

(2006) 01 AP CK 0008
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 1515 of 1998

Vadala Vinay Kumar

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 02-01-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2006) 1 ALD(Cri) 530 : (2006) 1 ALT(Cri) 437 : (2006) 1 APLJ 375 :
(2006) CriLJ 1710 : (2006) 3 RCR(Criminal) 394

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : A. Prabhakar Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Gopala Krishna Tamada, J.—The appellant herein was tried in Sessions Case No. 8 of 1996, by the learned I-Additional Sessions Judge, Ranga Reddy District at Saroornagar, Hyderabad, for the alleged offences punishable under Sections 306 and 498A of the Indian Penal Code (for brevity "IPC"). The learned Judge, having scanned the entire evidence on record, acquitted the appellant of the charge punishable u/s 306, IPC, but found him guilty of the offence punishable u/s 498-A, IPC and accordingly sentenced him to suffer rigorous imprisonment for a period of one year and also to pay a fine of Rs. 1500/-, in default, to suffer rigorous imprisonment for a period of one month. As against the conviction, the appellant has preferred this criminal appeal.

2. The substance of the charges, framed against the appellant by the learned I-Additional Sessions Judge, are as follows:

That you the accused being the husband of the deceased namely, Smt. Vanaja, subsequent to 1995, subjected your wife to cruelty, mentally and physically because the deceased questioned about your bad habit of consuming alcohol and

stopping practice as Advocate and concentrating upon the B.J.P. Activities and on the intervening night of 19/20-10-1994, you the accused, also did not allow your wife to sleep till late night and during that process, you also ill-treated her and also beat her with sticks and pulled out her Mangalasutram from her neck with the intention of driving the deceased to commit suicide and in other words you abetted her to commit suicide and those acts were sufficient for her to do so and accordingly, she poured kerosene and set fire herself in the kitchen room of the house during the early hours of 20-10-1994 and subsequently, she succumbed to the burns in Gandhi Hospital, Secunderabad where she was taken and thereby committed an offence punishable u/s 306, IPC and within my cognizance.

That you the accused at the same time and place as mentioned under charge No. 1 harassed your wife Smt. Vanaja mentally and physically because she (your wife) questioned about your habit of consuming alcohol and stopping practice as Advocate and concentrating upon the B.J.P. of activities and on the intervening night of 19/20-10-1994, you the accused also did not allow your wife to sleep till late night and during the process, you also ill-treated her and also beat her with stick and pulled out her Mangalasutram from her neck with the intention of driving the deceased to commit suicide and those acts drove her to commit suicide and according to herself on the early hours of 20-10-1994 which led to her death later on in the Gandhi Hospital, Secunderabad and thereby committed an offence punishable u/s 498-A of the Indian Penal Code and within my cognizance.

3. The case of the prosecution, in brief, is that Smt. Vanaja (hereinafter, referred to as "deceased") is the wife of the accused. P.Ws. 1 and 2 are the parents of the deceased. P.Ws. 3 to 6 and P.W. 10 are the sisters and brothers of the deceased. P.Ws. 7 and 8 are the children of the deceased and the accused. The marriage of the accused with the deceased was solemnized eight years prior to the date of offence and on account of their happy marital life for about 5 or 6 years, they were blessed with two children who are P.Ws. 7 and 8. The accused was practising as an Advocate. Later, he was addicted to drinking and was ill-treating the deceased by beating and insulting her.

4. On the intervening night of 19/20-10-1994, the accused, who was in a drunken state, picked up a quarrel with the deceased and beat her and on account of the same, she set herself ablaze at about 6 a.m. on 20-10-1994. The accused immediately poured water and tried to extinguish the fire and thereafter, he himself took the deceased to the hospital with the help of P.W. 9. On receipt of information about the burns case from the hospital, the Sub-Inspector of Police, who was examined as P.W. 14, visited Gandhi Hospital, Secunderabad, and sent a requisition to the Additional Judicial First Class Magistrate, West and South, Kothapet, to record her Dying Declaration. On the basis of the requisition, he went to the hospital and recorded the Dying Declaration of the deceased, which was marked as Ex. P. 10. The learned Magistrate was examined as P.W. 15. While undergoing treatment, the deceased succumbed due to the burn injuries,

on the same day at 4.50 p.m. The father of the deceased, P.W. 1 gave a report at about 9 p.m. on the same day and it was marked as Ex. P. 1. Based on the said report, a case in Crime No. 86 of 1994 was registered for the offence punishable u/s 174, Cr.P.C. and issued First Information Report (F.I.R.) to all concerned and the F.I.R. was marked as Ex. P-7.

5. P.W. 14 Sub-Inspector of Police held inquest over the dead body of the deceased at Gandhi Hospital, Secunderabad, itself in the presence of P.W. 12 and another and the inquest report was marked as Ex. P-6. Thereafter, he examined P.Ws. 1 to 10 and recorded their statements, and accordingly, he altered the section of law from Section 174, Cr. P.C. to Sections 498-A and 306, IPC. On a requisition, the Professor of Forensic Medicine, Gandhi Medical College, who was examined as P.W. 11, conducted autopsy over the dead body of the deceased and issued post-mortem Certificate and the same was marked as Ex. P. 5. According to him, the death was on account of severe burn injuries. On 25-10-1994, the accused was arrested and immediately thereafter, he was remanded to judicial custody. After investigation, the Circle Inspector of Police i.e., P.W. 16 filed the charge-sheet.

6. In order to bring home the guilt of the accused, the prosecution examined P.Ws. 1 to 16 and marked Exs. P-1 to P-11. As observed supra, the learned Judge, while acquitting the accused of the charge punishable u/s 306, IPC, found him guilty of the offence punishable u/s 498-A, IPC.

7. Heard the learned Counsel for the appellant and the learned Additional Public Prosecutor.

8. The main contention of the learned Counsel for the appellant Sri A. Prabhakara Rao, is that the Court below did not rightly appreciate the evidence of the prosecution witnesses in holding that the appellant is guilty of an offence punishable u/s 498-A, IPC. According to him, except the bald allegation that there was harassment, none of the prosecution witnesses stated anything about the alleged harassment to attract the provisions of Section 498-A, IPC. The learned Counsel has further drawn my attention to Ex. P-7-F.I.R. as well as Ex. P-10-Requisition Letter, given to the Judicial First Class Magistrate and contended before this Court that the prosecution has not come up with true version.

9. In the light of the submissions made by the learned Counsel for the appellant, this Court has looked into Exs. P-7 and P-10. As seen from Column 3(b) -- Occurrence of offence in Ex. P-7-F.I.R., it is clear that the day and date are mentioned as "Thursday, 20-10-1994" and the time is mentioned as "5.30 hours" and in Column 3(c)--Information Received at the Police Station, it is mentioned as "Date 20-10-994, Time 21 hours G.D. No. 178.

10. From the above what is to be inferred is that the alleged offence took place at 5.30 A.M. i.e. early hours of 20-10-994 and the report was given by P.W. 1 -G. Venkateswara Roa, who is the father of the deceased at 9"O clock in the night. When we look at Ex. P-10-Requisition Letter of Sub-Inspector of Police,

Nacharam Police Station, addressed to the Additional Judicial First Class Magistrate, the crime number i.e., Cr. No. 86 of 1994 was mentioned, but in the bottom of Ex. P-10, the endorsement of P.W. 15 shows that he received Ex. P-10 at 10.30 a.m. on the same day. If really it is a fact that the crime was registered at 9 p.m. on 20-10-1994 as evinced in Ex. P-7, it is curious to note that how the police gave the reference of the said crime in the requisition made to P.W. 15, who received the requisition letter at 10.30 a.m.

11. From the. above, it appears that there is something wrong with the investigation made by the police officials. In fact, the learned trial Judge also held that there was something wrong with the investigation made by the police officials. No doubt, that alone may not be taken into consideration provided there is impeaching evidence to establish that the deceased was harassed for dowry before she committed suicide.

12. To establish the said factum, the prosecution pressed into service the parents of the deceased, who were examined as P.Ws, 1 and 2 and the sisters and brothers who were examined as P.Ws. 3 to 6 and 10. Hence, this Court has looked into the evidence of these witnesses.

13. In the entire evidence of P.Ws. 1 and 2, what is stated by them is "Then, the deceased informed us about the ill-treatment and the behaviour of the accused". Nothing was spoken as to what was that ill-treatment and the behaviour of the appellant. The allegation made in the complaint is that the appellant evinced interest in political activities and was addicted to alcohol and used to ill-treat the deceased by beating, insulting and demanding her to bring the money. But, the said allegation, in my considered view, appears to be omnibus. May be he was evincing interest in political activities and addicted to alcohol and ill-treating the deceased by beating. But, that is not sufficient requirement to attract the provisions of Section 498-A, IPC. According to Section 498-A, IPC the Wife must have been subjected to cruelty and the cruelty must be as defined in Clause (a) and (b) of the Explanation to Section 498-A, IPC. As already observed, the ill-treatment of the appellant should come within the meaning of cruelty and has to be sound, hence, I am of the considered view that evincing Interest in political activities, and the omnibus allegation such as, the appellant was ill-treating the deceased by beating, insulting and demanding her to bring money, would not come within the meaning of Cruelty as defined u/s 498-A, IPC in any marital life, It cannot be said that there was total harmony and it is not uncommon between the wife and husband to have some petty quarrels, which in my considered view, cannot be termed as "cruelty" to attract the provisions of Section 498-A, IPC.

14. Something more than that shall be established by the prosecution to make the Court to believe that the appellant was guilty of the offence punishable u/s 498-A, IPC, Similar is the evidence of P.Ws. 3 to 6 and 10, who are the sisters and brothers of the deceased.

15. From a perusal of the said evidence let in by the prosecution, I am of the

considered view that it is not possible to hold that the appellant harassed the deceased for additional dowry and as such he was guilty of the offence punishable u/s 498-A IPC. Further, if really there was harassment for additional dowry, the deceased would not have missed to state in Ex. P-11 -Dying Declaration about the harassment. In Ex. P-11, recorded by P.W. 15, what was stated by the deceased on her own version is that she caught fire. No-where in the entire Dying Declaration, she stated anything about the alleged harassment for additional dowry. Non-mentioning anything about the alleged harassment in the Dying Declaration is also a factor, which goes to the route against the case of the prosecution.

16. For the above reasons, this Court is of the view that the learned Judge erred in coming to the conclusion that the appellant was guilty of the offence punishable u/s 498-A, IPC.

17. Accordingly, the Criminal Appeal is allowed and the conviction and sentence imposed by the Court below are hereby set aside and the appellant is acquitted of the charge punishable u/s 498-A, IPC. In the light of the acquittal recorded by this Court, the fine amount, if any paid by the appellant, shall be refunded to him.