to speak about the accused and his wife. She has turned hostile, so also PW 11 - Dasharath. PW 14/PSI has conducted further investigation. Ultimately, it is seen, as against the evidence of the complainant and his mother, what is not in dispute is there was burn injuries inflicted on the deceased to the extent of 95%. The police gave a requisition to the Taluk Executive Magistrate to record the dying declaration. There are said to be eye witnesses to the incident who have not supported the version of the prosecution to the extent of accused assaulting or abusing the deceased under intoxication. However, the dying declaration which is a part of investigation and vital material depicts the fact that the deceased was afflicted by witch craft/banamati and might be her mental condition was inconsistent/wavering and ultimately she decided to put an end to her life by committing suicide. It is her statement, nobody is responsible or cause for her death. When two views are possible and material is available on record directly from the mouth of the deceased who was conscious though she had sustained 95% burns, it could be considered favourably so as not to deny justice to the accused i.e., to say when material is available on record to prove the innocence of the accused although some evidence is deposed against the accused, nothing remains to complain against the accused despite some oral evidence on record. In that view of the matter, rightly the trial court acquitted the accused holding that deceased committed suicide due to the impact of evil spirit on her, having lost mental balance. The appeal deserves to be dismissed. While upholding the order of acquittal passed by the Sessions Court, the appeal is dismissed. The bail bond, if any executed stands cancelled.