
(2002) 02 AP CK 0031

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 820 of 1996

Yerramsetti Subbalakshmi

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 306

Citation : (2002) 1 ALD(Cri) 671 : (2002) 1 ALT(Cri) 511 : (2002) 2 DMC 466

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

E. Dharma Rao, J.—This appeal is filed by the accused aggrieved by the judgment dated 7.10.1996 in S.C. No. 237 of 1995 passed by the learned Principal Assistant Sessions Judge, Eluru wherein she was convicted for the offence u/s 306 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of 10 years and also to pay a fine of Rs. 1,000/-, in default to undergo simple imprisonment for further period of three months.

2. The story of the prosecution in brief is as follows :

One Yerranuetti Maha Lakshmi (deceased) was married to Yerramsetti Durga Prasad who is son of the accused. The marriage took place in the year 1990 and since then the accused started harassing the deceased frequently and the deceased used to inform about the harassment to her parents who in turn requested the accused to treat their daughter well and not to harass, but the accused did not heed their request and continued to harass the deceased. On 1.7.1994 at 1.00 p.m., the deceased could not bear the harassment caused by her mother-in-law (accused) and poured kerosene on herself and set fire and sustained burn injuries. She was admitted in the Government Hospital, Eluru

where her dying declaration was recorded by the II Addl. Judicial Magistrate of First Class, Eluru and she died while undergoing treatment on 1.7.1994 at 6.45 p.m. Thus, the accused was charged for abetting the commitment of suicide by her daughter-in-law.

3. In support of its case the prosecution examined P.Ws. 1 to 18 and marked Exs. PI to P23. No oral or documentary evidence was adduced on behalf of the accused.

4. Though majority of witnesses turned hostile i.e., P.W. 1, brother of the deceased, P.W. 2, husband of the deceased, P.W. 4, elder sister's son of the accused, P.W. 5, father of the deceased, P.W. 8, Pancha observer of the scene of offence, P.W. 3 P.Ws. 9, 11 and 12, who are neighbours of the deceased, basing on the two dying declarations Exs. P17 and P22 recorded by P.W. 13 (the learned Magistrate) and P.W. 18 (S.I. of Police), the learned Assistant Sessions Judge satisfied that the prosecution has proved the guilt of the accused and accordingly convicted and sentenced the accused as slated supra. Aggrieved by the said judgment the present appeal is filed by the accused.

5. Mr. C. Padmanabha Reddy, learned Senior Counsel appearing for the appellant mainly contended that there are several inconsistencies between the two dying declarations Ex. P17 and P22 and the evidence of P.W. 13 and P.W. 18 who recorded the dying declarations and the evidence of P.W. 17, the Doctor who was present at the time of recording dying declaration by P.W. 13. When the dying declaration was recorded by P.W. 13 at 3.20 p.m. on 1.7.1994, it was recorded by the learned Magistrate that at the time of recording except himself and the duty doctor no other person was there in close visibility. It is further recorded that from the case sheet it was found that sedatives have been administered. It is the contention of the learned Counsel for the appellants that there are variations and inconsistencies in between the two dying declarations recorded within a span of 10 minutes" gap. Coming to the evidence of P.W. 13, the Magistrate who recorded Ex. P17 dying declaration, he stated that he recorded the statement of Yerramsetti Mahalakshmi and satisfied with her mental condition to give statement Ex. P17. It was recorded in the presence of the Medical Officer on duty. In cross-examination he stated that he has verified the case sheet of the injured, but he did not ascertain as to whether the statement made by the victim was voluntary or outcome of any tutoring or persuasion. It was not certified that the statement was voluntary. He denied the suggestion that the injured was not in a normal alertness and that she was drowsy when the statement was recorded by him. He affirmed that sedatives were not administered to the patient. So this statement runs contrary to his remark made in Ex. P17 that on verification of the case sheet it was found that sedatives were administered to the victim. Further in the cross-examination, P.W. 18, who is SI of Police who recorded Ex. P22 statement stated that without obtaining the permission from the Duty Doctor to speak to the patient he recorded the statement and he has obtained copy of the statement recorded by the Magistrate

from the Court. Coming to the evidence of P.W. 17, doctor who treated the deceased he stated that he has seen the deceased in female surgical ward with 100% burns and was present when Ex. P17 dying declaration was recorded. He stated that he certified the condition of the patient as conscious and coherent. He further stated that sedatives were given after the dying declaration was recorded. The patient was conscious even at 4.45 p.m. He stated that the patient was not wearing any clothes. He further deposed in the cross-examination that police entered in this case after the dying declaration was recorded by the Magistrate. Further the B.P. could not be recorded due to shock of the patient and the injection Fortwin gives drowsiness. The injunction was given for relieving pain. But, he denied that the administration of the above said injection would weaken the alertness of the patient. In re-examination he stated that he also made endorsement on the statement of the patient recorded by the police. In re-examination he stated that he cannot say the time when the sedative was given. From the oral evidence of F.W. 13 and P.W. 18 and P.W. 17 compared to the two dying declarations it is not evident whether at the time of recording dying declaration recorded by the Magistrate, the sedative was administered to the patient and she is in a fit state of mind to give the above statement. So, merely basing on the above dying declarations, the conviction cannot be upheld. It is further contended that the patient has received 100 percent burns and due to shock, B.P. could not be recorded and she was under the administration of sedative. Therefore, in those circumstances, it may not be believed that the two dying declarations are recorded properly and it is not admissible evidence. Further it is contended that mere uttering of word "go out" does not amount to abetment to commit suicide attracting the ingredients of Section 306, Indian Penal Code.

6. The learned Counsel for the appellant relied on *Ramesh Kumar v. State of Chhattisgarh*, II (2001) DMC 636 (SC)=VII (2001) SLT 356=2001 (2) ALD (CrL.) 873 (SC), with regard to the proposition that asking to go away to any place does not amount to instigating the deceased to commit suicide. He further relied on *Swamy Prahaladdas v. State of M.R.*, 1995 Supp. (3) SCC 438, in support of his contention that even uttering of the words "go and die" does not amount to abetment of suicide and they are casual in nature which are often employed in the heat of the moment between quarrelling people. Another judgment relied on by the learned Counsel for the appellant is a decision of the Supreme Court in *The State of Punjab Vs. Gian Kaur and Another*, wherein it was held that the evidence of prosecution is inconsistent in regard to the fact of the obtaining the thumb impressions of the deceased on the dying declaration, when it is evident from the autopsy that the deceased sustained 100% injuries and contended that in the instant case, the evidence Ex. P17 shows that it contains the thumb impression of the deceased, whereas the evidence of P.W. 17, the Doctor shows that the deceased sustained 100% injuries and, therefore, there is inconsistency between the two statements of P.W. 13 who recorded Ex. B17 and the evidence of P.W. 17.

7. On the other hand, the learned Additional Public Prosecutor Mr. Niranjanreddy submitted that according to the first dying declaration the mother-in-law is harassing the deceased for the last 4 years prior to the occurrence of the incident on 1.7.1994 and the uttering of word "do not stay in the house" is sufficient to attract the ingredients of Section 306 and if Section 306 is not attracted, it attracts at least Section 498-A, I.P.C. and, therefore, the accused should be convicted at least u/s 498-A, I.P.C.

8. I have heard both the learned Counsels and considered the evidence on record.

9. Certainly there are inconsistencies in both the dying declarations Exs. P17 and P22. When a question was put to the deceased how the incident has happened, in Ex. P17 she has stated that:

I have disputed with my mother-in-law. My mother-in-law's name is Subba Lakshmi. She told me that do not stay in the house, go out. She scolded me daily by picking up quarrel.

10. I could not bear her harassment, I poured kerosene and set at fire myself." Finally it was mentioned that:

"From the beginning to my marriage my mother-in-law disputed with me. My husband does not know anything. He would not say single word to me."

11. Thereafter, on intimation P.W. 18 SI of Police recorded another statement, Ex. P22 of the deceased at 3.30 p.m. the relevant portion of which runs to the following effect:

"My mother-in-law namely Subba Lakshmi today i.e., on 1.7.1994 Friday while she harassed and asked to die, at 1.00 p.m. I poured kerosene on my body and set fire myself. While I am burning, when I put cries, the neighbours and my husband came and put off fire and brought me to the Government Hospital, Eluru. When my burns are putting off Tilak and S. Lakshmi, etc. came there. Due to my mother-in-law's harassment I am doing the suicide."

12. When compared both the statements, the presence of Tilak and S. Lakshmi and the mother-in-law asking the deceased to die is absent in Ex. P17 and the statement in Ex. P17 that her husband is innocent is absent in Ex. P22.

13. Certainly the words used in Ex. P17 are not present in Ex. P22. Though, it is recorded in the case sheet that the deceased was administered sedative, the Doctor was not able to say the exact time of administration of sedative and the doctor has went back on his statement recorded in the above dying declaration with regard to the administration of sedation. Further, Ex. P22 statement appears to have been recorded by the police without obtaining the permission of the duty doctor. Taking into consideration the 100% burns sustained by her it cannot be believed that he was able to give the above statements.

14. In Ramesh Kumar case (supra), the Supreme Court held that making the deceased free to go where she liked and to do whatever she wished does not and

cannot mean instigation even by stretching that the accused had made the deceased "to commit suicide" as held by the High Court. In this case one Seema Devi, daughter of Sohan Lal Sharma (P.W. 16) and Smt. Prabhawati Devi (P.W. 19) was married with accused appellant on 23.6.1985. On 17.6.1986, within one year of marriage, Seema died of suicide. On 16.6.1986, she poured kerosene herself and set herself to fire. Before committing suicide she wrote a suicide note and a letter to her husband in a diary. With regard to charge u/s 498-A the Supreme Court held as follows :

"From an independent evaluation of evidence and having gone through oral evidence adduced and the several documents available on record, mostly the writings of the deceased we are satisfied that "he present one is not a case of dowry death or the deceased having been instigated into committing suicide for her failure to satisfy the dowry demands of the accused. However, teasing by the accused-appellant of the deceased, ill-treating her for her mistakes which could have been pardonable and turning her out of the house, also once beating her inside the house at the odd hours of night did amount to cruelty within the meaning of Section 498-A of Indian Penal Code and, therefore, we agree with the Trial Court as also with the High Court though to some extent at variance with the case for cruel treatment that the accused-appellant subjected deceased Seema to cruelty and, therefore, conviction of the accused-appellant u/s 498-A deserves to be maintained."

15. With regard to the charge u/s 306, the Apex Court held as follows :

"In our opinion there is no evidence and material available on record wherefrom an inference of the accused-appellant having abetted the commission of suicide by Seema may necessarily be drawn. The totality of the circumstances discussed hereinabove, especially the dying declaration and the suicide notes left by the deceased herself, which fall for consideration within the expression "all the other circumstances of the case" employed in Section 113-A of Evidence Act, do not permit the presumption thereunder being raised against the accused. The accused-appellant, therefore, deserves to be acquitted of the charge u/s 306, Indian Penal Code."

16. Admittedly in the instant case the deceased in her both statements Exs. PI 7 and P22 did not state anything about the beating or demanding of any dowry against the accused nor attributed any cruelty except stating that her mother-in-law harassed her and asked her to die and not to stay in the house and go out. In the circumstances, Section 498-A does not come into play, much less when there was no charge made against the accused u/s 498-A. With regard to the offence u/s 306, as held by the Supreme Court *supra*, the facts and circumstances in the present case do not warrant a presumption being drawn against the accused.

17. In *Swamy Prnliahiddas* case, (*supra*), the appellant-accused was charged with the offence punishable u/s 306, Indian Penal Code. The prosecution alleged

that the appellant while quarrelling with the deceased remarked for the deceased to go and die and thereafter the deceased went in a dejected mood, and committed suicide and thereby the appellant-accused is responsible for committing of suicide by the deceased. In those circumstances the Supreme Court held as follows :

"We think that just on the basis of that utterance the Court of Sessions was in error in summoning the appellant to face trial. In the first place it is difficult, in the facts and circumstances, to come to even a prima facie view that what was uttered by the appellant was enough to instigate the deceased to commit suicide. Those words are casual in nature which are often employed in the heat of the moment between quarrelling people. Nothing serious is expected to follow thereafter. The said act does not reflect the requisite mens rea on the assumption that these words would be carried out in all events. Besides the deceased had plenty of time to weigh the pros and cons of the act by which he ultimately finished his life."

18. In the instant case though the deceased stated in her first statement, P.W. 17 that the accused told "do not stay in the house, go out", in the subsequent statement, Ex. P22, she stated "my mother-in-law harassed me for four years, now and then and scolded me and asked me to die". Applying the above said decision, here also the deceased has plenty of time to weigh pros and cons of the act. Mere uttering of the words in a casual manner does not attract the ingredients of Section 306 as held by the Supreme Court.

19. In Gian Knur case (supra), where also the deceased sustained 100% burn injuries, the Supreme Court held as follows :

"The High Court disbelieved the declaration on the ground that even though according to the medical evidence Rita had 100% burns, the thumb mark of Rita appearing on the dying declaration and clear ridges and curves. The High Court found evidence of Dr. Ajay Sahni P.W. 1 not reliable as he failed to satisfactorily explain how such thumb mark could appear on the dying declaration when Rita had 100% burns over her body. The High Court relied upon the deposition of Doctor Aneja, who had performed post-mortem and who has categorically stated that there were 100% burns over her body and both the thumbs of Rita were burnt. In view of such inconsistent evidence, the High Court was right in giving benefit of doubt to the respondents. It cannot be said in this case that the High Court has taken an unreasonable view."

20. In the instant case also, as per the medical evidence, the deceased suffered 100% burn injuries. As such it cannot be said that the deceased was in a fit state of mind while recording dying declaration, that too, when there are several inconsistencies in between the two statements, one recorded by the Magistrate and another recorded by the Police Officer. With regard to administration of sedatives also, there is inconsistency in the evidence of the learned Magistrate as P.W. 13 and the evidence of the Doctor examined as P.W. 17. The Doctor was not

able to say the exact time when the sedative was administered.

21. In view of the inconsistencies pointed above and applying the principles laid down by the Supreme Court in the judgments referred to above, I am of the view that the prosecution has failed to prove the guilt of the accused that she abetted the commitment of suicide by the deceased beyond all reasonable doubt. The accused is entitled to benefit of doubt.

22. In the result, the appeal is allowed and the conviction and sentence imposed by the Court below is set aside.