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Jangaiah Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Jul-12-2007

Reported in : 2007CriLJ4598

Judge : C.Y. Somayajulu, J.

Acts : Evidence Act, 1872 - Sections 32; Indian Penal Code (IPC), 1860 - Sections 306 and 506

Appeal No. : Cri. Appeal No. 179 of 2002

Appellant : Jangaiah

Respondent : State of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Shyam S. Agrawal, Adv.

Disposition : Appeal allowed

Judgement :

C.Y. Somayajulu, J.

1. Appellant (A2) and another (A1) and the daughter of the appellant (A3) were charge-sheeted for an offence under Section 306, IPC for abetting Kumari Alivelu (the deceased) daughter of P.W, 5 and sister of P.W, 6 to commit suicide, Since

the daughter of the appellant is a juvenile the case against her was separated.

2. The case of the prosecution is, inasmuch as A, I promised to marry her, the deceased developed Illicit intimacy with him but he later refused to marry her, Imputing unchasitity to the deceased the appellant used to abuse her in filthy language in public. For that reason and as Al refused to marry her, the deceased committed suicide and so a charge under Section 306, IPC was framed against the appellant and A-1. They denied the offence.

3. In support of its case, the prosecution examined nine witnesses as P.Ws. 1 to 9 and marked Exs. P1 to P12 and M.Os. 1 to 3.

4. The trial Court acquitted the appellant and A1 of the offence under Section 306, IPC, but in view of the Ex. P7 statement made by the deceased recorded by P.W. 7, and Ex. P10 dying declaration recorded by P.W. 9, convicted the appellant under Section 506, IPC and sentenced him to rigorous imprisonment for three months and fine of Rs. 1,000/- in default, simple imprisonment for one month. Hence this appeal.

5. The point for consideration is whether 'the prosecution brought home the guilt of the appellant beyond reasonable doubt for the offence under Section 506, IPC.

6. P.W. 1 is the pancha at the scene of offence panchanama, P.W. 2 is the photographer who took Exs. P2 to P4 photographs of the scene of offence panchanama, P.W. 3 is the pancha at the time of Ex. P5 inquest held on the body of the deceased, P.W. 4 is the doctor who conducted post-mortem examination on the body of the deceased and issued Ex. P6 post mortem examination report, P.Ws. 5 and 6 are the mother and brother of the deceased, P.Ws. 7 and 9 are the investigating officers and P.W. 8 is the Magistrate who recorded Ex. P. 10 dying declaration of the deceased.

7. Since P.Ws. 5 and 6 in their cross-examination stated that they were tutored by the concerned police as to how they should give evidence in the Court, the trial Court disbelieved their evidence. In fact, P.W. 6 was treated as a hostile witness by the Additional Public Prosecutor on the ground that he during cross-

examination gave a good bye to his version in the chief examination and permitted him to cross-examine P.W. 6.

8. On the ground that Exs. P7 and P10 show that appellant used to insult the deceased by suing obscene words In the public, the trial Court convicted the appellant for the offence under Section 506, IPC, Such conviction basing only on Exs. P7 and P10 which are the dying declarations of the deceased only without there being any corroborative material, is not sustainable because, as per Section 32 of the Evidence Act, the statement of a person, who is dead, is relevant and can be admitted in evidence, only if it relates to his/her cause of death or in other circumstances enumerated therein - See Inderpal v. State of Madhya Pradesh : 2002 CriLJ926 . Since the statement made by the deceased in Exs. P7 and P10, relating to the appellant abusing her in filthy language in public place does not fall within any of the limbs of Section 32 of the Evidence Act, and since there is no other evidence on record to show that the appellant ever abused the deceased in vulgar language in public view, the trial Court erred in convicting the appellant for an offence under Section 506, IPC because P.Ws. 5 and 6 admitted in their evidence that they were tutored by the police to give evidence in the manner in which they dictated. If the evidence of P.Ws. 5 and 6 is discarded there is no other material on record to show that the appellant committing the offence under Section 506. IPC.

9. Therefore, I hold that the prosecution failed to bring home the guilt of the appellant for the offence under Section 506, IPC. The point is answered accordingly.

10. In the result, the appeal is allowed and the appellant is acquitted of the offence under Section 506, IPC. His bail bonds shall stand cancelled.

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