
(1987) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 307 of 1987

Vungarala Yedukondalu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 16-09-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 498A

Citation : (1987) 2 APLJ 470 : (1988) CriLJ 1538

Hon'ble Judges : Syed Shah Mohammed Quadri, J;K. Amareswari, J

Bench : Division Bench

Advocate : K. Sesharajyam, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Amreswari, J.—The sole accused Yedukondalu in Sessions case No. 61 of 1986 is the appellant before us. He was charged and tried under S. 302, I.P.C. for having caused the death of Voleti Samrajyam by pouring Kerosene and setting fire to her clothes. He was found guilty of the charge and sentenced to suffer imprisonment for life.

2. The case of the Prosecution is that the deceased Voleti Samrajyam is a native of Bapatla. She married her maternal uncle Voleti Venkateswara Rao. They had three female children. Venkateswara Rao died some time in the year 1984. After the death of Venkateswara Rao, the deceased was making her living by selling some groundnuts near Revathi Talkies at Masulipatnam. There she developed illicit intimacy with the accused Yedukondalu and they were living like husband and wife. The deceased and the accused used to quarrel often. On 31-1-1986 also the deceased and the accused had quarrel and in the evening at about 5 p.m. it is said that the appellant poured kerosene on the deceased and set fire to her clothes at her house. The deceased ran out of the house. Then she was taken to the Hospital by P.W. 2 Gadda Koteswaramma and one Jyothi. P.W. 4, the Deputy Civil Surgeon, Government Head Quarters Hospital, Masulipatnam

examined the deceased and found burns all over the body. He issued the wound certificate. He gave the necessary treatment. He made entries in the accident register and sent Ex. P. 3 intimation to the Police and on receiving the same the Assistant Sub Inspector of Police, P.W. 8 came to the Hospital and recorded the statement of the deceased Ex. P-5 at 7.40 p.m.

In the meantime, the III Additional Munsif Magistrate, Masulipatnam also reached the Hospital. He recorded the statement of the deceased at 7.45 p.m. Ex. P. 6. Later, at 8.30 p.m. P.W. 11 the Sub Inspector of Police recorded another statement of the deceased Ex. P. 14. In all the three statements the deceased stated that the appellant poured Kerosene and set fire to her clothes. The deceased died at 8.35 p.m. on 1-2-1986. After receiving the death intimation, the Section was altered to S. 302, I.P.C. under Ex. P-16. The Inspector of Police P.W. 12 took up the investigation on 2-2-1986. He went to the Hospital and examined P.Ws. 1 and 2. He conducted the inquest over the dead body of the deceased. The inquest report is Ex. P-13. He sent the dead body for autopsy. P.W. 5 the Civil Assistant Surgeon Bandar conducted the post mortem and issued the post mortem certificate Ex. P-9. He opined that the death was due to burn injuries. The appellant was arrested on 6-2-1986 at his house at about 8 a.m. by P.W. 12.

As P.W. 12 found burns on the accused, he sent him to the Doctor for examination. Ex. P-10 is the wound certificate. P.W. 6 the Civil Assistant Surgeon of Government Hospital, Bandar examined the appellant. He found him to be having 30% burns. The Doctor opined that the injuries are grievous in nature. The appellant got treated for about a month for his burn injuries. The appellant was treated for 6 weeks in the Hospital. After completing the investigation, the Inspector of Police filed charge-sheet on 29-4-1986. The Prosecution examined 14 witnesses in all and marked Exs. P-1 to P-16 and M.Os. 1 to 8. The appellant had not examined any witnesses or marked any documents.

3. When examined under S. 313, Cr.P.C. the appellant stated that the deceased was a quarrelsome lady, that on 31-1-1986, she quarrelled for some money, that he gave her Rs. 10/-, she was not satisfied, that he slept in the house till 5 p.m. and he woke up on hearing some cries, then he saw the deceased in flames. He tried to rescue her and in that process he received the burnt injuries and by the time he came out after tying a lungi, the deceased was taken to the Hospital by two ladies, that he also went to the Hospital in another Rickshaw. Soon he came to know that he was implicated in the case and out of fear, he went away.

4. The learned Sessions Judge accepted the case of the Prosecution and found the appellant guilty of the charge of murder. He relied upon the evidence of P.Ws. 1 and 2 and the dying declaration Exs. P-5, P-6 and P-14.

5. In this appeal, it is contended by Mrs. K. Sesharajyam, the learned counsel for the appellant that Exs. P-5 and P-14 recorded by the Police Officials do not inspire any confidence, that in Ex. P-5 itself there are indications that the

deceased was bent upon implicating the accused, that Ex. P-14 was brought into existence much later, that it was not supplied to the accused at the time of framing of the charge and the same was given to him 3 months after the charge was framed. She also contended that Ex. P-6 cannot be relied upon as it was not put to the accused in his examination under S. 313, Cr.P.C. and he was not given an opportunity to explain about the contents of Ex. P-6. She urged that P.W. 1 is a child witness and her version that she saw the accused pouring Kerosene on the deceased is a later development. P.W. 2 did not support the prosecution case in its entirety and she was treated as hostile and the testimony of a hostile witness cannot be relied upon.

6. The case of the Prosecution entirely rests upon the three dying declarations Exs. P-5, P-6, P-14 and the evidence of P.Ws. 1 and 2. The controversy lies in a narrow compass. While it is the case of the Prosecution that the appellant poured kerosene and set fire to the clothes of the deceased, it is the case of the appellant that the deceased herself poured kerosene on her and set fire to herself. Thus it is the case of suicide according to the defence and homicide according to the Prosecution. The undisputed facts are that the accused and deceased were living like husband and wife. They used to quarrel often. On 31-1-1986 also the deceased and the accused had a quarrel. According to the Prosecution, it was the deceased, who got the kerosene brought through her daughter, of course, the case of the Prosecution is that the kerosene was brought for cooking purposes. According to the Prosecution, after P.W. 1 had brought Kerosene at the instance of her mother the appellant poured the Kerosene on the deceased and set fire to her clothes.

7. Now let us examine the evidence of P.Ws. 1 and 2 in this regard. P.W. 1 is the daughter of the deceased aged 10 years. She is admittedly the daughter through Venkateswara Rao the husband of the deceased who died two years back. P.W. 1 stated that "Kondadu" (referring to the accused) poured Kerosene on her mother and lighted a match stick and her mother died due to burns and that they were residing in Sukarlabanda of Masulipatnam. She admitted that the incident took place in the evening, that the accused was coming to their house regularly, that on the fateful day, the appellant and the deceased quarrelled with each other and that her mother asked her to bring kerosene and after she brought the same the appellant took the bottle and poured it on mother and lighted a match-stick. In the cross-examination, she admitted that she did not tell the Police in her 161 statement that she saw the accused pouring Kerosene on her mother and that she stated that after bringing Kerosene, she and her sisters were playing and at about 5 p.m. her mother came out in flames raising cries. Thus, P.W. 1 did not say at the earlier stage that she saw the accused pouring Kerosene on her mother. The fact that the deceased came out in flames raising cries is not in dispute. The question is whether the deceased herself poured Kerosene on her and set fire to her clothes or whether it was the appellant that had done it. We have no doubt that P.W. 1 has improved her evidence. She is a child witness aged about 10 years. The learned Sessions Judge observed that she appears to

be aged about 8 years. It is quite possible that she is tutored to say that she actually saw the accused pouring kerosene. In view of the fact that she did not mention this fact at the earliest stage, we are not inclined to place any reliance on the present version given by P.W. 1.

8. P.W. 2 is one Gadda Koteswaramma. She is a resident of Englishpalem, Bandar. She deposed that when she was sitting near her house, which is about 20 yards from the house of the deceased, she heard some cries and when she went she found the deceased coming out with burns and that her saree was burnt and she and another lady Jyothi out of pity called a Rickshaw and took her to the Hospital. She deposed that she did not see the other children and the accused at that time and that after she went to the Hospital, the deceased stated to P.W. 4 that she was kept by the accused and he poured Kerosene and burnt her. She further stated that she was not examined by the Police at all. This witness is treated as hostile by the Prosecution and when she was cross-examined she denied that she had ever stated that the accused was present.

We are not at all impressed by the evidence of this witness. Admittedly her statement that the accused was not there is false. In fact, it is the case of the accused that he was present, his clothes were burnt and by the time he came out after tying a lungi, the deceased was being taken by P.W. 2 and one Jyothi to the Hospital. Her statement that she was not examined by the Police is an utter falsehood. Her further evidence that the deceased stated to P.W. 4 that the accused poured Kerosene and burnt her is also is not correct inasmuch as P.W. 4 stated that he made an entry in the general diary that the deceased suffered burns at the hands of Rattaiah. Even otherwise, she is not an eye-witness to the occurrence and her evidence only shows that the deceased came out of the house in flames. Thus the testimony of P.Ws. 1 and 2 is not of much use in fixing the guilt of the accused.

9. Then we have three dying declarations Exs. P-5, P-6 and P-14. It is vehemently contended by the learned counsel for the appellant that Ex. P-5 was brought into existence subsequently. Ex. P-6 is a statement of the deceased recorded by the Magistrate P.W. 14. In this statement, the deceased when asked about the name of her husband, answered saying "Kondala Rao". As regards the occurrence, she said "from the morning there was a quarrel between me and my husband, I got the kerosene by giving money, my husband poured over my head and set fire to me, this is all." This was recorded between 7.45 and 7.50 p.m. P.W. 14 the Munsif Magistrate, who recorded the statement, stated that the deceased answered that her husband's name is "Kondala Rao". It is contended by the learned counsel for the appellant that the name of the appellant is "Yedukondalu" and not "Kondala Rao" and it was her husband that set fire and that the accused is not her husband. It is true that the name of the accused is Yedukondalu, but even the charge says Yedukondalu alias Mithi Bandi Kondadu. The accused was making his living by selling sweet meats on a cart. P.W. 1 also refers to the accused as "Kondadu" So it appears to be that the accused was also

called Kondadu. The reference in Ex. P-6 is obviously to the appellant as it is said that there was a quarrel between her and her husband from the morning. The accused is also being called as Kondadu and when she said Kondala Rao instead of Kondadu, she must have meant only the appellant.

It is also commented that from the cryptic statement made by her it is clear that she was not in a position to give any details and that she was under sedation and not fully conscious. It is true that the Doctor P.W. 4 also stated that they had given sedatives to the deceased. But P.W. 14 stated that the deceased was conscious and in a fit condition. In view of the evidence of P.W. 14 it cannot be said that the victim was not conscious or in a fit condition to make a statement. No doubt, P.W. 14 admitted that he cannot say whether the deceased is in a restless state and he did not ascertain whether she was given any sedatives. We cannot however say that Ex. P-6 is not a genuine document. But it is contended by Mrs. Sesharajyam, the learned counsel for the appellant that Ex. P-6 cannot be relied upon as this was not put to the accused in his examination under S. 313, Cr.P.C. and he was not given an opportunity to explain the contents of Ex. P-6. We see some force in this contention.

Ex. P-6 is a very important document. In fact, it is the crucial piece of evidence which connects the accused with the crime. It was recorded by the Magistrate P.W. 14 and the only question put to the appellant in connection with Ex. P-6 is that the Doctor P.W. 4 deposed that the Magistrate after receipt of the requisition visited the Hospital and recorded a statement Ex. P-6 and that the Magistrate P.W. 14 corroborated the evidence of P.W. 4 in all material particulars. It is seen from this what was put to the accused is that P.W. 4 stated that the Magistrate recorded a statement and he appended a certificate that the patient was conscious. The contents of Ex. P-6 were not put to the appellant. What the deceased had stated in Ex. P-6 was not put to the accused. All that was mentioned was that the Magistrate recorded a statement as spoken to by P.W. 4 and that P.W. 4 stated that P.W. 14 recorded a statement and he certified that the patient was conscious. The factum of recording a statement is not relevant. It is the contents of the statement that matters. The accused must be asked about what the deceased had stated is true or not. The other question namely, that P.W. 14 corroborated the evidence of P.W. 4 in all material particulars is neither correct nor relevant. P.W. 14 corroborated P.W. 4 is only with regard to the recording of the statement and the certificate of the Doctor that the patient was conscious. The contents of Ex. P-6 were not at all put to the accused and the accused was not given an opportunity to explain the statement made by the deceased. No document which is not put to the witness can be relied upon and must be eschewed from consideration.

10. Then we have Ex. P-5 recorded by the Assistant Sub Inspector P.W. 8. The time of recording is mentioned as 7.40 p.m. This document contains many particulars. In this, it is said that the deceased lives by selling groundnuts, that her husband Voleti Venkateswara Rao died about 2 years back and she has 3

children by that husband, that after the death of her husband, "Kondalu" a sweet-meat cart hawker kept her (as his mistress), that his caste is Kapu, that on 31-1-1986 she and her paramour Kondalu quarrelled that Kondalu poured Kerosene brought by her daughter at about 5.30 p.m. and while the children were playing outside and lighted a match-stick and set fire to her saree, that she came out crying for help and Kondalu ran away, that she originally belongs to Bapatla, that her parents are residing at Bapatla and that her parents sells palmyrah leaves near the Jammulapalem gate.

On a reading of Ex. P-5 we doubt very much whether this statement was recorded at 7.40 p.m. on that day then we compare the statement with Ex. P-6 which was recorded by the Magistrate immediately thereafter within 5 minutes. In Ex. P-6, she refers to Kondalu as her husband, whereas here in this she makes a distinction and says that her husband Venkateswara Rao died and that Kondalu is her paramour. She gives many details about the caste, about her parents, about her native place and about the profession of her parents. Her statement that after pouring kerosene Kondalu ran away is incorrect as P.W. 1 had stated that Kondalu went in a rickshaw only after her mother was taken in a rickshaw to the Hospital. This statement that Kondalu ran away gives an indication that she was trying to implicate him. At more than one place she refers to the appellant as Kondalu and as her paramour. Whereas in Ex. P-6 statement recorded by the Magistrate, she refers to the appellant as her husband. A reading of Ex. P-6 which in our opinion is a true document disproves Ex. P-5 as having been recorded 5 minutes earlier. Further, in Ex. P-5 she says that her husband got the Kerosene brought by her daughter whereas in Ex. P-6 she said that she gave money to her daughter for bringing kerosene. In view of these inherent improbabilities, we are unable to place any reliance on Ex. P-5 which is said to have been recorded by the Assistant Sub Inspector of Police. It is sought to be relied upon as dying declaration since the deceased died and in a case of dying declaration where there is no scope for any cross-examination, it must be beyond all suspicion.

11. Then we have Ex. P-14. It is said to have been recorded by the Sub Inspector of Police at 8.45 p.m. on 31-1-1986 in the Hospital at Bandar. Ex. P-4 contains many more details. In this the deceased says that when she tried to escape from his harassment he caught hold of her and restrained her and that somehow she escaped and ran out and by that time all her clothes got burnt. This statement appears to be a deliberate improvement to explain the injuries on the accused. This Ex. P-14 was not supplied to the accused along with other documents at the time of filing of the charge-sheet. This was given to him sometime in July whereas the charge-sheet was filed in April. In the circumstances, the contention of the learned counsel for the appellant that it was brought into existence much later cannot be ruled out. A reading of Ex. P-14 does not inspire that it is a genuine document. Thus we have no legal evidence in this case to convict the accused for the charge of murder. We therefore, set aside the conviction and sentence u/s 302 of the I.P.C.

12. But on a consideration of the evidence, we do not see any reason why the appellant cannot be convicted under S. 498A of the I.P.C. which is a lesser offence. The case of the appellant is that the deceased committed suicide. P.W. 1 stated that the accused and the deceased were always quarrelling and even on the fateful day they quarrelled. The deceased stated in Ex. P-6 the dying declaration recorded by the Magistrate that from the morning on that day they were quarrelling. Even accepting the case of the appellant that she committed suicide in the circumstances, it can only be held that she did the act being unable to bear the cruelty and harassment meted out by the appellant. Otherwise, no person would go to the extent of committing suicide. There is no other inference possible from the circumstances. The accused himself stated that they quarrelled on that day. But the learned counsel Mrs. Sesharajyam submitted that to attract S. 498A the harassment or cruelty must be by the husband or any relative of the husband and since the appellant is a paramour, the Section is not attracted. It is true that S. 498A speaks of harassment or cruelty by the husband or relative of the husband. In the present case, the deceased and the appellant were living like husband and wife. The evidence shows that the appellant was regularly coming to the house of the deceased. In the dying declaration Ex. P-5 the deceased described the appellant as her husband saying that her husband poured Kerosene and set fire to her clothes. Short of tying tali they were husband and wife. They were living together. They were sharing the income. Every witness says that the deceased was the kept mistress of the appellant. It is necessary to give such a restricted meaning to the expression "husband". Their relationship is that of husband and wife. We do not see any reason why S. 498A, IPC cannot be applied to a case where a person inflicts such cruelty and harassment as to lead his mistress to commit suicide. We accordingly convict the appellant under S. 498A of IPC and sentence him to undergo rigorous imprisonment for two years.

The appeal is partly allowed to the extent indicated above.

13. Appeal partly allowed.