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Court : Andhra Pradesh

Decided On : Oct-13-2000

Reported in : 2000(2)ALD734; 2000(2)ALD(Cri)734

Judge : Bilal Nazki, J.

Acts : Indian Penal Code (IPC) - Sections 306 and 498A

Appeal No. : Crl. A. No. 346 of 1995

Appellant : A.T. Bheemaiah and ors.

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

Advocate for Def. : Public Prosecutor

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

Disposition : Appeal allowed

Judgement :

Bilal Nazki, J.

1. In this case, A1 to A3 who are the appellants before this Court have been convicted under section 498A and 306 IPC. Under both the offences they have been sentenced to three years rigorous imprisonment and a fine of Rs.500/- has been imposed, in default of payment of fine they have to undergo further

imprisonment of three months. The facts leading to the prosecution of the appellants are summarised below.

2. One Smt. Revathi Devi was married to A.T. Bheemaiah (A1) in the year 1987 at Ananthapur. After marriage she started residing with her husband and parents-in-law, (A2 and A3). It was alleged that she was ill treated by all the accused, they used vulgar language while talking to her, A1 to A3 forcibly snatched away her gold ornaments i.e., a pair of ear studs and gold ring, they sent her to her parents to get cash of Rs.1,000/-, they also asked her not to return to their house till she arranges the cash of Rs.1,000/-. Revathi Devi remained with her parents. Two months prior to the occurrence A1 to A3 went to Ananthapur, engaged some unsocial elements and attacked the parents of Revathi Devi and tried to kidnap her. Sri K.S. Prasad, cousin of Revathi Devi intervened and a panchayat was conducted at Ananthapur and the matter was passified and Revathi Devi was sent to the house of her in-laws. In the meanwhile A1 to A3 decided to have second marriage of A1. Due to this harassment and ill treatment Revathi Devi committed suicide by pouring kerosene oil on herself and then setting herself to fire. The incident occurred at 1.20 pm on 5-12-1989 at the house of A1 to A3 in H.A.L, Balanagar. Smt. Revathi Devi received burn injuries, she was admitted in Gandhi hospital where she expired on the next day i.e, 6-12-89 at about 6.30 pm. One Sri Prasad (P.W.1), Senior Manager in H.A.L, Hyderabad came to know about the incident and presented the complaint Ex.P1 to police at 2.00pm on 5-12-89 which was registered by the Police Inspector P.W.12. P.W.11 sent a requisition to the Magistrate to record dying declaration of Revathi Devi. The Magistrate recorded dying declaration between 5.05pm and 5.20 pm on 5-12-89 which is marked as Ex.D10. P.W.9 conducted the inquest over the dead body on 7-12-89 his report is Ex.P3, it was attested by P.W.8 and others. Thereafter, prosecution was launched. The accused were charged under section 498A, 304B and 306 of IPC. The accused denied the allegations. The prosecution examined twelve witnesses and exhibited Ex.P1 to P7 and marked M.Os 1 to 4. Ex.D1 to D8 were exhibited by the defence. The dying declaration Ex.D10 was also exhibited by the defence.

3. P.W.1 is a Senior Manager in H.A.L factory, Balanagar. He stated that, he knew A2 who is an employee of H.A.L factory, Revathi Devi is his daughter-in-law. He

knew A1 also who is son of A2. He knew A3 also who is wife of A2. He stated that Smt. Revathi Devi set fire to herself in the house of A2 at about 1.20pm on 5-12-89. When he was about to go to the factory, A3 came and informed him that her daughter-in-law was in flames. He instructed the security personnel of the factory to convey the message to A2 who was in the factory. He took his jeep, accompanied by one Inspector Saibabahe went to the house of A2. There was a crowd already in the house. He and the Inspector entered into the house and found Revathi Devi with burn injuries in bathroom of the house. They shifted her into the jeep, by that time A2 and A3 also arrived, the injured was taken to the dispensary, Doctors examined her, thereafter she was shifted to Gandhi hospital, Secunderabad for treatment. He lodged a complaint with P.S. Balanagar.

4. P.W.2 is another employee of the H.A.L factory, Balanagar. His house is opposite to the house of the accused. He knew the accused as well as Revathi Devi. According to him, on 5-12-89 between 1.00 and 1.30 pm, A3 knocked at the door of his house and after he came out he was informed that door of her house was bolted from inside and it was not being opened. Thereafter, he went to her house, knocked at the door of the house of the accused but there was no response from inside, after some time he pushed the doors with force and broke open the door, accompanied by A3 he entered into the house, they did not find anybody in two rooms but they could see smoke coming from the bathroom, then he pushed the door of bathroom and found Revathi devi with burn injuries. He told A3 to stay back at house and he himself went to dispensary of H.A.L to get ambulance. He informed the security officer. A2 was on duty on that day and he tried to contact him on phone but he could not get him. So, he personally went to his department and apprised him of the incident. Then he along with A2 went to the house of A2. By the time they returned, P.W.1 and many other people had reached the spot. Revathi Devi was taken out from the bathroom and had been shifted to the dispensary. Thereafter, she was shifted to the Gandhi hospital.

5. P.W.3 is the mother of the deceased. She stated that, Revathi Devi was given in marriage to A1 in the year 1987. At the time of marriage she had given Rs.5,000/- to A2 and presented a pair of gold ear studs and a gold ring to his daughter and a wrist watch to A1. She had also presented clothes to A1. After the marriage her

daughter stayed with A1 in his house. After a month of stay A1 and his daughter came to the house of the witness for Sreeramanavami. Her daughter informed her that her ear studs and gold ring had been taken by her in-laws and pledged towards a loan. She also informed her that when she resisted parting with the ornaments she was beaten by her husband and her in-laws. A1 also demanded Rs.2,000/- on loan at Rs.10/- interest since he had incurred certain debts. The witness further stated that, as her own financial condition was not good she showed her inability. Thereafter A1 abused her daughter and bet her in her presence in her house. Thereafter, Revathi refused to accompany A1 but the witness pacified her and sent her with A1. After one and half months her daughter Revathi came back to see her ailing father. she had been informed through telegram by the witness. At that time the condition of the husband of the witness was bad. After seeing her father she refused to go to her marital home as she apprehended danger to her life. The deceased also informed her mother that her husband was insisting her to do job. She had agreed, provided the job was available. The deceased also informed the witness that she had done a job for 15 days in a factory but the factory owner tried to outrage her modesty on one day therefore she gave up the job and narrated the incident to her husband and in-laws but she was told by her husband that such incidents occur and are quite common in the cities and in order to continue with the job one has to adjust to such things, but, she refused to attend the duties. After one week of her stay in the witness's house a telegram was received that A1 had died. The telegram was addressed to the husband of the witness. Relations of accused also received such telegrams who are neighbours of the witness. In the meantime maternal uncle of A1 came to her house, abused her and attacked her. Elders intervened. On the next day she filed a complaint with Station House Officer, II town P.S, Ananthapuram. After this complaint no panchayat was held. Word was sent to the accused for holding panchayat but they did not come. One Sri K. Siva Prasad intervened and advised that A1 and deceased should live separately for one year. However, A1 and A3 insisted and forced the deceased to come to their house. The deceased refused to go saying that if she were to go she would be ill treated. The deceased continued her stay with the parents. Thereafter the accused approached their relations and put pressure for sending the deceased to their house, but in

between the husband of the witness died and accused was informed that the deceased would be sent after first death anniversary of the husband of the witness. Later on, on 4-10-89 the witness and one Siva Prasad, one Ravindranath Sharma brought the deceased to the house of the accused in Hyderabad. In the month of November they came to Kurnool along with the deceased and attended religious ceremony of a Guru. The witness also went to Kurnool. The deceased informed her about the ill treatment and harassment by the accused. The witness requested the accused persons to send the deceased with her but they did not agree. The witness went to her own house and the deceased and her husband went to their place. She wrote letters to the accused to send the deceased to her house in connection with betrothal ceremony of her son in December, but she was not sent. In the morning of 6-12-89 she received a telegram about the death of her daughter. The incident had occurred on 5th. She came to Hyderabad and went to Gandhi hospital and learnt that the deceased had died by then. Before death, while the deceased was with the witness at Ananthapur A1 had come and taken some signatures of the deceased on some papers saying that he was taking insurance policy in her name. In her cross examination the witness stated that on one occasion when she had gone to the house of A1 she was presented with the saree. She also agreed that while deceased was at her house A1 sent Rs.200/- for two months. A1 also brought a new saree for the deceased while she was staying with her mother. She also admitted that accused had given Rs.3,000/- at the time of marriage of the deceased. She also agreed that she is a literate and can read and write. She also agreed that she used to write letters to A1 and to the deceased. Only on one occasion the deceased had written a letter to her. She also agreed that deceased had never mentioned in her letter about any demands by the accused. She also agreed that on one occasion when she came to Hyderabad, A1 had taken her to Birla mandir and to the house of her elder brother and also to a picture. She accepted that D1 to D8 are the letters written by her to her deceased daughter. They were in her own hand writing.

6. P.W.4 is the brother-in-law of the deceased. The deceased was only sister of his wife. He stated that the deceased had told her that she had given up the job because of the indecent incident in the office. Thereafter he wrote a letter to one Siva Prasad requesting him to settle the matter. P.W.5 is the sister of P.W.3. She

also narrated the incident which allegedly had taken place at the factory where the deceased was working. P.W.6 is the cousin of the deceased. He stated that he had met the deceased and the deceased had informed him about the ill treatment given by her husband and her in-laws. He also stated that the deceased told him that A1 was not giving salary in the house and her ear studs and ring were pledged by him somewhere. On one occasion he was informed by the deceased that A1 had demanded Rs.1,000/- but she had refused to get the money from her parents. She also informed him about the incident that took place at the factory where she had gone for working.

7. P.W.7 is an employee of the H.A.L, Balanagar. He identified his signatures on Ex.P2. He knew that the deceased Revathi Devi died due to burning. P.W.8 is a panch witness to the inquest. P.W.9 conducted the inquest.

8. P.W.10 is the Assistant surgeon. He stated that, on 5-12-89 Revathi was brought for treatment at 2.30pm with 100% burns. At that time her condition was poor, but she was in a position to give dying declaration. He was present at the time of recording the dying declaration by the Magistrate. He exhibited it as Ex.D10. The endorsement made by him is Ex.P4. The deceased died on 6-12-89 at 6.30 a.m. He did not notice that any kerosene smell was present on the dead body.

9. P.W.11 is the S.I of Police. He had sent the requisition to the Magistrate to record dying declaration of Revathi. The Magistrate had recorded the dying declaration. P.W.12 is Senior Executive Officer, C.I.D, Hyderabad. Earlier he had worked as Inspector of Police, Balanagar. He had received the complaint and registered case in Cr.No. 371/89. He exhibited F.I.R. He recorded statements of P.W.1 and P.W.2 and visited the scene of occurrence and conducted panchanama in the presence of panchas P.W.7 and L.W.10. He exhibited panchanama Ex.P2. He seized kerosene bottle and a small copper vessel and a plastic funnel and a match box from the scene of occurrence. He identified them as M.Os 1 to 3. He also sent a message to the Mandal Revenue Officer for holding inquest. He also sent message to the parents of the deceased. He also recorded statements of some of the witnesses. After the death of the deceased the offence was altered to

Section 306 and 498A IPC. He arrested A1 to A3 from their residence. He filed the charge sheet after receiving the post-mortem report.

10. The Doctor who conducted the autopsy was not examined, but in the light of the evidence his report may not be of any consequence. One S. Surender Babu Reddy who was Magistrate and who recorded the dying declaration was not examined by the prosecution and was given up. The dying declaration was also not put forth before the Court by the prosecution although it was an important document. I will come to this later, but before that the evidence of the prosecution witnesses has to be scrutinized.

11. There are vague allegations of harassment by the mother of the deceased. Some of the things which have been highlighted are that the deceased's gold ornaments were pledged for a loan, a demand of Rs.1000/- was made, the deceased was forced to work in a factory where she had worked for fifteen days and had suffered indecent behaviour of the employer. On the other hand P.W.3, the mother of the deceased who is a store witness had written eight letters to her daughter, son-in-law and the parents of the son-in-law during the crucial period. These letters do not contain even a suspicion that her daughter was being harassed. It is unusual to expect that the witness would write sweet letters to the accused persons when her daughter was being continuously harassed. The trial court has given its own interpretation to these letters by saying that these letters were written by way of giving an encouragement to the daughter who was suffering at the hands of in-laws. But, I do not agree with this interpretation on the ground that at least there would be any hint somewhere in some letter which would create an impression that her daughter was being harassed. On the other hand, if these letters are read in the context of the statement made by P.W.3 it becomes clear that the deceased was not suffering any harassment by her husband or in-laws. She agreed in her statement that when she visited Hyderabad her son-in-law took care of her, he took her to Birla mandir, he also accompanied her to her brother's house and he also went with her to see a picture. These are not the indications of an un-cordial relationship, on the other hand these incidents point out a cordial relationship between mother-in-law and the son-in-law. Had the daughter of the witness been a victim of harassment, certainly the son-in-law

would not extend such courtesies to his mother-in-law and even if he had extended such courtesies the mother-in-law would not accept it. She had also admitted that on her visit to her daughter's house she had been offered a saree. She had also accepted that when the deceased was staying in her house for two months a maintenance of Rs.200/- was sent to her by the son-in-law. Had he demanded Rs.1000/- and had he been in dire need of Rs.1000/-, he would not have sent Rs.400/- when his wife was staying with her parents. In one of the letters the witness who is mother of the deceased wrote to her son-in-law and daughter that, 'if you write a letter what all you want, I will bring them when I come in November'. So, she was insisting on her daughter and on her son-in-law as is the normal practice that if they needed anything she would send them. Had there been any demands, then she would have said that she will either accept those demands or she would have shown her inability to accept those demands, on the other hand, she offered to get things for her daughter and son-in-law provided they say what they want. In these circumstances, I feel that the trial court was wrong in coming to the conclusion that the deceased had been harassed during the marriage.

12. Now coming to the question of un-natural death of the deceased, it is true that the death has been caused in an un-natural manner and within seven years of the marriage. Therefore, there is a presumption against the accused persons. But, in view of the dying declaration this Court feels that, this presumption has been discharged by the accused persons. If the dying declaration is read along with the letters written by the mother of the deceased there remains no doubt in mind that the death of the deceased was caused due to an accident. The dying declaration is reproduced below:

'Statement of Yeti Revathi, w/o Bheemasena sarma recorded on 5-12-1989 in Female Burns ward, Gandhi hospital, Secunderabad in pursuance of the requisition received from Sub-Inspector of Police, Balanagar on 5-12-1989.

Proceedings commenced at 5.05 pm.

Q. What is your name?

A. Yeti Revathi

Q. What is the name of your husband ?

A. Bheemasena Sarma

Q. Where do you stay?

A. HAL colony

Q. What does your husband do?

A. Employee in City Small causes court.

Q. How old are you?

A. 22 or 23 years.

Q. Do you know that I am a Magistrate?

A. Now I Know.

From these answers I am satisfied that the deponent is fully conscious and in a fit state of mind to give statement.

Q. What has happened?

A. In the morning my father in law had his food and left. My mother-in-law went to bazaar. At 2.00 pm I have put coffee on a store and was pouring kerosene in the other Nutan stove. My hem caught fire behind. I went to bath room to extinguish. There is no water in the tub. I have collapsed there itself. I was brought to the hospital in Ambulance. My husband had been to his office. He was not at home.

Q. Do you want to say anything?

A. No.

--Affixed--

Left big toe impression of Yeti Revathi.

Both hands of the deponent are burnt and she is not able to sign and to affix thumb impression. Hence her left big toe impression is affixed.

I do hereby certify that the deponent is conscious and in a fit state of mind through out her statement that I read over the statement to her and she admitted the same to be true and correct and affixed her left big toe impression, that I recorded this statement in the presence of Dr. Y. Rama Mohan Rao, D.S.O, on this 5th December,1989.

Proceedings closed at 5.20 pm. Sd/-Judl.Magistrate of FirstClass, Hyderabad at (W&S;) 'Certified that the patient has been conscious all through and in a fit state to depose.' Sd/-Dr. V. Rama Mohan Rao, M.SD.S.O, dt. 5-12-89. 5.05 pm to 5.20 pm.'

13. This dying declaration was recorded by the Magistrate at the request of the Police. The Magistrate satisfied himself after putting some formal questions to the deceased that the deponent was conscious and was in fit state of mind to make statement. The Doctor who is witness No P.W.10 has also certified that the patient had been conscious all through and was in a fit state to depose. The Doctor was examined as prosecution witness and he exhibited his certificate. Since the Doctor was of the view that the patient was conscious and was in fit state to depose, the Magistrate also recorded the same satisfaction, therefore, I do not think that there was any reason to disbelieve the dying declaration. In the light of the evidence, with regard to the harassment, I think the dying declaration was an important piece of evidence corroborating to the fact that the deceased had not suffered any harassment at the hands of her in-laws during her matrimonial life. The deceased in her dying declaration gave the account of the accident she faced which ultimately resulted in her death. Therefore, I think the learned trial court was not correct in convicting the accused either under section 498A or under section 306 IPC. The accused have discharged the burden of presumption by placing on record the letters written by P.W.3 and also Ex.D10 dying declaration recorded by the Magistrate.

14. The conviction and sentence is accordingly set aside. Fine amount, if paid, be reimbursed. Bail bonds discharged.

15. Before parting with the case this Court feels it its duty to point out that prosecution has not been fair in this matter. It is not the duty of the prosecution to get conviction alone, it is also their duty to see that innocent persons are not harassed and are acquitted. The dying declaration is an important piece of evidence and by giving up the Magistrate's evidence the prosecution has not done what it is supposed to do in view of the responsibility placed on it. The prosecution is supposed to help the Court in reaching to the correct conclusions. It is the duty of the prosecution to assist the Courts in getting the guilty convicted and the innocents acquitted. If they suppress important evidence which will help an innocent person to get an acquittal, the Courts may end up by doing injustice.

16. With these observations this appeal is allowed.

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