

(2004) 10 AP CK 0033

Andhra Pradesh High Court

Case No: Criminal Appeal No. 1513 of 1998

Janapati Krishna Singarappa

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision: Oct. 11, 2004

Acts Referred:

- Arms Act, 1959 - Section 19
- Criminal Procedure Code, 1973 (CrPC) - Section 300, 313
- General Clauses Act, 1897 - Section 26
- Penal Code, 1860 (IPC) - Section 306, 376

Citation: (2005) 3 ALT(Cri) 244 : (2005) 1 ALT(Cri) 355 : (2005) CriLJ 1187 : (2005) 2 RCR(Criminal) 295

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: G. Srinivasa Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

P.S. Narayana, J.

Janapathi Krishna-appellant being aggrieved by the Judgment dated 05.10.1998 in Sessions Case No.162 of 1995 on the file of I Additional Sessions Judge, Cuddapah, had preferred the present Criminal Appeal.

2.The appellant-accused No.1 was charged with the offences punishable under Sections 376 and 306 IPC and accused No.2, the mother of accused No.1 was discharged. The case of the prosecution is that the accused is a resident of Kotha Khaderabad village. One C.Jayamma aged about 14 years was a daughter of Rangaswamy and the said Jayamma would be hereinafter referred to as "the deceased" for the purpose of convenience. One Venkata Rangappa is the elder brother of Rangaswamy. Chinna Rangappa is the grand father of the deceased. The mother of the accused is the elder sister of Rangaswamy and Venkata Rangappa.

The further case of the prosecution is that on 25.08.1994 in the afternoon hours, the deceased along with her senior paternal uncle Venkata Rangappa and uncle G.Narayana Swamy went to Sivalayam of Potladurthi to attend the marriage of one Gopal of that village. The accused also attended to the said marriage. On the same day, after taking night meals, the deceased was washing her hands at the tap in the said temple. Noticing the same, the appellant-accused went there and began conversation with her and told that he will marry her and so saying he closed her mouth, forcibly took her to the nearby bushes and had sexual intercourse with her against her will and without her consent and also promised to marry her and asked not to reveal the incident to anybody. The deceased returned to the temple weeping and informed the same to Rangaswamy-her father. Then Rangaswamy and his wife went to the house of the accused and requested them to celebrate marriage of the deceased with A1. But the mother of the accused knowing that the life of the deceased, who is a minor girl at that time would be miserable if the marriage is not celebrated with the accused, refused for the marriage. They returned to the house and informed the same to the deceased. On 02.09.1994 at about 2.00 PM, having learnt that the accused refused to marry her, the deceased poured kerosene over her body in her house and set fire to her clothes and received burn injuries and raised cries. Her parents and senior paternal uncle put off the flames and took her to the Government Hospital, Proddatur. Her dying declaration was recorded by the Magistrate in the hospital and she died on the next day. The police registered a case and had conducted investigation. The Medical Officer, who conducted post mortem examination over the dead body of the deceased, opined that she would appear to have died of shock due to burns.

3. In support of the case of the prosecution, PWs.1 to 9 were examined and Exs.P-1 to P-12 were marked and DW-1 also was examined.

4. The learned Judge on appreciation of the evidence available on record came to the conclusion that the prosecution was able to establish the guilt of the accused beyond reasonable doubt for the offence u/s 306 IPC and sentenced him to undergo Rigorous Imprisonment for seven (7) years and also to pay a fine of Rs.1,000/-, in default, to suffer Rigorous Imprisonment for six (6) months.

5. The learned Judge had recorded that the A1 was tried for an offence u/s 376 IPC in relation to the similar incident in Sessions Case No.51 of 1997 on the file of the Assistant Sessions Judge, Proddatur and an acquittal was recorded. The learned Judge also observed that the said case ended in acquittal since PWs-1 to 5 turned hostile and the evidence of PWs-6 and 7 was held to be insufficient to base the conviction. The served copy of the charge sheet in S.C. No. 51 of 1997 was also filed during the course of examination u/s 313 Cr.P.C. The learned Judge also recorded a finding that the learned Assistant Sessions Judge in the prior case had not recorded the evidence of the Magistrate, who had recorded the dying declaration and since the kith and kin of the deceased girl, who were examined as PWs-1 to 5 turned

hostile, acquittal was recorded. The learned Judge also had recorded a finding that inasmuch as the offences under Sections 376 and 306 IPC being distinct offences, the mere acquittal recorded in S.C. No. 51 of 1997 on the file of Assistant Sessions Judge, Proddatur will not enure to the benefit of appellant-accused in the present case. Assailing the same, the present Criminal appeal is preferred.

6. Sri Srinivasa Reddy, learned Counsel representing appellant-accused made the following submissions:

The learned counsel would submit that as per the findings recorded by the learned Judge, it appears that the learned Judge was more guided away by the commission of suicide by a young girl of 14 years. The learned Counsel would submit that in the light of acquittal recorded in S.C. No. 51 of 1997 on the same set of facts, the conviction and the sentence recorded in the present case u/s 306 IPC cannot be sustained. The learned Counsel placed strong reliance on the language of Section 300 Cr.P.C. The Counsel also would submit that the question of abetment would not arise especially, in the light of the gap in between 25.08.1994 to 02.09.1994. At any rate, the learned Counsel would maintain that the alleged rape or having sexual intercourse cannot be said to be having any nexus or the present suicide is as a result of the said act. In the alternative, the learned Counsel would submit that even otherwise, the very commission of offence of rape had been disbelieved and an acquittal had been recorded the very basis and the foundation of the prosecution version had been disbelieved and hence, the conviction and the sentence on the basis of some more material placed by the prosecution in this trial, definitely cannot be sustained. The learned Counsel also placed strong reliance on [Pritam Singh and Another Vs. The State of Punjab](#), and [Sudhakar and Anr Vs. State of Maharashtra](#), .

7. Per contra, the learned Additional Public Prosecutor had relied upon the language of Section 300 Cr.P.C and would explain the meaning of the expression "the same offence". The learned Additional Public Prosecutor would submit that this unfortunate girl had committed suicide not only due to the heinous crime committed as against her but also the refusal to marry and hence, thinking for some time in the period of gap in between the two dates, being vexed with life, had thought of committing suicide. Hence, the ingredients u/s 306 IPC are attracted. The learned Additional Public Prosecutor also placed strong reliance on [State of Bihar Vs. Murad Ali Khan and Others](#), .

8. Heard the counsel.

9. In the present case, the evidence of PWs.1 to 9 and DW.1 had been recorded and Exs.P-1 to P-12 were marked. PWs.1 to 5 in this case were declared hostile. PW-6-Woman Civil Assistant Surgeon, Government Hospital, Proddatur, deposed about conducting post mortem examination over the dead body of Jayamma, aged 14 years and found the burn injuries to an extent of 50% and she also deposed about Ex.P-6-post mortem certificate. PW-7 is the police constable who escorted the

dead body to Government Hospital, Proddatur after the inquest was held. PW-8 is the Sub Inspector of Police and PW-9 is the Magistrate, who had recorded the dying declaration of the deceased-Ex.P-8 and deposed that she was conscious and was in fit condition to give statement at that time and the duty doctor was also present at the time of dying declaration of Jayamma and he also made an endorsement about her condition on the dying declaration-Ex.P-8 itself. The said dying declaration-Ex.P-8 reads as hereunder:

"Q. Do you know that I am Munsif Magistrate, Proddatur and I came here to take your declaration?

A. Yes, I know.

Q.2 What is your father's name?

Ans:- Raangaswamy.

Q. Do you know where are you?

Ans:- I am in Government Hospital.

Q. Are you in a position to give your declaration?

Ans:- Yes, I am in a position to give my declaration.

From the answers given by the declarant to the questions put by me as above, I am satisfied that the declarant is conscious and in a condition to give dying declaration.

Sd/- x x x

II Addl, District Munsif,
Proddatur 2-9-94.

Q. Tell me when and where you have received the injuries.

Ans:- I belongs to Khaderabad. I am unmarried. I myself set fire today afternoon at 2.00 O" clock. Krishna is my cousin. He has promised to marry me but cheated. He raped me t Sivalayam of Pottladurti village on Thursday of last week. He raped me against my will. He promised me to marry but refused. As my cousin (paternal aunts son) cheated me, I myself poured kerosene over my body and set fire. I had never been away with my cousin previously. My cousin is responsible for my burns.

I have listened the contents of this declaration.

() L.T.I. of Chinnavandla Jayamma.

The dying declaration is read over to the declarant and she admitted the same as correct and true. Recording closed at 3.25 P.M."

10.In the dying declaration, no doubt, the deceased is said to have stated about the rape committed at Sivalayam of Pottladurti village and also A-1 promising to marry but refusing and her cousin and maternal aunt cheating her and she also said to

have stated that she herself poured kerosene over her body and set fire. In the light of Ex.P-8 and the evidence of PW-9, the learned Judge recorded certain findings and had arrived at a conclusion that Section 300 Cr.P.C would not operate as a bar inasmuch as Section 306 IPC is a distinct offence and hence, recorded conviction. It is no doubt true that in the prior trial, the evidence of Magistrate had not been recorded and that an acquittal had been recorded in relation to the offence u/s 376 IPC. Section 300 Cr.P.C. reads as hereunder:

"Person once convicted or acquitted not to be tried for same offence:

1. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.
2. A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220.
3. A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened at the time when he was convicted.
4. A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
5. A person discharged u/s 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first mentioned Court is subordinate.
6. Nothing in this Section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897), or of Section 188 of this code."

11. In *STATE OF BIHAR V. MURAD ALI KHAN* (3 supra), the Apex Court while dealing with the expression "the same offence" held as follows:

"The expression "the same offence", "substantially the same offence" "in effect the same offence" or "practically the same", have not done much to lessen the difficulty in applying the tests to identify the legal common denominators of "same offence".

Friedland in Double Jeopardy (Oxford 1969) says at page 108:

The trouble with this approach is that it is vague and hazy and conceals the thought processes of the Court. Such an inexact test must depend upon the individual impressions of the judges and can give little guidance for future decisions. A more serious consequence is the fact that a decision in one case that two offences are "substantially the same" may compel the same result in another case involving the same two offences where the circumstances may be such that a second prosecution should be permissible."

12. In PRITAM SINGH v. STATE OF PUNJAB (1 supra) it was held that:

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim "res judicata pro veritate accipitur" is no less applicable to criminal than to civil proceedings. Thus an acquittal of an accused in a trial under S.19 (f), Arms Act, is tantamount to a finding that the prosecution had failed to establish the possession of certain revolver by the accused as alleged. The possession of that revolver was a fact in issue which had to be established by the prosecution before he could be convicted of the offence under S.19 (f). That fact was found against the prosecution and could not be proved against the accused in the subsequent proceedings between the Crown and him, under a charge of murder. The evidence against him in the latter proceedings would have to be considered regardless of the evidence of recovery of the revolver from him."

13. In SUDHAKAR AND ANOTHER v. STATE OF MAHARASHTRA (2 supra), wherein the Apex Court held that:

"In the absence of the charge being proved u/s 376 IPC, the prosecution could not have asked for conviction of the appellants u/s 306 of the IPC as according to the prosecution it was the commission of the rape on her person which resulted in the suicide of Ms. Rakhi, allegedly on the abetment of the appellants. If the cause for committing suicide is not legally proved, the appellants cannot be held responsible for the abetment of the ultimate offence of suicide."

14. It is needless to specify the ingredients to be satisfied to attract the offence u/s 306 IPC. Whatever may be the reason an acquittal had been recorded in relation to the charge u/s 376 IPC by a competent Court which had attained finality. No doubt, an attempt was made by the learned Additional Public Prosecutor to show that these offences are distinct offences and hence, the mere acquittal recorded in S.C. No. 51 of 1997 would not operate as a bar for the accused being convicted u/s 306 IPC.

15. A careful reading of the material available on record would go to show that virtually on the same set of facts and basing on the same evidence the trial in S.C. No. 51 of 1997 was conducted which had resulted in an acquittal. The only additional factor in the present trial appears to be that the dying declaration-Ex.P-8 was proved by examining PW-9. On the strength of this additional factor, the learned Judge in the considered opinion of this Court is not justified in recording conviction u/s 306 IPC especially, in the light of the fact that the charges in relation to both the offences had been founded on the same set of facts. At any rate, it cannot be said that there was an offence of abetment to commit suicide within the meaning of Section 107 IPC. Hence, viewed from any angle, the findings recorded by the learned Judge cannot be sustained and accordingly, the findings are hereby set aside.

16. The Criminal Appeal is accordingly allowed. Their bail bonds shall stand cancelled.