
(2004) 09 AP CK 0131

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1439 of 1998

Veerla Venkateswera Rao and Another

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Criminal Rules of Practice and Circular Orders, 1990 — Rule 58
Penal Code, 1860 (IPC) — Section 306, 498A

Citation : (2005) 1 ALT(Cri) 305 : (2005) 1 DMC 845

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : T. Pradyumna Kumar Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Accused 1 and 2 in S.C. No. 55 of 1995 on the file of Sessions Judge, Mahila Court, Vijayawada, preferred the present criminal appeal as against the judgment dated 15.10.1998.

2. The accused were found guilty of the offence punishable u/s 306 of the Indian Penal Code (for short "I.P.C.") and the first accused was sentenced to undergo rigorous imprisonment for a period of three years and in addition to it, to pay a fine of Rs. 5,000/- (rupees five thousand) and in default of payment of fine to undergo simple imprisonment for a period of six months and the second accused to undergo simple imprisonment for a period of one year. The S.I. of police, Thotlavalluru police station, filed charge-sheet against appellants/A1 and A2 alleging that due to the harassment caused by the appellants Padma Kumari-the second wife of first accused committed suicide by burning herself on 3.5.1995 at 9 p.m. The learned V. Metropolitan Magistrate, Vijayawada, registered the same as PRC No. 11/94 and the same was committed to the Court of Session at the Metropolitan Sessions Judge, Vijayawada and the same was transferred to Sessions Judge, Mahila Court, Vijayawada and the learned Judge recorded the

evidence of P.W. 1 to P.W. 11 and marked Exs. P1 to P11 and also M.Os. 1 to 3 and convicted and sentenced the accused as referred to supra.

3. Mr. Pradyumna Kumar Reddy, the learned Counsel representing the appellants would submit that the very cause of death had not been established and hence it is futile on the part of the prosecution to contend that the ingredients of Section 306, I.P.C. had been established. The learned Counsel also would contend that Ex. P8 the post-mortem certificate was not marked through any witness and how this document was brought on record is to be explained by the prosecution. The learned Counsel also would submit that the same was not marked through the investigating officer, but simply the investigating officer deposed about the post-mortem report and nothing more. The doctor who issued the postmortem certificate or at least some other doctor acquainted with the signature had not been examined and hence the very cause of death had not been established by the prosecution. The learned Counsel also would submit that P.W. 4 and P.W. 5 were declared hostile and the evidence of P.W. 3 the mother of the deceased alone is available on the record and apart from this aspect of the matter, even if Ex. P5 is carefully scrutinized, there is nothing to suggest that the ingredients of Section 306, I.P.C. had been attracted and this is the statement of dying declaration said to have been recorded by the Head Constable-P.W. 10. The learned Counsel also would point out that the very framing of the charge that "A1 having married the said Veerla Padma Kumari suppressing the fact that A1 already was married to A2" itself is a defective charge since it is contrary to the very version of the prosecution. The learned Counsel would conclude that on the strength of such evidence, the conviction recorded and the sentence imposed definitely cannot be sustained.

4. Per contra, the learned Additional Public Prosecutor would contend that even in the absence of medical evidence, the evidence of P.W. 3 is natural and apart from this aspect of the matter, P.W. 10 had recorded Ex. P5 wherein it was specifically stated by the deceased that she was vexed with the life, went into house and poured kerosene and lit fire. The learned Additional Public Prosecutor also would explain that in Ex. P5 it was clearly stated that the husband and the step-wife (first wife) of the deceased beaten her and abused her. This would be sufficient to sustain conviction u/s 306, I.P.C.

5. Heard the Counsel and also perused the findings recorded by the learned Judge and the evidence available on record.

6. The prosecution version in nutshell is as hereunder:

"The accused are residents of Garikaparru village. They are wife and husband. A1 again married the deceased at Lord Venkateswara Temple in Mantada about 8 years prior to her death. Both of them married without informing their family members. Even by the time of marriage the deceased was pregnant. Out of their wedlock two children were born. As A1 was coming home in drunken state and beat the deceased, P.W. 3 the mother of the deceased sent them from her house.

A1 and the deceased were living separately. But the children were with the P.W. 3. One day P.W. 3 went to the house of the deceased and saw A1 beating the deceased, when enquired the deceased informed that A1 was beating her and demanding to bring money from P.W. 3. When P.W. 3 asked the deceased to come to her home she refused. On the same day at about 9 p.m., one person came and informed P.W. 3 that the deceased was in flames and that A1 took her to the Government Hospital, Kataru. Immediately P.W. 3 and her husband went to the hospital. Then the deceased was shifted to the Government Hospital, Vijayawada. The deceased was able to speak and when P.W. 3 tried to speak with the deceased, A1 prevented her by putting his hand on the mouth of the deceased. On 4.5.1994 at about 10:20 a.m. the doctor sent Ex. P7 the medical intimation to the police. P.W. 10-Head Constable, Thotlavalur Police Station received a phone from the hospital. Immediately he proceeded to the hospital and sent away all the persons who were near her and recorded the statement of the deceased between 2:30 p.m. and 3 p.m. and Ex. P5 is the statement. Then P.W. 10 registered it as Crime No. 13 of 1994 u/s 498-A, I.P.C and issued Express, FIRs and Ex. P6 is the FIR sent to the Court. P.W. 11 S.I. of Police, Thotlavalluru Police Station, took up investigation and visited University General Hospital, Vijayawada and examined the deceased and one China Pitchaiah and recorded their statements. Then he proceeded to the Garikaparru village and prepared observation report Ex. P3. He also seized M.Os. 1 to 3 and prepared Ex. P9 rough sketch.

On 7.5.1994 at about 2:45 a.m., the deceased died in hospital. P.W. 11 S.I. on receiving the death intimation altered the section of law to 306, I.P.C. Ex. P11 is the altered FIR. P.W. 11 S.I. held inquest over the dead body of the deceased between 2 p.m. and 4 p.m. on 7.5.1994 and Ex. P4 is the inquest report. During the inquest P.Ws. 1 to 3 were examined and their statements were recorded. On 18.4.1994 the accused were arrested and after completing the investigation P.W. 11 filed the charge-sheet on 12.7.1994."

7. In support of its case, the prosecution examined P.W. 1 to P.W. 11 and marked Ex. P1 to 11, M.Os. 1 to 14.

8. The plea of the accused is one of denial.

9. It may be appropriate to have a look at the charge framed which reads as hereunder.

"That on the 3rd day of May, 1994 at about 9 p.m. at the house of deceased Veerla Padma Kumari situated in Garikaparru village, the said Veerla Padma Kumari committed suicide by setting fire to herself and that A.1 of you, having married the said Veerla Padma Kumari suppressing the fact that you (A.1) of you were already married to A.2 of you, and A.2 of you abetted the said commission of suicide by beating her and insisting her to go away along with her two children, and that you (A1 and A2) thereby committed an offence punishable u/s 306 of the Indian Penal Code and within my cognizance.

11. No doubt, submissions were made by both the Counsel that the charge itself is defective since it is contrary to the version of the prosecution on one hand and on the contra the learned Addl. Public Prosecutor contends that it cannot be a ground for recording an acquittal.

12. Be that as it may, the evidence of P.W. 10 is that he is working as Head Constable in Thotlavallur Police Station since 2.3.1993 and he was in-charge of the police station from 3.5.1993. On 4.5.1993 he received a phone message from the Government Hospital. He went there and found the deceased who was with burn injuries and he sent all the persons who were near the deceased and recorded her statement between 2:30 p.m. and 3 p.m. Ex. P5 is the said statement and he registered Ex. P5 as in Crime No. 13/94 u/s 498-A, I.P.C. He submitted the FIR Ex. P6 to the Court and copies of the same to all the concerned officials and handed over the station FIR to the S.I. of police. Ex. P5 said to have been recorded by P.W. 10, which reads as hereunder

"My native place is Garikaparru village and I live by doing coolie works. My husband got first wife and children. Her name is Veerla Papamma. I got two male children. My husband is living with Veerla Papamma, and he did not look after me. Well every day he used to beat and harass me. On 3.5.194 night-time at about 9 O'clock my husband and step wife (first wife) by name Papamma beat and abused me. I controlled myself. At night, when all are sleeping, vexed on my life, went into the house and poured kerosene on myself and lit fire. On that, my husband took me to the Government Hospital of Vuyyuru in rickshaw and admitted me. I request to take necessary action against my husband and step wife (first wife) Papamma. When the police people asked I said the facts happened. Heard by read over and found correct.

13. P.W. 11 is the S.I. of police, who had deposed about his taking up of the investigating and visiting the scene of offence. Ex. P3 is the observation report drafted by him and M.Os. 1 to 3 are the objects which were seized at that time and he prepared Ex. P9 the rough sketch of the scene of incident and examined P.W. 4 and 3 others and recorded their statements. On receiving the death intimation on 7.5.1994, he altered the section of law by adding Section 306, I.P.C. Ex. P10 is the death intimation received by him. Ex. P11 is the altered FIR and he issued a requisition to the MRO to hold an inquest over the dead body and he visited the Government Hospital and examined PW. 3, P.W. 1 and P.W. 2 at the time of inquest and recorded their statements. On 18.5.1994 he arrested A1 and A2 and on 19.5.1994 forwarded the accused to judicial custody. This witness simply deposed that after receiving the post-mortem certificate, he filed charge sheet on 12.7.1994. The CI of police verified the C.D. file maintained by him. This witness was cross-examined and certain omissions were put to this witness.

14. As can be seen from the material available on record, Ex. P8 the postmortem certificate is shown to have been marked. The doctor concerned to Ex. P8 had not been examined nor any other medical evidence was produced in this regard.

On a perusal of the records i.e., on Ex. P8, it is not shown through which witness the same was marked and there was no endorsement made by the Court. Rule 58 of Criminal Rules of Practice, 1990 dealing with marking of exhibits reads:

"Rule 58. Marking of exhibit--(1) Exhibits admitted in evidence shall be marked as follows,

(i) if filed by the prosecution with the capital letter "P" followed by numeral P1, P2, P3 and the like;

(ii) if filed by defence with the capital letter "D" followed by numeral D1, D2, D3 and the like;

(iii) in case of Court exhibits with the capital letter "C" followed by numerals C1, C2, C3 and the like.

(2) All the exhibits filed by the several accused shall be marked consecutively.

All material objects shall be marked in Arabic numbers in continuous sets as M.O. 1, M.O. 2 and M.O. 3 and the like, whether exhibited by the prosecution or the defence or the Court."

While marking the documents, it is needless to say that either the author of the document or at least the person who is acquainted with the signature of the author, who issued such certificate, or at least the same could have been marked through the investigating officer who would have received the same. In the absence on any material available on record, especially on perusal of Ex. P8, this Court is satisfied that Ex. P8 post-mortem certificate was not brought on record in accordance with law since the same was not exhibited in accordance with law nor the same was marked through any of the witness who had been examined. Courts are expected to be careful and cautious while conducting criminal trials and while making very crucial documents like post-mortem reports and postmortem certificates which would be very essential to prove the cause of death in grave crimes. P.W. 4 and P.W. 5 were declared hostile. P.W. 1 deposed that the deceased is the daughter of his younger brother and this witness specifically deposed that though it was within the knowledge of the deceased that A1 was already married, the said marriage was proceeded with. P.W. 2 deposed that the deceased is his niece and she died by pouring kerosene and her husband harassed her. This witness does not know even the name of the husband of the deceased but had deposed that he (A1) married the deceased as his second wife during the life-time of his first wife.

15. P.W. 3 the mother of the deceased no doubt deposed that A1 was beating her daughter and making demands for money and she expressed her inability to give money. On the strength of the evidence of P.W. 3 the learned Additional Public Prosecutor would contend that though the cause of death, as such, had not been clearly established and proved by the prosecution in the absence of any medical evidence especially in relation to Ex. P8, definitely the offence u/s 498-A, I.P.C. had been proved.

16. P.W. 6 deposed about the observation report Ex. P3 and M.O. 1 and M.O. 2 kerosene bottles seized in his presence. P.W. 7 also deposed about M.O. 1 and M.O. 2 and Ex. P3. P.W. 8 deposed in relation to Ex. P4 the inquest report and also deposed that the MRO conducted inquest proceedings. P.W. 9 deposed that he was present at the time of inquest on the dead body of the deceased and Ex. P4 bears his signature. P.W. 10 is the Head Constable and P.W. 11 is the S.I. of police and their evidence had already been discussed supra.

17. The evidence of P.W. is very vague. It is pertinent to note that the evidence on record would clearly disclose that the deceased married A1 knowing that he had already a wife and hence the very framing of the charge no doubt is a defective. Apart from this aspect of the matter, specific charge u/s 498-A had not been framed. Even otherwise, except the evidence of P.W. 3 a vague statement that some money had been demanded, no specific allegation had been made by P.W. 3. Even in Ex. P5, the dying declaration alleged to have been recorded by P.W. 10 of the deceased, no such allegations are there except beating and abusing. Hence, in view of the scant evidence available on record, the alternative submission of the Additional Public Prosecutor that the accused may be convicted u/s 498-A also cannot be accepted. Viewed from any angle the findings recorded by the learned Judge cannot be sustained. Accordingly the said findings are not in conformity with the settled principles of criminal jurisprudence and are liable to be set aside.

18. The appeal shall stand allowed and the conviction and sentence are hereby set aside. The appellants are entitled to the refund of the fine amount. Bail bonds shall stand cancelled.