

K. Ashok Kumar Reddy Vs. State of A.P. Rep. by the P.P.

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Court : Andhra Pradesh

Decided On : Apr-18-2008

Reported in : 2008(1)ALD(Cri)995; 2008(2)ALT(Cri)202; 2008CriLJ2783

Judge : B. Seshasayana Reddy, J.

Acts : Indian Penal Code (IPC) - Sections 306, 415, 417 and 420; Arms Act - Sections 25 and 27

Appeal No. : Criminal Appeal No. 28 of 2004

Appellant : K. Ashok Kumar Reddy

Respondent : State of A.P. Rep. by the P.P.

Advocate for Def. : Addl. Public Prosecutor

Advocate for Pet/Ap. : C. Padmanabha Reddy, Adv.

Disposition : Appeal allowed

Judgement :

B. Seshasayana Reddy, J.

1. This criminal appeal is directed against the judgment dated 13.01.2004 passed in Sessions Case No. 335 of 2002 on the file of IV Additional Metropolitan Sessions Judge, Hyderabad, whereby and whereunder the learned Additional

Metropolitan Sessions Judge found accused K.Ashok Kumar Reddy guilty for the offence under Section 417 IPC and convicted him accordingly and sentenced him to suffer simple imprisonment for six months and pay a fine of Rs. 1,000/-, in default, to suffer simple imprisonment for three months.

2. The prosecution case in brief is:- Accused K.Ashok Kumar Reddy and P.Prathima Devi were selected as Sub-Inspectors and underwent training in A.P. Police Academy, Hyderabad, during 1996-97. After training, the accused was posted as Sub-Inspector of Police in A.P.S.P., Vizianagaram, and P.Prathima Devi was posted as Mahila Sub-Inspector of Police, Kadapa. While they were under training, they got acquainted with each other. Incidentally they happen to be of the same community and their acquaintance blossomed into love affair. Marriage proposal was also in offing between them. Parents of the accused did not approve of the marriage proposal. Therefore, the accused assured P.Prathima Devi to convince his parents to marry her. P.Prathima Devi applied for leave to appear for Group-I Service Examinations in 1999. She came to Hyderabad and joined with her brother, who has been examined as PW.4, for preparing competitive examinations. PW.4 secured a seat in B.L. in Krishnadevaraya University, Ananthapur and left Hyderabad to pursue his law course in Krishnadevaraya University, Ananthapur. P.Padmaja, who is the sister of P.Prathima Devi, joined with her at Hyderabad. The accused got transferred to Hyderabad and he was also preparing for Group-I Service Examinations. The marriage of the accused came to be fixed with one Sreedevi of Proddatur and scheduled to be held on 18.08.2000. On 02.07.2000 there was a get together at Ananthapur in the house of PW.5 Jayachandra Reddy, who is the junior paternal uncle of P.Prathima Devi. A discussion on the marriage of P.Prathima Devi was cropped up in the get together. Then P.Prathima Devi disclosed her love affair with the accused and she told her relations not to search any alliance for her. She gave the particulars of the accused. She also told them that the elders of the accused were opposed to the marriage proposal, but, the accused promised her to convince his elders and marry her. On 08.07.2000 P.Prathima Devi left Ananthapur and came to Hyderabad. On 11.07.2000 PW.4 P.Sesha Reddy found her shedding tears. He enquired her and learnt that the accused cheated her and fixed his marriage with one Sreedevi of Proddatur and the marriage was scheduled to be held on

18.08.2000. On the afternoon of 11.07.2000, after taking lunch, she set out from the room to meet her friend and thereafter to speak to K.Ashok Kumar Reddy. She told PW.4 that she would not be returning home on that night. On 12.07.2000 at about 6.45 A.M. PW.1 A.Ram Reddy while on morning walk heard a big sound from the room of the accused. He knocked the door and the accused opened the door. On enquiry, the accused told him that his colleague by name P.Prathima Devi committed suicide. By that time, the accused was wearing a towel as lungi and drying his hair with another towel. The accused introduced himself as Reserve Sub-Inspector. PW.1 found P.Prathima Devi lying dead on a cot. He also noticed a pistol lying on the floor nearby the deadbody of P.Prathima Devi (hereinafter referred to as 'the deceased'). PW.1 informed the incident over telephone to Panjagutta Police. Within 15 minutes Panjagutta Police came and he lodged a written report-Ex.P1. PW.16 B.R.Baig, Inspector of Police, Panjagutta P.S. received Ex.P1 report and made an endorsement thereon to the Station House Officer, Panjagutta P.S. to register a crime and send a copy of the F.I.R. to the spot for investigation. PW.17 T.Sivaram Naidu, Sub-Inspector of Police, Panjagutta P.S. received Ex.P1 report and registered a case in Crime No. 443 of 2000 for the offence under Sections 306 IPC and 25 of the Arms Act and issued Ex.P12 FIR. PW.18 P.Rama Rao, Assistant Commissioner of Police, Panjagutta Division, took-up investigation, observed the scene of offence in the presence of PW.7 L.Dasarath Yadav and effected seizure of Mos.1 to 10 under the cover of Ex.P4 panchanama. He also got the scene of offence photographed and video-graphed. He prepared rough sketch of the scene of offence, which has been exhibited as Ex.P9. Exs.P13 to P25 are the positive photographs alongwith corresponding negatives. Ex.P26 is the Videocassette and Ex.P27 is the floppy. He conducted inquest over the dead body of the deceased in the presence of PW.6 Chintala Naresh. The opinion arrived at by the panchas, on hearing the statements of witnesses examined during the course of inquest, came to be incorporated in Col. No. 15 of the inquest report. After the inquest, the deadbody was sent for postmortem examination. PW.9 Dr.K.Rajgopal Reddy, Professor, Gandhi Medical College, Hyderabad, conducted autopsy over the deadbody of the deceased and found the following injuries:

A contact fire arm entry wound over the right temple with bursting of skull measuring 4 x 3 cms with irregular margins. A bony gap measuring 3 x 2.5 cms. in the temporal bone with irregular margins. Surrounding the margins blackening on the bone. Blackening under the skin in sub-coetaneous tissue. The bone pieces were driven into the brain substance. The bullet made a track in the brain, passed from right temporal lobe to the left parietal lobe of the brain and made an exit wound in the left parietal bone 5 cms above the left mastoid process measuring 1.5 x 1 cms. with irregular margins. The outer table of the bone has got beveled margins. It produced exit wound in the skin measuring 2 x 1.5 cms. with averted and irregular margins. This skull bone was fractured at different levels due to the bursting effect. Base of the skull was divided into two halves. The track is directed from right to left slightly backwards and upwards.

He issued Ex.P6 postmortem examination report opining that the deceased died due to fire arm injury to head. The injury found on the deceased could be possible by MO.5 pistol. PW.18 arrested the accused on 13.07.2000 and sent him for remand. On 15.07.2000 he secured the presence of PWs.6 and 7 and proceeded to the room of the deceased situated at Chikkadpally and effected seizure of writings of the deceased, one LIC diary, a notebook containing 22 pages, one telephone diary and another diary with bus warrants under the cover of Ex.P3 panchanama. MO.1 is the LIC diary and Mos.2 to 4 are the notebooks. He sent the vaginal swabs of the deceased preserved by the postmortem examination doctor along with a letter of advice. Ex.P29 is the FSL report. He also sent the bloodstained clothes of the deceased preserved by the postmortem examination doctor to FSL. Ex.P30 is the FSL report. MO.5 pistol, empty cartridge and deformed bullet came to be sent to the FSL. Ex.P7 is the FSL Report. Suicide note of the deceased and other writings seized from the room of the deceased were sent to the handwriting expert. Ex.P8 is the report of the handwriting expert. After completing the investigation, he laid a charge-sheet before XXIII Metropolitan Magistrate, Hyderabad.

3. The learned Metropolitan Magistrate took the charge-sheet on file as P.R.C. No. 18 of 2001 and committed the case to the Metropolitan Sessions Division, Hyderabad, as the offence under Section 306 IPC is exclusively triable by a Court

of Session. The learned Metropolitan Sessions Judge took the case on file as Sessions Case No. 335 of 2002 and made over the same to the Court of IV Additional Metropolitan Sessions Judge, Hyderabad, for disposal according to Law.

4. Learned Additional Metropolitan Sessions Judge, on hearing the prosecution and the accused, framed charges under Sections 306 and 420 IPC and Section 27 of the Arms Act. He read over and explained the charges to the accused, for which the accused pleaded not guilty and claimed to be tried.

5. To bring home the guilt of the accused for the offences with which he stood charged, prosecution examined 18 witnesses and proved 31 documents and exhibited 10 material objects. The accused marked two contradictions in 161 Cr.P.C. statement of PW.14 as Exs.D1 and D2 and Xerox copy of the G.O.Ms. No. 526, dated 22.08.1981, as Ex.D3, on his behalf. The plea of the accused is that there was no love affair between him and the deceased and that a day prior to the incident, the deceased came to his room to collect I.A.S. study material and after collecting the material when she was about to leave, there was heavy downpour of rain and therefore, she stayed back in his room on that night. The further plea of the accused is that the deceased was deeply hurt about the behaviour of her relations who used to look-after her since the death of her mother at her young age and that on the date of the incident he went into the bathroom and while taking head bath, he heard big sound and so he ran out from the bathroom and found the deceased lying with bullet injury on head. In the meanwhile he heard knocks on the door and he opened it and found PW.1.

6. The learned Additional Metropolitan Sessions Judge, on appreciation of the evidence brought on record and on hearing the prosecution and the accused, found the accused guilty for the offence under Section 417 IPC, convicted him accordingly and sentenced him to suffer simple imprisonment for six months and pay a fine of Rs. 1,000/- in default to suffer simple imprisonment for three months. However, the learned Additional Metropolitan Sessions judge found the accused not guilty for the offences under Sections 306 IPC and 27 of the Arms Act and accordingly acquitted him of the same, by judgment dated 13.01.2004. Hence, this

criminal appeal by the appellant/accused challenging his conviction and sentence for the offence under Section 417 IPC.

7. Heard Sri C.Padmanabha Reddy, learned senior counsel appearing for the appellant/accused and learned Additional Public Prosecutor appearing for the respondent/State.

8. Sri C.Padmanabha Reddy, learned senior counsel appearing for the appellant/accused submits that even if the suicide note which has been exhibited as MO.9 is considered in toto, no ingredients of Section 417 IPC are made out and therefore, the conviction and sentence of the appellant/ accused recorded for the offence under Section 417 IPC is not legal and proper and the same is liable to be set aside. Learned senior counsel took me to the suicide note, which has been marked as MO.9. It is also contended by the learned senior counsel that at no point of time, the appellant/accused deceived the deceased and in which case the accused is entitled to acquittal for the offence under Section 417 IPC. Learned senior counsel took me to Ex.P1 report presented by PW.1 wherein it is stated that elders of both the deceased and the accused did not approve their love affair.

9. Learned Additional Public Prosecutor appearing for the respondent/State submits that the incident occurred at the room of the appellant/accused and the deceased took an extreme step being not able to bear the deception played by the appellant/accused and therefore, the trial Court is justified in convicting the appellant/accused for the offence under Section 417 IPC and the same is not liable to be interfered with in this appeal.

10. Prosecution examined 18 witnesses to bring home the guilt of the appellant/accused for the offence with which he stood charged. The appellant/accused came to be charged for the offences under Sections 306 and 420 IPC and 27 of the Arms Act. The trial Court found the appellant/accused not guilty for the offences under Sections 306 IPC and 27 of the Arms Act while finding him guilty for the offence under Section 417 IPC. Therefore, the question to be examined in this appeal is as to validity and legality of the conviction and sentence of the appellant/accused for the offence under Section 417 IPC.

11. Section 415 IPC defines cheating. The section requires -

(1) Deception of any person.

(2) (a) Fraudulently or dishonestly inducing that person-

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

In the definition of cheating there are set forth two separate classes of acts, which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person or to consent that any person shall retain any property. The second class of acts set forth in the section is the doing or omitting to do anything, which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. The distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct, but for which the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution under Section 420 IPC, unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.

12. PW.1 is the informant. He happened to pass through the house bearing door No. 6-3-60 on 12.06.2000 at 6.45 A.M. He heard a big sound. He knocked the door and the accused opened the door. Thereupon, he found a lady lying on a cot with bullet injury. He deposed that the accused was wearing a towel as lungi and was drying his hair with another towel by the time he (accused) opened the door. According to him, the accused told him that he and the deceased belong to Reddy

community and they loved each other. His evidence is material to the extent of the deceased receiving bullet injury which caused her instantaneous death. Nothing could be culled out from his evidence that the deceased committed suicide because of the deception played on her by the accused.

13. PW.2 is the batch-mate of the deceased. She deposed that the deceased told her of her love affair with the accused. She did not claim of the accused informing her his love affair with the deceased. Therefore, nothing can be inferred from her evidence that the accused promised the deceased to marry her.

14. PW.3 is the owner of the house wherein the accused stayed as a tenant. He did not claim of his seeing the deceased and the accused together in the house let out to the accused. His evidence is only hearsay and therefore, it may not be of much use to further the prosecution case.

15. PW.4 is brother and PW.5 is junior paternal uncle of the deceased. Whatever deposed by them before the Court is based on the information given to them by the deceased during her lifetime. They do not claim to be present when the accused allegedly promised the deceased to marry her.

16. PW.6 is the panch witness for the observation of the scene. He is also a panch witness for the recovery of Mos.1 to 4 from the room, where the deceased stayed along with PW.4. PW.7 is another panch witness for the observation of the scene and for the recovery of Mos.5 to 9 under the cover of Ex.P4 panchanama. PW.8 is the brother of the accused. Prosecution declared him hostile and marked his 161 Cr.P.C. statement as Ex.P5. PW.9 is the postmortem doctor. The postmortem examination report issued by him has been marked as Ex.P6. PW.10 is the Scientific Officer, RFSL, Guntur. He speaks of his assisting the Investigating Officer in identification, collection and preservation of the physical evidence available at the scene. PW.11 is the Head Constable, Intelligence & Security, Hyderabad. He speaks of issuance of 9 m.m. pistol to the accused for the purpose of security. He identified MO.5 as the pistol issued to the accused for the purpose of discharging his duties as security officer of Minister by name Vijayarama Rao. PW.12 is the Assistant Director, FSL, Hyderabad. He examined Mos.1 to 3 and issued Ex.P7 opinion. PW.13 is the Assistant Director, FSL, Hyderabad. He

compared the disputed writings with the admitted writings of the deceased and issued Ex.P8 opinion.

17. PW.14 is one of the tenants of the house owned by PW.3. She speaks of visits of the deceased to the accused and the accused informing her the proposal to marry the deceased. She deposed that a day prior to the incident, the accused and the deceased came together on a scooter. By reading the evidence of this witness, it can be said that the deceased and the accused together came to the room of the accused on the previous night of the incident and stayed together.

18. PWs.15, 16 and 18 are the Investigating Officers. PW.17 is the Sub- Inspector of Police, who received Ex.P1 report and registered a case in Crime No. 443 of 2000 for the offences under Sections 306 IPC and 25 of the Arms Act and issued Ex.P.12 FIR.

19. The trial Court proceeded to conclude that the accused had carnal relationship with the deceased since both of them spent a whole night together. Whether such an inference is permissible in the given facts and circumstances of this case? I deem it appropriate to refer the conclusion recorded by the trial Court and it is thus:

Adverting to the facts on hand the lions share of the circumstances relating to the conduct of the accused would decide whether the offence of cheating committed by him or not. Though it is clearly and clinchingly established that the deceased had love affair with him for a long time prior to the offence, the accused has taken the defence which is prima facie inconsistent with the facts established. In the 313 examination he stated that he had no love affair with the deceased and that no such intentions had ever blossomed between them. This version if found to have not suited to the conduct of the accused spoken to by the witnesses who knows him. It is therefore obvious that the accused has taken the false defence. In a bid to escape offering explanation for his closeness with the deceased. The very fact that the deceased being a female had the liberty of staying with the accused for nights is sufficient to understand what kind of relationship they used to maintain. Since they are not under the prohibited degrees of relationship, it would be reasonable and justifiable to presume the existence of sexual relationship between

them. If such a relationship was not there the deceased would have certainly hesitated to stay with the accused for nights openly and to the knowledge of the neighbours of the accused. Further if the deceased had no such relationship she had no reason to be so worried about the failure of her love with the accused. Obviously the deceased is courageous to face all the challenges of life. This conclusion is reflected from her becoming the Sub-Inspector in spite of adversities in her life from childhood. Therefore taking the decision to end the life by such a lady must be accompanied by a serious and intolerable injury to her mind, body or reputation. Such an injury could be nothing but the failure of love with the accused accompanied by the feeling of her being defeated in life on account of the dubious helplessness of the accused in the matter of their love. Considering the gravity of these circumstances I have no hesitation to hold that the deceased would not have submitted to the accused had she not been induced by him with the promise of marriage.

20. None of the witnesses stated of the deceased having carnal relationship with the accused. There is no basis for the trial Court to infer that the accused had physical union with the deceased. Even the close relations of the deceased, who have been examined as PWs.4 and 5, did not speak of the accused having carnal relationship with the deceased. Therefore, the finding recorded by the trial Court that the deceased and the accused had physical union is not based on any evidence. Once the finding recorded by the trial Court is brushed aside, there is no other evidence to speak of the deceased losing any valuable security or property of her because of breach of the promise of marriage made by the accused. The only other circumstance is the suicide note, which has been exhibited as MO.9. By reading and re-reading of the suicide note, it is highly difficult to conclude that the accused deceived the deceased and the said deception drew her to put an end to her life. Indeed, the suicide note is explicit that she desired to have next birth so that she could be loved by the accused. It appears she immensely loved the accused without there being no reciprocation from the accused and therefore, the deceased desired to have next birth so as to enable her to secure love from the accused. It is nowhere stated in the suicide note that the accused deceived her and therefore, she became frustrated and resorted to take such an extreme step. Even assuming for a moment that the accused promised to marry her and

committed breach of such promise, there is nothing on record that the deceased submitted herself to the accused because of the promise of the marriage. Therefore, I find that the prosecution failed to satisfy the necessary ingredients of cheating so as to find the accused guilty for the offence under Section 417 IPC. The trial Court recorded the conviction of the appellant/accused for the offence under Section 417 IPC on mere conjectures and surmises and therefore, the conviction and sentence of the appellant/accused for the offence under Section 417 IPC is liable to be set aside.

21. Accordingly, the criminal appeal is allowed setting aside the conviction and sentence of the appellant/accused for the offence under Section 417 IPC passed in Sessions Case No. 335 of 2002 on the file of IV Additional Metropolitan Sessions Judge, Hyderabad, and he is acquitted of the same. The fine amount paid by him, if any, is ordered to be refunded to the appellant/accused. The bail bonds furnished by the appellant/accused shall stand cancelled.

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