

P. Santhakumar Vs. the State of A.P., Rep. by Its Public Prosecutor, High Court of A.P.

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Court : Andhra Pradesh

Decided On : Jul-11-2003

Reported in : 2003(2)ALD(Cri)341; 2003(2)ALT(Cri)552; II(2003)DMC743

Judge : Dubagunta Subrahmanyam, J.

Acts : Indian Penal Code (IPC) - Sections 306 and 498A; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Revision Case No. 1309 of 2001

Appellant : P. Santhakumar

Respondent : The State of A.P., Rep. by Its Public Prosecutor, High Court of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : D. Kodanda Rami Reddy, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Dubagunta Subrahmanyam, J.

1. This revision is filed against judgment dated 02.11.2001 in Criminal Appeal No.175 of 1999 on the file of 1st Additional Sessions Judge, Cuddapah, confirming the conviction and sentence of R.I. for a period of three years and a fine of Rs.1,000=00 for the offence under Section 498-A I.P.C., imposed by the Assistant Sessions Judge, Cuddapah, in S.C.No.112 of 1998 on his file.

2. The deceased - Prameela is the wife of the revision petitioner - accused. Their marriage took place about 12 years prior to the present date of offence. It appears to be a love marriage between accused and the deceased. On 17.5.1997 there was altercation and exchange of words between the deceased and the accused in their residence. It appears that the accused poured kerosene on the deceased. He did not do any further act thereafter. However, even according to the version of the deceased herself she set fire to her after her husband poured kerosene and later died due to burn injuries sustained by her. A case was registered on the basis of dying declaration given by the deceased in the hospital. After completion of investigation, the police filed a charge-sheet against the accused. It was committed to Assistant Sessions Judge for trial. The learned trial Judge framed two charges under Sections 498-A and 306 I.P.C., against the accused. The accused pleaded not guilty to the respective charges against him. The prosecution examined P.Ws 1 to 8 and marked Exs.P.1 to P.9. On a consideration of evidence adduced by the prosecution, the learned trial Judge held that the prosecution failed to establish the guilt of the accused for the charge under Section 306 I.P.C. He acquitted the accused of the said charge. The learned trial Judge accepted the case of the prosecution, found the accused guilty and convicted him for the offence punishable under Section 498-A I.P.C. Aggrieved thereby, the accused preferred an appeal in Sessions Court. The learned Additional Sessions Judge confirmed the conviction and sentence imposed on the accused by the learned trial Judge. Aggrieved by the said judgment, the accused preferred the present revision.

3. The sister and other close relations of the deceased were examined by the prosecution. They did not support the version of the prosecution. They stated clearly that the accused was not treating cruelly the deceased. The learned trial Judge relied upon the dying declaration Ex.P.6 recorded by the Magistrate P.W.7.

In Ex.P.6 it is stated that on the morning of 17.5.1997 accused after attending a marriage returned to the house at about 2.30 p.m. in a drunken state and then abused the deceased saying that she had taken away money in his shirt pocket without telling him. She also stated further in her statement that thereafter the accused left the house and returned to the house at about 8.30 p.m. She stated that the accused beat her. Thereafter she stated that while she was standing outside her house, the accused brought a Can containing kerosene and poured kerosene on her. She further stated that she started to go to Police Station to give a complaint. At some distance one Devadass met her and brought her back to the house saying that he would accost the accused. She also further stated that on seeing her, her husband - accused asked her why she came back without going to the Police Station and giving a complaint. She further stated that she got disgusted and set fire to herself. She also stated that the persons present there put down the fire and took her and admitted her in the hospital. According to the learned trial Judge this statement of the deceased proved the guilt of the accused beyond reasonable doubt.

4. For better appreciation of the question involved in the present revision, it is necessary to extract entire Section 498-A I.P.C. It reads as follows:

' 498-A. Husband or relative of husband of a woman subjecting her to cruelty. --- Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.--- For the purposes of this section, 'cruelty' means ----

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman - Where such harassment is with a view to coercing her or any person related her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

5. The explanation to the above provision consists of two parts. Explanation (a) defines cruelty as any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. It is to be stated that in the present case the trial Judge found that the prosecution failed to prove the guilt of the accused for the offence punishable under Section 306 I.P.C. According to the learned trial Judge the conduct of the accused on the date of the offence is not such a nature to drive the woman, namely, the deceased to commit suicide. In view of that finding of the trial Judge, for convicting the accused Explanation (a) cannot be invoked.

6. According to Explanation (b) where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. In the present case, it is not the version of the prosecution that at any time the accused harassed his wife - deceased in connection with unlawful demand for any property or valuable security, etc. Even in her statement Ex.P.6 the deceased did not state that the accused at any time harassed her or beat her with an intention to demand property or valuable security, etc., from her. Therefore, Explanation (b) is also not applicable to the facts of the present case. It is, therefore, to be held that the prosecution has not established the guilt of the accused for the offence punishable under Section 498-A I.P.C.

7. Before closing the discussion it becomes necessary to point out one important circumstance. It is already noticed that the blood relations of the deceased categorically denied that there was any harassment of any kind by the accused. Further, the trial Judge as well as the Appellate Judge relied upon Ex.P.6 dying declaration alone for convicting the accused in the present case. If the court wants to convict the accused basing on any incriminating circumstance, whether it is a dying declaration or any other piece of evidence, as per the mandate of Section 313 Cr.P.C., the court is bound to bring to the notice of the accused the said incriminating circumstance appearing against the accused in the evidence adduced by the prosecution. The evidence includes oral evidence as well as documentary evidence. I have carefully gone through Section 313 Cr.P.C., statement of the accused recorded by the trial Judge. In that statement the trial

Judge did not put any question to the accused bringing to his notice the so called incriminating material mentioned in Ex.P.6 and then call for the explanation of the accused in that regard. On this ground alone the accused is entitled for acquittal. For the reasons stated above, it is very clear that the conviction and sentence imposed by the trial Judge and confirmed by the Sessions Judge are liable to be set aside.

8. In the result, the revision is allowed. The accused is found not guilty and accordingly acquitted of the charge under Section 498-A I.P.C. The fine amount paid by the accused shall be refunded to him forthwith.

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