

Golla Hanumanthu Vs. the State of A.P., Rep. by Public Prosecutor, High Court of A.P.

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Court : Andhra Pradesh

Decided On : Jul-19-2004

Reported in : 2004(2)ALD(Cri)430; 2004CriLJ4009; I(2005)DMC144

Judge : P.S. Narayana, J.

Acts : [Evidence Act, 1872](#) - Sections 32; Indian Penal Code (IPC) - Sections 107, 306 and 498A; Code of Criminal Procedure (CrPC) - Sections 161, 294, 313 and 428

Appeal No. : Criminal Appeal No. 429 of 1997

Appellant : Golla Hanumanthu

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

Advocate for Def. : Niranjan Reddy, A.P.P.

Advocate for Pet/Ap. : C. Praveen Kumar, Adv.

Disposition : Appeal allowed

Judgement :

P.S. Narayana, J.

1. This criminal appeal is filed by the appellant-accused aggrieved by the judgment of the Principal Assistant Sessions Judge, Rangareddy District, Saroornagar, Hyderabad in Sessions Case No.182 of 1995, dated 24.04.1997.

2. The Inspector of Police, Neredmet laid charge sheet against the appellant-accused in Crime No.42 of 1994 for the offences punishable under Sections 498-A and 306 of the Indian Penal Code.

3. The story of the prosecution in nutshell is as hereunder:

The deceased Padma, a native of Bajjipuram, Timmajipet Mandal, Mahaboobnagar District was married to the accused five years back and was residing with him. But however, inasmuch as they had no issues at all, the appellant-accused started harassing her for not conceiving the children and also had been threatening that he would marry another woman for getting children, which made the deceased to take the same seriously. Prior to incident, the deceased and her husband came to Hyderabad from Thimmajipet Mandal of Mahaboobnagar District to see her brothers and staying in the house of her brother M. Narsinga Rao and on 28.4.1994 at about 10.30 a.m. one Battina Rajini-the defacto-complainant heard a woman crying from the neighbouring house and she came out from her house and saw one Shivarani making hue and cry. The house was bolted from inside and smoke was emanating there from. Immediately neighbours Babu Prasad and others gathered and Babu Prasad forcibly opened the door, and inside a woman was found set self ablaze, and was almost burnt and a kerosene tin and match box were found nearby and the said woman was identified as Padma-the deceased and the wife of appellant-accused herein, and on the complaint lodged by Rajini, crime No.42 of 1994 was registered and investigation was taken up. The Sub-Inspector had given a requisition to the Magistrate for recording dying declaration and the same was recorded by the Magistrate on the same day and the deceased was examined by the Investigating Officer and while undergoing treatment, she succumbed to burns on 29.4.1994 evening and thereafter, the provision of law was altered to Section 498-A and Section 306 of Indian Penal Code. It is the further case of the prosecution that due to the harassment by the appellant-accused that she had not given birth to

children, and as the accused expressed his intention to marry another woman for the sake of children, ultimately the same had resulted in the incident and the appellant-accused was arrested on 9.5.1994 and charge sheet was filed.

4. The case was taken on file in PRC No.153 of 1994 under Sections 498-A and 306 of IPC against the accused by the learned Judicial I Class Magistrate, Hyderabad East and North and the case was committed to the Court of Sessions, Rangareddy District on 10.7.1995 and before the Court of Session, the same was registered as S.C.No.182 of 1995. Subsequent thereto on appearance of the accused, he was examined and charges were framed, read over and explained to him, and the appellant-accused pleaded not guilty. The prosecution had examined P.Ws 1 to 12 and also got marked Exs.P-1 to P-11 and M.Os 1 to 4 and the accused was examined under Section 313 Cr.P.C.

5. The learned Principal Assistant Sessions Judge, Rangareddy District at Saroornagar on appreciation of both oral and documentary evidence available on record and also taking into consideration the respective rival contentions of the prosecution and the defence, ultimately arrived at a conclusion that the prosecution had proved its case. Accordingly, the accused was sentenced to undergo rigorous imprisonment for a period of two years for the offence under Section 498-A IPC and to pay a fine of Rs.200/-; and he was also sentenced to pay a fine of Rs.200/- and to undergo rigorous imprisonment for a period of 10 years for the offence under Section 306 IPC, and both the sentences to run concurrently, and the accused shall undergo simple imprisonment for a period of one month each in default of the fine imposed and the remand period already undergone by the accused shall be set off under Section 428 of Cr.P.C.

6. Aggrieved by the same, the appellant-accused preferred the present appeal. Sri C. Praveen Kumar, the learned counsel representing the appellant-accused had taken this Court through the evidence of P.Ws 1 to 12 and had pointed out that P.W.4 and P.W.5 who are the brothers of the deceased, were declared hostile and except dying declarations, there is no other material available on record to substantiate the stand taken by the prosecution that the appellant-accused is liable to be convicted for the offence charged with. The learned counsel also had

explained the events and would submit that the oral dying declaration as spoken to by P.W.1 and the other two dying declarations recorded by the Sub Inspector and also the Magistrate would not inspire confidence. The learned counsel would also submit that at any rate definitely the material available on record would not establish the offences with which the accused had been charged with beyond reasonable doubt. The learned counsel after taking this Court through the oral and documentary evidence available on record, in particular had pointed out Exs.P-8 post mortem report and would contend that the doctor was not examined and atleast a person acquainted with the signature of the doctor had also not been examined and hence, cause of death of the deceased itself is not established by the prosecution. The learned counsel had placed reliance on Section 294 Cr.P.C. and also had placed reliance on Kota Peda Nagesh V. State of A.P., 1999(1) ALT (CrI.) 364 (DB)(AP) and Erlapalli Prakasam V. State of A.P., 2002 (1) ALD (CrI.) 621 (AP) in this regard. The learned counsel also would point out that though P.Ws 4 and 5 were declared hostile, P.Ws 1 and 2 were not declared hostile and hence, the oral dying declaration made by P.W.1 would assume lot of importance since it is the earliest in point of time. The learned counsel had also taken this Court through the evidence of the panch witnesses and also P.W.9 who had conducted the inquest panchanama and the contents of F.I.R. (Ex.P-6) and also the contents of Ex.P-9 recorded by P.W.10 and Ex.P-11 another dying declaration recorded by P.W.12. The learned counsel on the aspect of appreciating the credibility of the dying declarations and the consistency thereof, had placed reliance on Chinnapattu Nagan V. State of A.P., 1999(2) ALT (CrI.) 460 (DB) (AP) and Public Prosecutor V. Jangili Nirmala, 1996(2) ALD (CrI.) 940 (DB)(AP). The learned counsel also made elaborate submissions relating to the ingredients of Sections 107 and 306 IPC and the meaning of intentionally aiding and placed strong reliance on C. Nehrubabu V. State of A.P., 2001(2) ALD (CrI.) 683 A.P.; Bommididi Rajamallu V. State of A.P., 2001 (1) ALD (CrI.) 337 (AP); Ramesh Kumar V. State of Chhattisgarh, 2001(2) ALD (CrI.) 873 (SC) and also Mohd. Hoshan V. State of A.P., 2002 CrI.L.J. 4124. The learned counsel would conclude that in the light of the material available on record, definitely it cannot be said that the prosecution had proved its case beyond all reasonable doubt, and hence, the conviction and the sentence awarded by the Court of first instance definitely

cannot be sustained.

7. Per contra, the learned Additional Public Prosecutor Sri Niranjan Reddy made the following submissions:

The learned counsel would maintain that this is a case of death where the cause of death had been well established by the dying declaration recorded by the Magistrate. No doubt, the other two dying declarations are also there one by P.W.1 and another by the Sub-Inspector and these dying declarations as to cause of death are admissible under Section 32 of the Indian [Evidence Act, 1872](#) and hence, no further corroboration is necessary. The learned counsel also would point out that in the dying declaration made to the Magistrate, the cause, which had resulted in committing suicide, had been clearly spoken to. The other dying declarations are also consistent in this regard. The learned counsel would also submit so far as the non-examination of the doctor relating to the post mortem certificate or non-examination of a person who can identify the signature of the doctor as far as this aspect is concerned, it cannot be said to be fatal to the prosecution case and if such technical flaw is there, even at this stage, this Court can permit the prosecution to rectify the same by giving an opportunity and on that ground, the well considered judgment of the Court of first instance cannot be reversed. The learned counsel also placed strong reliance on K. Pratap Reddy V. State of A.P., 1985 (1) APLJ 220 (HC). The learned counsel in detail had explained the ingredients of Section 306 of IPC, which are to be satisfied by the prosecution and also placed strong reliance on K. Prema S. Rao V. Yadla Srinivasa Rao, 2003 SCC (Cri.) 271 and ultimately, the counsel concluded stating that in view of the consistency relating to the cause of death well spoken to by P.W.1, and also the other dying declarations, the Judgment of the Court of first instance is not liable to be disturbed at the hands of this Court.

8. Heard both the counsel and also perused the oral and documentary evidence available on record.

9. P.W.1- Rajini is the defacto-complainant. P.W.2- Siva Rani is sister-in-law of the deceased. P.W.3 is eye witness. P.W.4- Narsinga Rao and P.W.5- Devendar are brothers of the deceased. P.W.6- Venkata Ramana Sarma is the mediator for

seizure of M.Os 1 to 4. P.W.7-Ravindranath and P.W.8-Yadamma are the mediators for the inquest. P.W.9-P. Venkat Reddy, is the M.R.O. who held the inquest over the dead body of the deceased. P.W.10-P. Srinivasa Reddy is the Investigating Officer, who worked as Sub-Inspector of Police in Nacharam at the relevant point of time and prior thereto he worked as Sub-Inspector of police, Naredmet. P.W.11-M. Lakshminarayana, is another Investigating Officer who filed the charge sheet and P.W.12 is the Magistrate who had recorded the dying declaration. The prosecution also got marked Ex.P-1-Original complaint; Exs.P-2 and P-3-statements of P.Ws 4 and 5 under Section 161 Cr.P.C; Ex.P-4- scene of offence-panchanama; Ex.P-5-inquest panchanama and Ex.P-6-F.I.R.; Ex.P-7-alteration memo; Ex.P-8-post-mortem certificate; Ex.P-9-statement of the victim; Ex.P-10- requisition; Ex.P-11-dying declaration. Apart from these, M.O.1 kerosene tin, M.O.2 match Box, M.O.3 saree and M.O.4 blouse also had been marked.

10. P.W.1 deposed that she is a resident of Neredmet and one Narsinga Rao is her neighbour and about three years back at about 9.00 A.M. she found flames coming out from the house of Narsinga Rao, and herself and Babu Prasad found fumes and the said Babu Prasad jumped over the wall into the portion of Narsinga Rao and broke open the main door and they found a lady having set ablaze to herself sitting in a corner of the room, with burns all over her body and she is the sister of Narsinga Rao and thereafter people gathered, police came and obtained a complaint. Ex.P-1 is the complaint given by her. Ex.M.O.1 is the kerosene tin and M.O.2 is the match box. The first sentence in the cross-examination itself is to the effect that the deceased told her that incident happened when she was making attempt to light the stove and no doubt she had denied the suggestion that Ex.P-1 was written by her on instructions of the police.

11. P.W.2 is a resident of Neredmet and Padma is her sister-in-law. P.W.2 deposed about the incident and in the chief-examination itself she deposed that the deceased used to feel worried for not having children. In the cross-examination P.W.2 deposed that the deceased was happy with her husband and they had no disputes and the deceased had feeling for not conceiving a child. She had also deposed that the deceased had an idea to settle down at Hyderabad and the accused being a farmer, refused to come over to Hyderabad, but the deceased

had no grievance in relation thereto.

12. P.W.3 is a resident of Kakatiya colony and P.W.3 just deposed that after hearing cries, he found some fumes coming out from the windows and he broke down the door and found a lady setting ablaze to herself and he had seen her dress with burnt injuries and he came out. He also deposed that the said victim was the sister-in-law of P.W.2 and she was shifted to the hospital. 13.P.W.4 is one of the brothers of the deceased who was declared hostile and P.W.5 who was another brother of the deceased was also declared hostile.

14. P.W.6 is a resident of Kakatiya Nagar, Neredmet and Ex.P-4 is the scene of offence panchanama. He deposed that M.O.1-kerosene tin, M.O.2- match box, M.O.3-saree and M.O.4-blouse were seized by the police.

15. P.W.7 deposed that about 3 years back, he went to Gandhi hospital and one Yadamma was also present and they found dead body of the deceased and M.R.O. was present and the police conducted inquest over the dead body of the deceased and it was completely burnt. He further deposed that Ex.P-5 is the inquest panchanama and the same bears his signature and they came to know that the deceased committed suicide by setting herself ablaze. In the cross-examination, he deposed that P.W.5 is his relative viz., his brother-in-law. It is needless to say that P.W.5 is the brother of the deceased who was declared hostile.

16. P.W.8 also deposed about Ex.P-5 inquest panchanama. P.W.9 who is the M.R.O. deposed about Ex.P-5, and he conducted the inquest panchanama.

17. P.W.10 is the sub-Inspector of police who deposed about the receiving of Ex.P-1 from P.W.1 and registering the case in Crime No.42 of 1994 recording the statements of Rajini and proceeding to the scene of offence and conducting scene of offence-panchanama and sending the burnt woman to Gandhi Hospital. He deposed about Ex.P-4 scene of offence-panchanama and also seizure of M.Os 1 to 4 and recording of the statements. He also deposed about the alteration of section of law. Ex.P-7 is the alteration memo. Ex.P-8 is the post mortem certificate. He deposed that on receipt of the information of the death, he

requested M.R.O to conduct inquest over the dead body of the deceased. Ex.P-9 is the statement of the victim recorded by him.

18. P.W.11 is the Inspector of Police. P.W.12 is the Magistrate, who deposed that he received a requisition from the Sub Inspector of police, Naredmet Police Station, to record the statement of Padma, Gandhi Hospital, Secunderabad. Ex.P10 is the requisition and accordingly he visited the Gandhi Hospital at 2.15 p.m. and recorded the statement of victim-Padma, who was found in female burns ward. Ex.P11 is the Dying Declaration recorded by him. P.W.12 also deposed that he had taken all the precautions as required under the law and Doctor was present at the time of recording the statement.

19. As already referred to supra, the earliest oral dying declaration was given by P.W.1, who had specifically stated that the deceased told that the incident happened when she was making an attempt to light the stove. Except that, nothing more had been stated. Ex.P-9 was recorded by P.W.10 and Ex.P-11 was recorded by P.W.12. In Ex.P11 for the question 'How did you receive these injuries', the deceased stated as follows:

'today morning at 7.00 A.M. I came to the house of my elder brother at Neredmet. At about 9.00 A.M. I poured Kerosene from the stove and set fire because my husband harassed me daily stating that I am not having any children. Due to said unbearable harassment and as he is saying daily that he will contact another marriage, I came to the house of my elder brother, poured kerosene and set fire, I extinguished flames with water, thereafter my sister-in-law admitted in the Hospital.'

20. This is the portion on which strong reliance was placed by the prosecution and no doubt, reliance was also placed on Ex.P-9 recorded by P.W.10. The stand taken by the prosecution is that these dying declarations were recorded by P.Ws.10 and 12, Exs.P-9 and P-11 respectively are definitely consistent relating to the cause of death and reliance can be placed on such dying declarations and hence, the learned Principal Assistant Sessions Judge, Ranga Reddy District, had arrived at a correct conclusion in this regard. 20.Relating to the appreciation of dying declarations and consistency thereof, strong reliance was placed on

Chinnapattu Nagan V. State of A.P. (3 Supra), and Public Prosecutor V. Jangili Nirmala (4 Supra). The principles are well settled relating to the evidentiary value of the dying declarations and appreciation thereof and the same need not be repeated again. When multiple dying declarations are available on record, the Court may have to scrutinize all the declarations available and may have to arrive at a conclusion whether such declarations inspire the confidence for the purpose of convicting the accused. The earliest version may have to be given due weight. P.W.1 specifically deposed that the deceased told that the incident happened when she was making attempt to light stove. Except making this statement, nothing more had been stated by P.W.1. Hence, the subsequent versions in improved form definitely are doubtful.

21. Apart from this aspect of the matter, relating to the establishment of the cause of death by the prosecution, Ex.P-8 post mortem report was marked through investigating officer. Neither the doctor nor any person acquainted with the signature had been examined. Strong reliance was placed on Section 294 Cr.P.C. and a contention was advanced that Ex.P-8 was not proved in accordance with law and hence, on this ground, the prosecution is bound to fail. Strong reliance was placed by the defence counsel on Kota Peda Nagesh V. State of A.P. (1 supra) a decision of Division Bench and also on Erlapalli Prakasham V. State of A.P. (2 supra) in this regard. No doubt prosecution placed reliance on K. Pratap Reddy V. State of A.P. (9 supra) wherein contrary opinion was expressed. It is pertinent to note that the said judgment is by a Single Judge and in the light of the view expressed in Kota Peda Nagesh V. State of A.P. (1 Supra) a decision of Division Bench and also in the light of a latest decision of this Court in Erlapalli Prakasham V. State of A.P. (2 supra), the view expressed by the learned Single Judge in K. Pratap Reddy V. State of A.P. (9 supra) is of no consequence. No doubt, the prosecution made a faint attempt at this stage requesting for giving an opportunity to rectify this technical flaw. In the light of the fact that the matter has been pending for sufficiently a long time, it would not be just to give such opportunity at this stage. Hence, I am not inclined to accept the said contention.

22. Apart from all these aspects, the blood relatives of the deceased P.Ws 4 and 5 had turned hostile, and they had not supported the case of prosecution. Even if the

whole material is taken into consideration, the prosecution intends to sustain its case on the ground that there is some material relating to harassment to the effect that she was not begetting children and hence, such harassment would amount to intentional aiding. In the light of the language employed in Section 107 of IPC and also Section 306 of IPC, I am not inclined to accept the said contention. Strong reliance was placed in this regard on C. Nehrubabu V. State of A.P. (5 supra), Bommi Rajamallu V. State of A.P. (6 Supra) and Ramesh Kumar V. State of Chhattisgarha (7 supra).

23. On careful scrutiny of the oral and documentary evidence available on record and also the oral dying declaration at the earliest point of time and the subsequent dying declarations and the suspicion in relation thereto, and also in view of the fact that the very cause of death was not proved by proving Ex.P-8 in accordance with law, I am of the considered opinion that the conviction and the sentence imposed by the learned Principal Assistant Sessions Judge, Rangareddy District in Sessions Case No.182 of 1995 cannot be sustained and are liable to be set aside. Hence, the appellant-accused is entitled for acquittal.

24. Accordingly, the Criminal Appeal is hereby allowed. The bail bonds of the accused shall stand cancelled.