

(2011) 09 AP CK 0102

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1315 of 2006

The State of AP

APPELLANT

Vs

Kalidindi Sahadevudu and 3-Ors

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 174

Evidence Act, 1872 — Section 32

Penal Code, 1860 (IPC) — Section 107, 306, 34, 498A

Citation : (2012) 2 ALD(Cri) 113 : (2012) 2 ALT(Cri) 115 : (2012) CriLJ 2302

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : M. Lakshmana Sharma, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This Criminal Appeal is filed by the State against the Judgment dated 01-4-2004 passed by the Assistant Sessions Judge, Peddapuram, East Godavari district, in SC. No. 85 of 2002 acquitting the respondents-accused for the offences u/s 498-A, 306 read with section 34 of IPC. Heard the learned Additional Public Prosecutor representing the State-appellant and Sri M. Lakshmana Sharma, the learned counsel appearing for the respondents-accused.

2. The brief facts leading to the filing of this appeal may be stated as follows :

The marriage of Kalidindi Chinnathalli @ Simhachalam, hereinafter called as the "deceased" was performed three years prior to her death with A-1. A-2 is the father of A-1. A-3 and A-4 are the sisters of A-1. The deceased is no other than the sister's daughter of A-2, who was married to A-1.

According to the prosecution, at the time of marriage, the parents of the deceased agreed to pay dowry of Rs.6000/-before the elders, paid an amount of Rs.3000/-and subsequently it is said that A-1 to A-4 were harassing the

deceased to get the balance amount of dowry. It was further alleged by the prosecution that as the deceased did not beget children for a period of three years after the marriage, they were harassing the deceased by calling her "barren woman". It was further alleged that there used to be quarrels between the deceased and A-1 due to which the deceased came back to her parents house and subsequently she was taken by A-1 to his house during which time the parents of the deceased advised A-1 and the deceased to live peacefully without quarrel.

According to the prosecution on 05-11-2000 at 09:00 p.m., A-1 called the deceased for pressing the harvested tobacco and the deceased did not attend the said work, as she was suffering from fever. As per the prosecution version, A-1 and A-2 insulted the deceased by calling her as "barren woman".

That on the morning of 06-11-2000, A-1 and A-2 again harassed the deceased by calling her as "barren woman" due to which she suffered mental agony, poured kerosene on her body and set herself on fire with a view to commit suicide. She sustained severe injuries and was admitted in Government Hospital, Kakinada on the same day. Subsequently on 12-11-2000 at about

08:10 a.m. the deceased died in the hospital of burn injuries while undergoing treatment.

That on 07-11-2000 at about 12:30 p.m., PW-11 the Head Constable of Kakinada I-Town Police Station on receiving the intimation from the Hospital authorities rushed to the hospital and basing on the statement of the deceased registered a case in Crime No. 102 of 2000 but subsequently the case was transferred to Jaggampet Police Station on the point of jurisdiction and the subsequent investigation was taken up by the Police Jaggampet. PW-15 the Sub-Inspector of Police altered the section of law in the FIR from woman burns to section 174 Cr.P.C. and then to sections 306, 498-A r/w section 34 of IPC.

3. Before the learned trial Court, the prosecution in order to prove the guilt of the respondents-accused examined PWs 1 to 15 and marked Exs.P-1 to P22 besides MOs-1 to 3. The respondents-accused did not propose to examine any defence witnesses but marked Exs.D-1 to D-5 contradictions.

4. The learned trial Court upon considering the evidence on record acquitted the respondents-accused for the offences u/s 306, 498-A/IPC read with section 34 IPC.

5. Assailing the said order of acquittal, the State preferred the present criminal appeal.

6. PW-1 the father of the deceased stated in his evidence about settling the dowry relating to the marriage of the deceased with A-1 at Rs.6000/-and his paying Rs.3000/-. He also stated about the respondents-accused harassing the deceased for the balance of dowry amount and also insulting her on the ground that she was "issueless". PW-2 the mother of the deceased though stated about

the payment of dowry, her version is that it was paid in the presence of village elders but she was not present at the time when the dowry was paid. According to her, the promise for payment of balance of dowry amount was also in the presence of the elders. PW-3 the sister of the deceased also supported the version of PWs 1 and 2 on the aspect of dowry. PW-8 another sister of the deceased did not state about having any personal knowledge regarding payment of dowry at the time of marriage and also regarding the respondents-accused demanding additional dowry.

7. The independent witnesses; namely, PWs 4, 5 and 6 did not support the prosecution version and they were treated hostile by the prosecution.

8. The learned trial court considering the facts namely that though according to PW-2 the dowry amount was settled, it was paid in the presence of elders and also the balance amount of dowry was agreed to be paid in the presence of elders, none of the elders were examined by the prosecution to prove the said fact thought it is quite unsafe to rely on the testimony of PWs 1 to 3 and 8, who are the parents and sister of the deceased. The learned trial Court also took into consideration the evidence of PW-6, who according to the prosecution came along with A-1 to the house of PW-1 to take the deceased back to the house of A-1 not supporting the prosecution version. The learned trial court further took into consideration the fact that the marriages of A-3 and A-4 were performed about ten years prior to the incident and they were staying at their in-laws house and it is quite unusual to allege against them that they have been constantly harassing the deceased to get additional dowry or on the ground that she was not be getting children.

9. The crucial points considered by the trial court were that Ex.P6 dying declaration recorded by PW-9 the learned Magistrate on 07-11-2000 does not contain anything about either payment of dowry or demanding additional dowry. Similarly Ex.P8 is the statement of the deceased recorded by PW-11 Head Constable I-Town Police Station, Kakinada on the intimation sent by the authorities of the Government Hospital, Kakinada. The said statement also does not disclose anything about the dowry aspect. Ex.P-12 the statement of the deceased, which was recorded by PW-11 the Head constable, Jaggampet Police Station, during the course of investigation though reveals about the payment of dowry of Rs.3000/-by the parents but it does not contain anything about the settlement of dowry at Rs.6000/-and also any promise made by PW-1 for payment of the balance of dowry amount. All the statements do not contain the fact that the respondents were harassing the deceased with a demand to get the balance amount of dowry.

10. Exs. P-6, P-8 and P-9 are the statements of the deceased relating to cause of her death or the circumstances, which ultimately resulted in her death. They are admissible u/s 32 of the Indian Evidence Act. If really there is any harassment in connection with dowry or payment of balance of dowry amount, certainly the deceased would have mentioned the same in the said statements. Since the said

element is conspicuously absent in all these statements. It can be certainly said that the oral evidence of PWs 1 to 3 and 8 given before the learned trial court is inconsistent with all the statements of the deceased and therefore, the learned trial court rightly disbelieved the version of PWs 1 to 3 and 8 on the aspect of dowry.

11. The next question requires consideration is whether the respondents-accused harassed the deceased by calling her "issueless" ? The basic version of the prosecution is that they were harassing the deceased on the ground that she was issueless, she became vexed with the harassment and ultimately resorted to commit suicide and thereby they are liable for punishment for the offences u/s 306, 498-A read with 34 of IPC.

12. In this context, it is necessary to consider certain aspects in the evidence of the prime witnesses of the prosecution. PW-1 stated in his evidence before the trial Court that on 12-11-2000 when he enquired the deceased as to the cause of her condition she informed that she slept during the night of incident and did not know what happened and saying the said words she died. In his evidence in the cross-examination, PW-1 stated that A-1 to A-4 and A-1's brother and their wives, all of them poured kerosene on the deceased and set her on fire. But he did not state the same before the police as is evident from Ex.D-1 contradiction. In his statement before the Police he stated that the deceased committed suicide by pouring kerosene and setting herself on fire on the ground of harassment caused by the respondents-accused. PW-2 stated in her evidence that she did not ask the deceased after she found her with burns in the hospital as to how the incident happened. But her evidence before the court is that the accused and his family members are responsible for the death of the deceased. She also stated that all the family members of the accused poured kerosene and set her on fire. This is the version given by her in the cross-examination. Ex.D-2 contradiction reveals that while she was examined, she stated that the deceased died by committing suicide having vexed with the ill-treatment in the hands of A-1 and A-2. PW-3 gave the same evidence before the trial court on this aspect she also stated before the police while he was examined u/s 161 Cr.P.C. that the deceased committed suicide, which is evident from Ex.D-4 contradiction marked in her statement. The evidence of PW-8, which is also, same on this aspect was not believed by the learned trial court because she also stated before the police while she was examined u/s 161 Cr.P.C. that the deceased committed suicide as found in Ex.D-1 contradiction. Before the trial court her evidence is that A-1 to A-4 poured kerosene and set her on fire.

13. The learned trial court thus while evaluating the evidence of PWs 1 to 3 and 8 found that their version is highly inconsistent and untrustworthy and thus rightly disbelieved about the harassment caused by them and expressed the view that the evidence is not convincing and no reliance can be placed on the evidence of the said witnesses.

14. The most crucial aspect which requires consideration is whether the contents

of Ex.P-6 dying declaration of the deceased recorded by PW-9 the learned Magistrate coupled with the version of PWs 1 to 3 and 8 on the issue that the first respondent, who is the husband of the deceased was harassing her on the ground that she was not be getting children and on account of the same the deceased on the night of the incident at about 10:30 p.m. poured kerosene over her body and set herself on fire and thereby whether the first respondent is liable for punishment u/s 498-A, 306 r/w section 34 IPC. The evidence of PW-9, the learned Magistrate and the contents of Ex.P6 clearly reveal that the Magistrate took all necessary precautions and obtained certification from the Medical Officer that the deceased is conscious and was in a fit state of mind to give the statement. The Magistrate himself also was satisfied about the fitness of the state of mind of the deceased to give statement. In Ex.P6 dying declaration the Magistrate has specifically mentioned that the deceased was conscious, coherent and is in fit statement of mind to give the statement. He arrived at the said decision by conducting preliminary examination, which is mentioned in Ex.P6 dying declaration recorded by him. The dying declaration shows that the deceased stated to him that she was married three years ago, she had no children and that her husband and in-laws were feeling said about it and she was not leading happy marital life since her marriage her husband who is the first accused used to say something against her and there used to be quarrel between both of them. On the evening of the date of incident, there was a quarrel between her and the first accused in the course of which she said that every body was saying that she had no children then the first accused replied that not only others he would also say that she was not begetting the children. So the deceased felt insulted and thought that she could not live like a "barren woman" poured kerosene on her body and set herself on fire. While she was caught in the flames her brother-in-law who was residing by the side of their house came and put-off the flames and subsequently her husband and her mother-in-law took her to the hospital. That she poured kerosene and set herself on fire with a view to die.

15. Now the question requires consideration is whether even the entire dying declaration given by the deceased to PW-9, the learned Magistrate is true ? whether it attracts the offence punishable u/s 498-A and 306 IPC.

16. Mere commenting on the ground that the deceased was not begetting children does not amount to subjecting the deceased to cruelty within the meaning of section 498-A IPC. In the explanation (a) of Section 498-A IPC cruelty is defined in the following manner :

(a) any 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 o life, limb or health (whether mental or physical) of the woman.

Even if the first accused was saying that the deceased was not begetting children, it cannot be said that utterance of such words does amount to wilful conduct since he never thought that by uttering such words there was likelihood

of the deceased committing suicide.

17. The conduct of the first accused also does not attract the offence of abetment to commit suicide because by mere calling the deceased that she was not begetting children the first accused never thought that on account of those words the deceased would commit suicide. The deceased said in Ex.P6 as she was not begetting children, her husband and his family members were feeling sad about it on account of the said issue the deceased became emotional and resorted to commit suicide. From the said situation it is not possible to infer the act of abetment of her husband or the relatives of the husband for committing suicide by her. Unless the ingredients of section 107 of IPC are satisfied it is not possible to convict a person for committing abetment to commit suicide, which is punishable u/s 306 of IPC.

18. In the instant case, the ingredients of the said offence are totally absent. The learned trial Court therefore rightly appreciated the evidence on record and held that the respondents-accused are not liable for punishment u/s 306, 498-A r/w section 34 of IPC and acquitted them of all the offences.

19. In an appeal against acquittal, this Court will not reverse the findings of the trial court even if another view is possible from the evidence. This Court will only interfere if the findings of acquittal recorded by the trial court are not either based on evidence or they are perverse. In the instant case, I am of the considered view that the trial Court recorded the findings by properly appreciating evidence on careful analysis of the same, the said findings is not call for any interference in this appeal. For the foregoing reasons, the judgment passed by the learned Assistant Sessions Judge acquitting the respondents for the offences u/s 306, 498-A IPC read with section 34 of IPC is confirmed. The appeal preferred by the State against the acquittal is dismissed.