

Lachala Seenaiah Vs. State

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Court : Andhra Pradesh

Decided On : Jul-23-2003

Reported in : 2004(1)ALD(Cri)215; 2003(2)ALT(Cri)496; I(2004)DMC56

Judge : M. Narayana Reddy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304 and 304A

Appeal No. : Criminal Appeal No. 368 of 1997

Appellant : Lachala Seenaiah

Respondent : State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : A.T.M. Rangaramanujam, Adv.

Judgement :

M. Narayana Reddy, J.

1. This judgment, according to law, based on the legal material placed, on record, arises out of a Criminal Appeal, filed by the sole appellant, against the sole respondent-State, under Sub-section (2) of Section 374, Cr.P.C., 1973, questioning the validity and legality of the adjudications made by, and set forth in Para 2, infra.

2. Judgment, dated 4.4.1997, of the Court of the Sessions Judge, Mahaboobnagar (Trial Court), made in S.C. No. 440/1994, of its file.
3. Perused the material papers of the record.
4. Arguments were heard of the learned Counsel for the sole appellant, and the learned Additional Public Prosecutor for the sole respondent-State.
5. The sole appellant herein corresponds to the sole accused in the said S.C. No. 440/1994 of the file of the said Trial Court. The sole respondent herein corresponds to the sole complainant therein, being the State of A.P., represented by the Inspector of Police, Mahaboobnagar (Rural) Police Station, pertaining to Crime No. 32/1993 of the Police Station, Nawabpet, registered under Section 302, I.P.C.
6. The parties are, here in after, referred to, with reference to their respective descriptions before the said Trial Court, in that S.C. No. 440/1994 unless, otherwise, so specified.
7. The Inspector of Police, Mahaboobnagar, Rural, Police Station, filed a charge-sheet, against the sole accused, in the Committal Court, being, the Court of the Judicial Magistrate of First Class, Mahaboobnagar, under Section 302, I.P.C., inter alia, averring therein, as under :
 - (a) The sole accused is aged about 19 years. The deceased, by name, Sathyamma, is aged about 17 years.
 - (b) On 23.4.1993, the accused brought the deceased, from her parents house, in Udithyal, to his village Dayapanthulapalli. In that night, the deceased denied the accused, consent for sexual inter-course, due to which, the accused became wild, and beat her. Thereupon, she went inside the kitchen, whereupon, the accused followed her, and set fire to her, by lighting a match stick, and throwing it on her clothes, resulting in burn injuries to her.
 - (c) Subsequently, the accused and his mother took the then injured (deceased) to the Government Hospital, Mahaboobnagar.

(d) There, on the intimation of the Hospital Authorities, the Police recorded the statement of the then injured (deceased), and registered the same, against the accused, as the said Crime No. 32/1993.

(e) Subsequently, the Judicial Magistrate of First Class, also recorded the Dying Declaration of the deceased, in the same hospital.

(f) Subsequently, the then injured (deceased), was referred to Osmania Hospital, Hyderabad, and while she was on transit, to that hospital, the deceased died.

(g) The father of the deceased took the dead body to his village and buried.

(h) On the requisition given by the Police, Nawabpet, the Mandal Revenue Officer exhumed the dead body, and held inquest, in respect thereof, and later, referred to the Medical Officer, for conducting post-mortem thereon.

(i) The Medical Officer, who conducted the autopsy, opined that the deceased died due to septicaemia, due to burns.

(j) The said crime was duly investigated into, and because the investigation revealed that the accused committed the offence of murder of the deceased, he is liable for punishment, under Section 302, I.P.C.

(k) Hence, the charge-sheet is filed against him, accordingly, under the said Section 302, I.P.C.

8. The said Committal Court, after registering the said charge-sheet, as P.R.C. No. 102/1993 of its file, committed the case to the Court of Session, Mahaboobnagar (Trial Court), which after registering the same, as the said S.C. No. 440/1994, of its Sessions Division, tried and adjudicated thereupon, by its now impugned judgment, set forth in Para 2, supra.

9. Because, the sole accused pleaded not guilty in respect of the sole offence and the sole charge, framed against him, and both punishable under Section 302, I.P.C., the said Trial Court tried the said S.C. No. 440/1994, following the procedure prescribed in Chapter XVIII, Cr.P.C. for trial of Sessions Cases, in the process whereof, it recorded the oral evidence of P.Ws. 1 to 15, and exhibited the

documentary evidence, by way of Exs. P.1 to P.25, and Ex. D.1; and the object evidence, by way of M.Os. 1 and 2, and, later, after due arguments there-into, finally, adjudicated thereupon, by its now impugned judgment, dated 4.4.1997, set forth in Para 2, supra as under :

(i) Finding the sole accused, not guilty of the alleged offence, as also the sole charge, framed against him, both punishable under Section 302, I.P.C.;

(ii) Consequently, acquitting him, in respect thereof, under Sub-section (1) of Section 235, Cr.P.C., 1973;

(iii) However, finding the sole accused guilty of the offence, punishable under Section 304 (Part II), I.P.C.; and

(iv) Consequently, convicting the sole accused, in respect thereof, under Sub-section (2) of Section 235, Cr.P.C, 1973, and hence, sentenced him under the said penal provision of Section 304 (Part II), I.P.C., as under :

'to undergo Rigorous Imprisonment for a period of seven years.'

10. Aggrieved thereby, and questioning the validity and legality thereof, the sole accused filed the present Criminal Appeal, as set forth in Para 1, supra, read with Para 2, supra.

11. Hence, the point for consideration and adjudication thereupon, by this Appellate Court in this Criminal Appeal, will be as under :

'Whether the impugned judgment, dated 4.4.1997, of the Trial Court, made in S.C. No. 440/1994, and set forth in Para 2, supra, as also the conviction and sentence imposed thereby, and set forth in Sub-para (IV) of Para 9, supra, are all unsustainable, either at fact or at Law, and hence are liable to be set aside in toto or modified or interfered with in any manner? '

12. No additional, oral or documentary evidence is sought to be adduced by either party, in this Criminal Appeal.

13. Arguments were heard, as set forth in Para 4, supra.

14. Point : The brief material required, facts and circumstances of the case, are all set forth in the foregoing paragraphs.

15. P.W. 1 is the father of the said deceased, and father-in-law of the accused, aged about 50 years. P.W. 2 is the wife of P.W. 1, aged about 45 years. P.Ws. 3 to 7 are all residents of the village of the accused, and are of age group between 28 years and 55 years, which are not very much relevant.

16. However, the foregoing P.Ws. 1 to 7 turned hostile to the prosecution and did not depose anything incriminating, against the accused. Hence, they were got declared as hostile to the prosecution and were cross-examined for the State, in respects thereof, as such. However, during their such cross-examinations for the State, also, nothing tangible, incriminating, could be elicited for the State.

17. During the course of such cross-examinations of the forgoing P.Ws. 1 to 5, their respective Police statements, recorded under Sub-section (3) of Section 161, Cr.P.C., 1973, were exhibited respectively as Exs. D.1 to D.5. Whether they were subsequently duly proved by their recording Police Officer or not, in either case, the same will not have the factual or legal effect, of substantive evidence on oath, before a Court of Law. The statutory mode of use thereof is postulated, again statutorily, in Section 162, Cr.P.C. Hence, they cannot be made use of than there beyond.

18. Hence, the evidence of P.Ws. 1 to 5 and Exs. P. 1 to P.5, as well as that of P.Ws. 6 and 7, is of no actual or legal use, for the prosecution-State, to substantiate its case, against the accused.

19. P.W. 8 is the photographer, who took the photographs of the dead body of the deceased, at the requisition of the Police. The positive photos are exhibited as Exs. P.7 to P.10, and their corresponding negatives are exhibited as Exs. P. 11 to P. 14. This material is not impeached for the accused.

20. P.W. 9 is the then Judicial Magistrate of the First Class, Mahaboobnagar, inter alia, he deposed about the recording of the Dying Declaration of the then injured (deceased), in the Government Hospital, Mahaboobnagar and exhibited the same

as Ex. P. 16. The requisition given to him by the said Police, to record that Dying Declaration, is exhibited as Ex. P.15. He also exhibited the endorsement of the Government Doctor, on Ex, P. 16, as Ex. P. 17,

21. The said P.W. 9, the Judicial Magistrate of First Class, inter alia, deposed in detail, about his recording the Dying Declaration of the then surviving deceased, exhibited the said Ex. P. 16, and her condition being fit to give that declaration, etc. and his certifying the same thereon. He also deposed about the Government Doctor's endorsement thereon, by way of Ex. P. 17 to the effect, that the then surviving deceased was in a fit condition, while giving the statement P.W. 9 also deposed that after recording the Dying Declaration, he read over the same and explained to the then surviving deceased, who admitted the same to be true and correct, etc. By way of cross-examination of P.W. 9 his evidence on oath, and the said Ex. P. 16 Dying Declaration are not impeached for the accused, much less substantially, so as to reject the same, on any question of fact or Law, or in appreciation thereof, on the ground, that the same is artificial, unbelievable or motivated, or not true, or false and the like. P.W. 9 is a Judicial Officer, being the Judicial Magistrate of the First Class. I see no valid or legal reasons, much less tangible, to reject the evidence of P.W. 9 and Ex. P.16, and as to why, they should not be accepted, or acted thereupon, for recording the guilt of the accused, on such basis.

22. The evidence of P.W. 9 and Ex. P. 16, inter alia, prove that in that night, the accused set fire to the deceased, by lighting a match stick, and throwing it, on her clothes.

23. The said Ex. P. 16 was recorded by P.W. 9 on 24.4.1993 around 7.45 p.m. The alleged incident occurred around 8.00 p.m. on 23.4.1993.

24. There is no valid, much less tangible reason as to why the deceased wife should tender false declaration against her accused-husband, as that, he is the cause of her burn injuries, and in the manner in which she sustained them, unless the same are true and correct.

25. By way of cross-examination of the parents of P.Ws. 1 and 2, or, otherwise, the accused could not probabalise, or, make out, much less substantiate the reason or reasons, if any, as to why either his deceased wife or her parents as P.Ws. 1 and 2, or other witnesses, should tender false statement or evidence against him. In fact, P.Ws. 1 and 2 turned hostile to the prosecution, and did not depose anything, incriminating against the accused. In fact, P.Ws. 1 and 2, the parents of the deceased are innocent, because after the death they took the dead body and buried the same which was later exhumed by the Mandal Revenue Officer, as considered hereunder. Had they any intention to foist a false case against the accused, who is their son-in-law, then they would have done so even before the dead body is buried or cremated. It is at the instance of the Police, the dead body was exhumed by the Mandal Revenue Officer, etc.

26. Merely because after the burn injuries, the accused and his mother took and joined the then injured (deceased), in the Government Hospital, Mahaboobnagar, that by itself, will not and factually and legally cannot ipso facto exonerate the accused, of his culpability much less warrant any interference, much less recording of finding or rejecting the evidence of P.W. 9 and Exh. P. 16, or viewing the same with suspicion, that if the accused were to be the culprit, then he would not have taken the then injured (deceased) to the Government Hospital, along with his mother, and joined her there, etc. That fact itself will not help the accused, to reject that convincing incriminating material. Obviously, in fact for that reason, the Trial Court as found herein rightly convicted and sentenced the accused in respect of an offence punishable not under Section 302, I.P.C., but in respect of the offence, punishable under Section 304 (Part-II), I.P.C. for the reasons, set forth in detail in Paras 19 and 21, of its impugned judgment, with which I am fully satisfied and accept the same, as such. All the crucial and relevant time the accused has had no mind, much less intention to kill his deceased wife, and hence Section 302, I.P.C. is not attracted.

27. P.W. 10 is an agriculturist, aged about 47 years, of the village of Udthiyal. P.W. 11 is the then Mandal Revenue Officer of the Nawabpet Mandal. They deposed about exhumation of the dead body of the deceased by P.W. 11 on the requisition of the police and in the presence of the Civil Assistant Surgeon, Government Civil

Hospital, examined as P.W. 12, as well as another lady Government doctor by name Dr. Anasuya Reddy, etc. The Panchanama prepared in respect of such exhumation of the dead body was exhibited as Ex. P. 18. The inquest Panchanama prepared in respect of the death, and the dead body of the deceased is exhibited as Ex. P. 19. The inquestdars opined that the deceased died due to burn injuries.

28. I am not inclined to attach any significance much less so much so as to reject the foregoing material, being inter alia by way of Dying Declaration of the deceased exhibited as Ex. P. 16, and the evidence of P.W. 9, the Magistrate on the basis of the admission made by P.W. 11, the Mandal Revenue Officer, to the effect, that P.W. 1 stated before him, that the deceased died because of lighting fire for cooking food and that P.W. 1 did not state in Ex. P. 1, that on account of refusal by the deceased for sexual intercourse, the accused set fire to her, etc.

29. Admittedly, P.W. 1 is not an eye-witness to the incident. Even otherwise, his statement, if any, like that, cannot outweigh the evidence of the victim (deceased herself), recorded within 24 hours of the incident, while she was still surviving. In fact, P.W. 11 admitted that P.W. 1 stated before him that the deceased was set fire by the accused, because she refused intercourse with her. The statement of P.Ws. 1 and 2 were recorded by P.W. 11, at the time of exhumation on 22.5.1993.

30. The said P.W. 12, the Government Doctor, deposed about holding autopsy over the dead body of the deceased, along with the other lady Doctor, aforesaid. He exhibited the post-mortem certificate, as Ex. P. 20. He opined that the deceased died because of extensive burns and septicaemia.

31. P.W. 13 is the then Head Constable of the Police Station, Mahaboobnagar II-Town. He exhibited about the intimation of the hospital, as Ex. P. 12, in respect of the admission of the then injured (deceased) of the burn injuries, and issue of requisition, exhibited as Ex. P. 15 to P.W. 9 to recording Dying Declaration. He deposed that after P.W. 9 recorded Ex. P. 16, he (P.W. 13) himself went to the hospital, and recorded the statement of the then injured (deceased), and read over the same to her, and obtained her thumb impression thereon, and exhibited as Ex. P. 22. As to the contents of this Ex. P. 22, he was cross-examined for the

accused.

32. P.W. 15 is the then Sub-Inspector of Police, Nawabpet Police Station. He deposed about registration of the statement of the deceased, recorded by P.W. 13, as the said Crime No. 32/1993, originally under Section 307, I.P.C., and issue of the original F.I.R., in pursuance thereof, exhibited as Ex. P. 23. He also deposed about his proceeding to the hospital, and recording statements of P.Ws. 1 and 2, and visiting the scene of offence and seizing M.O.1-Polyester Saree, and M.O.2-Petty Coat of the deceased, etc. He also deposed that after the death of the deceased on 14.5.1993, he altered section of Law of the said F.I.R. to Section 302, I.P.C., and exhibited the alteration memo, as Ex. P. 24. He also exhibited the statement of the deceased, recorded by P.W. 13, as Ex. P. 25. He further deposed about the requisition to the said Mandal Revenue Officer, the inquest proceedings, and later, subjecting the dead body for post-mortem examination, etc. He also deposed about the arrest of the accused, etc. and taking of the photographs, etc., and about the further investigation done by him. He was cross-examined for the accused.

33. P.W. 14 is the then Inspector of Police, Mahaboobnagar Rural. He deposed about filing of the charge-sheet in this case, after verifying the investigation done earlier in the crime.

34. The learned Additional Public Prosecutor for the sole respondent-State relied upon : 2002 CriLJ4095 , Laxman v. State of Maharashtra, delivered, inter alia interpreting Section 32 of the Evidence Act, 1872,. and postulating the legal principles, inter alia, in respect of appreciation, acceptance and acting upon Dying Declaration, etc.

35. The foregoing evidence of P.W. 12 read with Ex. P. 20, and the evidence of P.W. 9 the learned Magistrate, read with P.W. 16 and Ex. P. 17, as also the evidence of P.W. 11 read with Exs. P. 18 and P. 19 as well as the evidence of P.W. 8, read with Exs. P. 7 to P. 14, and Ex. P. 22, and the evidence of the Investigating Officer, in my opinion, conclusively proves that the death of the deceased and the culpability in respect of that death, being with the accused, etc.

36. In respect thereof, as set forth in Sub-para (i) of Para 9, supra, the said Trial Court found the sole ^accused not guilty of the offence, punishable under Section 302, I.P.C., but, however, at the same time, found him guilty of the offence, punishable under Section 304 (Part II), I.P.C.

37. The alleged incident occurred in the intervening night of 23/24.4.1993. The deceased died due to the burn injuries on 14.5.1993. The intervening period is 20 days. The accused was aged about 19 years, at the time of the incident, and the deceased was aged about 17 years. They were by then newly married and were very young. Ex. P. 16, and the rest of the evidence on record does not disclose even remotely that there were any earlier enmities or ill-wills or disputes between both of them or their parents and parents-in-law, as the case may be and vice versa. Ex. P.16 discloses that because the deceased refused to have sexual intercourse with the accused, the accused quarrelled with her, and beat her and when she went into the kitchen he scratched a match and threw it on her clothes, due to which flames arose. The deceased came from her parents' house on the same day. The evidence of P.Ws. 1 and 2, the parents of the deceased, and parents-in-law of the accused, doesn't disclose anything incriminating against the accused, or about any earlier enmities, or disputes between the parties. M.O.1 is a Polyester Saree, which the deceased was wearing at the relevant time, which will catch fire almost in no time. However at the same time it can not be said, that the accused who was by then a teenager and being a coolie by profession being a manual labourer, and who at best knows only how to sign and nothing there beyond and being uneducated cannot be said to have knowledge that the saree worn by the deceased at the crucial time is of such synthetic yarn make and will or is likely to catch fire in no time, even for a spark or just due to fall of the lighted match stick. No imputation, therefore, can be made to the accused that at the crucial time he has had knowledge that M.O. 1 will catch fire and that for that reason he threw the match stick. In fact, soon after the incident as disclosed by the evidence on record the accused and his mother took the then injured (deceased) to the Government Hospital, Mahaboobnagar, and joined her there. This shows their bona fides, to the extent, that inter alia, the accused has no mind to kill her or even to severely injure her. As already set forth, the deceased died after 20 days, after the incident.

38. On the basis of the material set forth in the immediately preceeding paragraph, and the facts and circumstances of the case, and the probabilities and improbabilities of the case, I am of the considered opinion, that the throwing of match-stick by the accused upon the deceased, is due to sudden out-burst of anger, because the deceased did not accede to his request to have sexual intercourse, but not due to any intention or knowledge to kill her within the factual and legal scope, ambit and circumspection of either of the two parts of Section 304, I.P.C. Either of them are not attracted by the legal material available on record, and having regard to the probabilities and improbabilities of the case, also.

39. No doubt, even though, the valuable precious life of the deceased at a very tender age of 17 years was lost due to the act of the accused, the foregoing material, etc. in my opinion, attract only the provisions of Section 304-A, I.P.C., proving only rash and negligent act on the part of the accused, as against the deceased. Inter alia also because there was no love lost between them, nor any ill-feelings, etc. so as to warrant the accused, even remotely to kill his wife or to injure her much less severely except throwing the match stick, due to sudden out-burst of anger.

40. I, therefore, record my finding that the accused is guilty of the offence, punishable under Section 304-A, I.P.C., but not under Section 304 (Part-II), I.P.C.

41. Hence, I am of the opinion, that the impugned conviction and sentence imposed by the Trial Court, and set forth in Sub-paras (iii) and (iv) of Para 9, supra have to be modified, from one under Section 304 (Part III), I.P.C., to one under Section 304-A, I.P.C., as is being done hereunder.

42. Hence, the High Court doth hereby adjudicate upon the Criminal Appeal, as under :

'Modify the impugned judgment, dated 4.4.1997, of the Court of the Sessions Judge, Mahaboobnagar, made in S.C. No. 440/1994 of its file, as under :

(I) Set aside the judgment, dated 4.4.1997, of the Court of the Sessions Judge, Mahaboobnagar, made in S.C. No. 440/1994, but only insofar as the same found

the sole accused (appellant herein), guilty of the offence, punishable under Section 304 (Part-II), I.P.C., and hence, convicted and sentenced him, as set forth in sub-paras (iii) and (iv) of Para 9, supra;

(II) However, under Sub-clause (i) of Clause (b) of Section 386, Cr.P.C., 1973 read with Section 222, thereof, I find the sole appellant-accused, guilty of the offence, punishable under Section 304-A, I.P.C., and hence, convict him in respect thereof, and hence, sentence him thereunder, as under :

(a) To undergo Rigorous Imprisonment for a period of two years, and

(b) To pay a fine of Rs. 1,000/- (Rs. one thousand only), and in default of payment thereof, to undergo simple Imprisonment for a period of three months.

The period, or periods, during which the accused has been in custody, or in jail in connection with the Crime No. 32/1993 of the Police Station, Nawabpet, shall be set off under Section 428, Cr.P.C., 1973 against the now imposed substantive sentence, covered by Clause (a) of this sub-para.

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