

P. Bikshapathi Vs. State of A.P. Represented by Public Prosecutor

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Court : Andhra Pradesh

Decided On : Oct-07-2004

Reported in : II(2005)DMC617

Judge : P.S. Narayana, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 161; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Indian Penal Code (IPC) - Sections 306 and 498A

Appeal No. : Criminal Appeal No. 622 of 2003

Appellant : P. Bikshapathi

Respondent : State of A.P. Represented by Public Prosecutor

Advocate for Def. : Additional Public Prosecutor

Advocate for Pet/Ap. : Hemalatha, Counsel by Legal Aid

Disposition : Appeal dismissed

Judgement :

P.S. Narayana, J.

1. The quarrel between a drunkard husband and his wife resulted in the death of the wife consequent upon which the husband was charged with the offences under

Sections 306 and 498-A I.P.C. and was convicted and sentenced to Rigorous Imprisonment for seven years and three years respectively, to run concurrently. The learned Judge for trial of offences under S.Cs. & S.Ts. (Prevention of Atrocities) Act 1989-cum-VI Additional Metropolitan Sessions Judge, Secunderabad in S.C.No.475/2002, recorded the evidence of PW-1 to PW-12, marked Exs.P-1 to P-12 and M.Os.1 and 2 and made the Judgment aforesaid dated 28-1-2003. Hence the present Criminal Appeal.

2. Submissions of Ms.Hemalatha Devi, Counsel by Legal Aid:

Ms.Hemalatha, learned Counsel submitted that the evidence on record would show that the appellant is a habitual drunkard often picking up quarrels and beating the deceased and the appellant and the deceased were married for about more than 20 years and begot four children and the deceased was bearing the beatings by the appellant/accused and was also putting up with the quarrels since the last 20 years and hence the learned Judge should have considered whether the routine beating and picking up quarrels by a drunkard husband and his taunting words in the circumstances may be considered as abetting the deceased wife to commit suicide. The learned Counsel also would contend that the learned Judge should have considered whether in the circumstances it was reasonable for the deceased to take the words of the appellant/accused so seriously and set fire to herself. The learned Counsel also while elaborating her submissions would contend that the behaviour of a drunkard husband in the manner explained by the prosecution may not amount to cruelty. At any rate, in the light of the fact that he is a habitual drunkard, definitely it cannot be said that the appellant/accused was guilty of an offence under Section 306 I.P.C. though at the best it may fall under Section 498-A I.P.C.

3. Submissions of Additional Public Prosecutor :

The learned Additional Public Prosecutor on the contrary would contend that the dying declaration by the Magistrate is clear and categorical and the learned Judge recorded reasons in detail and the medical evidence also would go to show that the deceased received 90% burn injuries but however PW-8, the Duty Doctor, certified that the deceased at the relevant point of time was in a fit condition to

make the statement and hence such statement may have to be given due weight and hence the findings recorded by the learned Judge need not be disturbed.

4. Bikshapathy/appellant/accused, the husband of Uppalamma, the deceased, was charged with the offences under Sections 306 and 498-A I.P.C. On 14-4-2002 at 3.15 p.m. a telephonic message was received from Gandhi Hospital that the deceased was admitted in burns ward and S.I. of Police, Tukaramgate went to the hospital and recorded her statement. It is also the version of the prosecution that the deceased had stated that she married the accused about 20 years ago and were blessed with four children and the accused was a rickshaw puller by profession and the deceased was working as servant-maid and the accused was habituated to drinking and never was bothered about the family affairs and he daily used to visit her fully in a drunken condition and used to pick up quarrels with her and used to beat her and on 14-4-2002 at 3.15 p.m. the accused was present in the house and picked up quarrel with the deceased, consumed two quarters of liquor and asked the deceased to consume liquor and she refused to consume the same and the accused asked their children to go out and bolted the door from inside and the accused after consuming liquor asked the deceased to cooperate with him for sexual enjoyment and when she refused saying that she was in menstrual periods, the accused got annoyed and poured kerosene on her and she herself lit the fire. Basing on the said statement a case in Cr.No.42/2002 was registered under the head 'Woman Burnt' and the S.I. of Police sent the requisition to VII Metropolitan Magistrate to record the statement of the victim and he visited the spot and conducted observation panchanama in the presence of mediators and seized material objects and examined witnesses. On receipt of death information of the injured on 15-4-2002 the Section of law was altered from the head 'Woman Burnt' to Sections 498-A and 306 I.P.C. and the S.I. of Police further examined the witnesses, relatives of the deceased, and conducted inquest over the dead body of the deceased in the presence of Panchayatdars and sent the dead body for post mortem examination and the Doctor opined that the cause of death was shock due to burns and he arrested the accused and remanded to judicial custody and after completing the investigation the charge sheet was filed.

5. The X Metropolitan Magistrate, Secunderabad had taken up the case on file under Sections 498-A and 306 I.P.C. and P.R.C.41/2002 was committed to the Court of Metropolitan Sessions Judge, Hyderabad who had made over the same to the Court of Special Judge for trial of offences under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989-cum-VI Additional Metropolitan Sessions Judge, Secunderabad. After appearance of the accused the learned Judge framed charges under Sections 498-A and 306 I.P.C., read over the same and explained to the accused who pleaded not guilty and hence the learned Judge examined PW-1 to PW-12 and marked Exs.P-1 to P-12 and M.Os.1 and 2.

6. Evidence available on record :

PW-1, the eldest son of the deceased, deposed that the deceased is his mother and the accused is his father and he is having one sister and two younger brothers. He deposed that his father was a rickshaw puller and his mother was a maid servant. His father was always creating galata in their house in drunken condition. On 14-4-2002, there was a quarrel between his father and mother and on that day he went to Kushaiguda for some work and at that time his sister went to his aunt's house at Janagam and his two brothers were in the house. He further deposed that when he was at Kushaiguda, he received information that his mother received burns in the house and was admitted in the hospital and immediately he rushed to the Gandhi Hospital and found his mother in the hospital and at that time his father was not near his mother and on his enquiry his mother informed that his father picked up quarrel and poured kerosene on her and insisted her to lit herself and in the night of the same day the deceased expired. PW-1 also further deposed that on his enquiry his brothers informed him that his father poured kerosene and lit fire and at that time they were playing outside and on seeing a mob gathered near their house they rushed to the house and saw the incident from the door.

PW-2, Nagesh, aged 14 years, is another son of the deceased and the accused. He deposed that on the date of the incident, himself and his another brother Karunakar and his mother were in the house and his father gave Rs.30/- to him and asked him to get a quarter whisky at about 12 noon and he brought the whisky and gave to his father and his father sent him and his brother for playing outside

the house. He further deposed that he heard noise and went near the door of his house and found his father and mother quarrelling with each other from small opening of the door and after seeing the same he left again to play and thereafter he noticed gathering of mob near their house and smoke was coming from their house and on seeing the same, himself and his brother came back and found his mother on the ground with burns and one aunty and Mrs.Fatima shifted his mother to Gandhi Hospital and later PW-1 came to the hospital. PW-2 also deposed that his father used to quarrel with his mother always in drunken condition and his father poured kerosene on his mother.

PW-3, Mrs.M.Fatima, is a resident of Addagutta and a neighbour of the accused and the deceased. She deposed that the accused used to quarrel with his wife demanding for money in drunken condition and when she intervened one or two times, he also beat her. On 14-4-2002 she heard a quarrel from the house of the accused, but she did not care for it as it was a routine affair in their house. Thereafter one Mrs.Moti Devi came to her and informed that smoke was coming from the house of the accused at about 3 p.m. and immediately they rushed to the house of the accused and found the door of the house of the accused closed from inside and the accused came out shouting that his wife was burning and herself and one girl poured water on the deceased and extinguished the fire and thereafter they shifted her to Gandhi Hospital. PW-3 deposed that she heard while the deceased was informing police that her husband poured kerosene on her.

PW-4, Mrs.Moti Devi also is a resident of Addagutta and she is another neighbour of the deceased and the accused. PW-4 also deposed that daily the accused and the deceased used to quarrel with each other and the accused used to be in a drunken condition and on 14-4-2002 at 2 p.m. while she was sleeping in her house she heard some noise and came out and found smoke coming from the house of the accused and immediately, herself and other neighbours rushed to the house of the accused and found the accused coming out from the house shouting that his wife was burning and some people extinguished the fire by pouring water and thereafter the deceased was shifted to hospital by PW-3.

PW-5 was the VII Metropolitan Magistrate who recorded the dying declaration of the deceased at the hospital. She deposed that she received requisition from Tukaramgata Police Station on 14-4-2002 at 5.30 p.m. to record the dying declaration of Uppalamma at Gandhi Hospital in Female Burns Ward and she proceeded to Gandhi Hospital and got identified the injured by the Duty Doctor Dr.N.V.N.Reddy who also certified that the deceased was in a fit state of mind to give statement before and after commencement of recording of dying declaration. PW-5 deposed that after asking the preliminary questions, she was satisfied about the mental condition of the deceased and she recorded the statement of the deceased wherein she stated that on the date of the incident she was in the house and there was a quarrel between her and her husband and her husband took drinks heavily and also asked her to take the drinks and poured kerosene and asked her to lit fire and he will see how she will be burnt and then she lit the match stick which was burnt and at that time her husband was in the house and he covered her with a blanket and thereafter he went outside and she came to know that he was also burnt and that he was always quarrelling with her in a drunken condition and that her neighbours admitted her in the hospital. After recording the statement of the deceased, PW-5 explained the contents and obtained her right thumb impression and Ex.P-1 is the requisition to record the dying declaration and Ex.P-2 is the dying declaration.

PW-6 is the father of the deceased Uppalamma and a resident of Janagam, Warangal District. He deposed that he performed the marriage of his daughter Uppalamma with the accused and they were blessed with three sons and one daughter and the accused was a rickshaw puller by profession. He also deposed that the accused was in the habit of drinking and used to beat his daughter and abuse her and on a prior occasion the accused lit the hut also. PW-6 deposed that about eight months back they received information that his daughter received burns and admitted was admitted in Gandhi Hospital and by the time he reached the Hospital his daughter expired. PW-6 deposed that he came to know that the accused poured kerosene and lit the fire.

PW-7 is the sister of the deceased Uppalamma and she is a resident of Ambedkarnagar. She deposed that the marriage of her sister with the accused

was performed about 20 years back and they were blessed with three sons and one daughter and the deceased was working as maid servant and the accused was a rickshaw puller. The accused used to quarrel with the deceased in a drunken condition and her sister expired about eight months back and they came to know that the accused poured kerosene on her and they do not know whether the accused lit fire or her sister herself lit the fire and ultimately she was burnt and died.

PW-8 is the Doctor who was present at the time of recording the dying declaration by PW-5 on 14-4-2002 in the Burns Ward and he certified that the patient was in a fit state of mind to give the statement before and after the commencement of recording of the dying declaration under Ex.P-3 and Ex.P-4 endorsements. Ex.P-5 is the case sheet of the deceased.

PW-9 deposed about Exs.P-6 and P-7 and this witness also deposed that he signed Exs.P-6 and P-7, scene of offence panchanama and rough sketch, respectively.

PW-10 is the Doctor who conducted autopsy over the dead body of the deceased. He deposed that on 15-4-2002 at 3.20 a.m he received requisition from the S.H.O. Tukaramgate Police Station to conduct autopsy over the dead body of the deceased and he conducted post mortem examination over the dead body of the deceased and found ante mortem mixed flames all over the body except posterior part of scalp, front of lower abdomen, pubic region, part of both buttocks and soles of both feet and all the internal organs were congested. Ex.P-8 is the post mortem examination report issued by him opining that the cause of death was due to shock due to burns.

PW-11 deposed that about one year back on 15-4-2001 she went to Gandhi Hospital and the police conducted inquest over the dead body of the deceased Uppalamma in her presence and in the presence of one Venkatesh and Ex.P-9 is the inquest report.

PW-12 is the Assistant Sub-Inspector of Police, Tukaramgate Police Station. He deposed that Cr.No.42/2002 relating to S.C.No.475/2002 was investigated by late

Mr.Bhoopalaswamy who was the then Sub-Inspector of Police, Tukaramgate Police Station and he can identify the hand writing and signatures of late Mr.Bhoopalaswamy. He further deposed that as per record late Mr.Bhoopalaswamy received a telephonic message from Gandhi Hospital on 14-4-2002 at 16.30 hours about admission of Uppalamma in Gandhi Hospital and he recorded the statement of the deceased Uppalamma at Gandhi Hospital under Ex.P-10 and he returned to Police Station and registered it as case in Cr.No.42/2002 under the head 'Woman Burnt' and issued Ex.P-11 First Information Report and Ex.P-10 is in his handwriting and thereafter he also recorded the statements of PW-1 to PW-4 and one Urmila Devi, Laxmi, PW-6 and PW-7 under Section 161 Cr.P.C. which bear his signatures. On 14-4-2002 at 18.00 hours the said Sub-Inspector of Police conducted the scene of offence panchanama in the presence of Mr.Manohar and Mr.Somaiah under Ex.P-6 and also drawn Ex.P-7 and seized MO-2 under Ex.P-6 and he also sent a requisition under Ex.P-1 to the Magistrate for recording dying declaration, which also bears his signature and he also conducted inquest over the dead body of the deceased on 15-4-2002 in the presence of Anjamma and Venkatesh under Ex.P-9 which is in his handwriting and bears his signature and thereafter he filed alteration memo under Ex.P-12 altering the Section of law from 'Woman Burnt' to Sections 498-A and 306 I.P.C. after the death of the deceased and after completion of the investigation he filed the charge sheet.

Dying Declarations:

PW-1 deposed that immediately he (PW-1) rushed to Gandhi Hospital and found his mother in the Hospital and at that time his father was not near his mother. In the words of PW-1 'On my enquiry my mother informed that my father poured kerosene on her and insisted her to lit herself. Except that she did not say anything'. This is the statement of the deceased alleged to have been made to PW-1. The then S.I. on receipt of information that the deceased was admitted in Gandhi Hospital in Female Burns Ward reached the Hospital at 16.30 Hours and recorded the statement of the deceased under Ex.P-10 and the signature was identified by his colleague PW-12.

Ex.P-10 reads as hereunder :

'I am a native of Janagoan, Warangal District. I was married with Bikshapathy about 20 years ago. I along with my husband and 4 children living in the above house since last 18 years. I am doing cleaning works in bungalows. My husband pull cycle rickshaw. I was torturing by my husband since long time. He harass me by suspecting my character and beat me regularly. Today i.e., 14-4-2001 at about 3.15 p.m. my husband was present in the house. He picked up quarrel with me, asking me to co-operate with him in sexual intercourse. He sent out my children out of the house. He consumed 2 quarter bottles of liquor and insisted me to drink. I refused. As I was in periods I objected to co-operate with him and asked him to be away. He abused me in filthy language and all of sudden poured kerosene oil on my person. I struggled with him. At last, I myself, set fire with match box. As the door was closed from inside, I could not come out and my husband came out of the house seeing my position. First he tried to rescue me by put off flames and in the process he too affected with burns (flames). Myself and my husband were brought to hospital by the locality people'.

x x x

7. The learned Magistrate, PW-5, recorded the dying declaration of the deceased at 6 p.m. and PW-8, the Duty Doctor, had attested and certified that the patient was in a fit condition as per Exs.P-3 and P-4. The dying declaration Ex.P-2 reads as hereunder :

'In order to satisfy himself about the condition of the Declarant, I put the following questions to Declarant.

What is your name ?

Uppalamma.

What is your husband's name ?

Bikshapathi

Where do you stay ?

Addagutta.

What is your age ?

28 years.

What work you do ?

I work in house (maid servant)

What work your husband does ?

He pull rickshaw.

How many children ?

Four.

Who reside in your house ?

Myself, my husband and children reside.

Where are you now ?

I am in hospital.

Do you know who am I ?

I do not know.

(I explained her, I am Magistrate came to record her statement).

From the above answers, I am satisfied that the patient is conscious is in a fit state of mind to give her statement.

What happened? Where happened? How happened? State in detail.

Happened in the afternoon in the house itself. Quarrel took place between my husband and myself. He drank very much. He stated to me to drink. He himself poured kerosene on me and stated to me to set fire myself. Before setting fire he

stated that he would see how I would set fire to myself. Then, I myself lit the match stick. It caught fire. He was in the house itself. He came and covered with bed sheet. Later, however went out. Later, I came to know that he set fire to himself. He already used to come in drunken state and used to quarrel. Our neighbours brought me to the hospital.

Will you say anything?

Nothing.'

8. On a careful scrutiny of Ex.P-10 and Ex.P-2 and also the statement alleged to have been made by the deceased to PW-1 there appears to be slight variation. The fact remains that the accused/husband had been a habitual drunkard and he had been quarrelling for sufficiently long time and this event of quarrelling had not happened on that particular day only since always he had been in the habit of quarrelling with the deceased/wife. PW-1 and PW-2 are the children of the accused and the deceased. Though the medical evidence shows 90% burn injuries, by virtue of Exs.P-3 and P-4 it can be taken that the deceased was in a fit condition to make the statement and hence the learned Judge had placed reliance on Ex.P-2 and the learned Judge had rightly done so.

9. Submissions at length were made by the learned counsel for the appellant that the ingredients of Section 306 I.P.C. are not satisfied since it is not in controversy that the accused is a habitual drunkard and quarrelling with the deceased/wife had been a common phenomenon in the family. Though the version appears to be slightly different, the fact that the accused uttered those words in consequence of which the deceased had lit fire to herself cannot be in dispute or controversy. Whether this will amount to abetment or not is the question. It is no doubt true that the accused was in a drunken mood and the deceased also was habituated to the usual quarrels of the accused. The drunken husband/accused as usual might have thought that by virtue of the usual quarrels nothing would happen. But however this cannot be taken as defence. At the best this can be taken as a mitigating circumstance in awarding punishment. As far as the instigation or aiding is concerned, in the facts and circumstances of the case, especially in view of the reasons recorded by the learned Judge in detail, this Court is of the considered

opinion that the said reasons need not be disturbed especially in the light of the clear evidence of PW-1 to PW-12 and Exs.P-1 to P-12 and M.Os. 1 and 2. Hence, the findings recorded by the learned Judge no doubt are hereby confirmed, but however, taking all the facts and circumstances into consideration and also the fact that the appellant/accused had been always a habitual drunkard and had been in the habit of quarrelling with the deceased/wife, the conviction under Sections 306 and 498-A I.P.C. no doubt are hereby confirmed, but the sentences are modified directing the appellant/accused to undergo R.I. for 31/2 years for the offence under Section 306 I.P.C. and 21/2 years for the offence under Section 498-A I.P.C. and with a further direction that both the sentences shall run concurrently. Except this modification of sentences, in all other particulars, the findings of the learned Judge are hereby confirmed.

10. The Criminal Appeal shall stand dismissed, subject to the above modification of sentences.

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