Ravelli Yellaiah Vs P.S. Toopran and Another

Court: Andhra Pradesh High Court

Date of Decision: Dec. 28, 2006

Acts Referred: Constitution of India, 1950 â€" Article 136
Criminal Procedure Code, 1973 (CrPC) â€" Section 313
Penal Code, 1860 (IPC) â€" Section 302, 307

Citation: (2007) 1 ALD(Cri) 891 : (2007) 2 ALT(Cri) 210 : (2006) CriLJ 1572

Hon'ble Judges: Nooty Ramamohana Rao, J; Bilal Nazki, J

Bench: Division Bench

Advocate: M. Govinda Reddy, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

Bilal Nazki, J.
This is an appeal against the judgment of the learned Principal Sessions Judge, Medak at Sangareddy in Sessions Case No.

473 of 2001. The appellant has been convicted for the offence u/s 302 of IPC and sentenced to undergo rigorous imprisonment for life and also to

pay a fine of Rs. 5,000/-, and in default of payment of fine, he has to undergo simple imprisonment for a period of six months.

2. The allegations on the basis of which charge was framed against the accused/ appellant was that he had committed murder of his wife by pouring

kerosene over her and setting her on fire. Charge was framed u/s 302 of IPC, to which the appellant pleaded not guilty and claimed to be tried.

Prosecution examined 12 witnesses and exhibited 9 documents.

3. PW-1 is the father of the deceased. He stated that he gave his daughter in marriage to the accused. 1Ã¯Â¿Â½ tula of gold and 30 tulas of silver, one

wrist watch, one fan, one Almirah and some utensils were given in dowry. As per the agreement, after the marriage, he had also to give one tula of

gold in addition to what he had already given. After the marriage, he sent Ã¯Â¿Â½ tula gold ear stud through his son and another son-in-law, to the

accused. After handing over the ear stud, his son and son-in-law returned. On the next day morning a person came from Chetla Gouraram i.e.

where the accused and deceased live and informed that his daughter sustained burn injuries. Then he, his wife Yellamma and his son Yadagiri went

to the house of accused on a scooter. His daughter was in front of the house at varandah with burn injuries over the entire body. On his enquiry, his

daughter told him that one day earlier, when he had sent Ã¯Â¿Â½ tula gold ear stud, the accused had become angry and he had stated that she had

illegal intimacy with her brother-in-law Balaiah. Balaiah was the person who had gone to the house of accused along with the son of the witness to

hand over the ear stud. The deceased told the witness that accused poured kerosene on her and set her on fire and thereafter left the house. Then

the witness went to the Police Station, Toopran and presented a complaint, Ex. P-1 was the complaint. Police shifted his daughter to Gandhi

Hospital, Secunderabad for treatment. On the same day at about 10 p.m., she died in Gandhi Hospital. M.R.O. recorded his statement at Gandhi

Hospital. Some of the officers visited the hospital and recorded the statement of his injured daughter. He was also examined by the Police.

4. In his cross-examination he stated that he got the information about the occurrence at about 7 a.m. and immediately he went to the house of the

accused. He did not know the name of the person who had informed him. He reached the house of accused at about 8 a.m. The distance between

his village and the house of the accused was 8 kilometres. His son took him on scooter. He denied the suggestion that by the time he reached the

house of the accused, the deceased had been shifted to the hospital. He did not know that accused was working as farm servant under one Vittal

Reddy and that the accused was working with Vittal Reddy for 24 hours. The lips, eyebrows and hair of the deceased had completely burnt. He

denied the suggestion that his daughter was unconscious and was not able to talk when he saw her. His wife was in Gandhi Hospital along with

their daughter till her death. At about 10 a.m., his daughter was admitted in Gandhi Hospital. He denied the suggestion that his daughter was taken

to the hospital by Mr. Vittal Reddy. After the marriage, the deceased went to the house of accused and stayed with him for 20 days. Thereafter,

she came back to the witness''s house and went back after 4 days. She had gone to the house of accused 8 days before the date of occurrence.

His daughter suffered with small pox at the time of marriage. She was also admitted in hospital for 4 days as she had small pox. He denied the

suggestion that when the deceased went back to the house of accused, she continued to suffer with small pox. He also denied the suggestion that

his daughter used to suffer with severe stomach pain. He also denied the suggestion that his daughter was not feeling well. He also denied the

suggestion that his daughter refused to join the company of accused because of stomach pain and small pox. He. also denied the suggestion that his

daughter had been sent to the house of accused against her will. He also denied the suggestion that his daughter had been married to accused

against her will. He also denied the suggestion that the deceased committed suicide. He also denied the suggestion that accused was not in the

house when the occurrence look place.

5. PW-2 is the wife of PW-1 and mother of the deceased. She also narrated the incident as it had been narrated by PW-1. She also accompanied

PW-1 to the house of accused, and on her enquiry, her daughter told her that the accused had suspected her to be having illegal intimacy with her

elder son-in-law and therefore the accused poured kerosene and set her on fire.

6. PW-3 is the son of the sister of PW-2. He had attended the marriage of the deceased. He also knew the accused. He also accompanied PWs.

1 and 2 to the house of accused on knowing that the deceased had got injured and on his enquiry, and on the enquires of PWs. 1 and 2, the

deceased had told him that accused had beaten her during the entire night and poured kerosene and set her on fire because he suspected that she

had illicit relations with her brother-in-law.

7. PW-4 is a neighbour who heard the cries of the deceased at 5 a.m. from the house of deceased on the day of occurrence. He went there and

found the deceased Laxmi Narsamma completely burnt. He also found the marriage pendal on fire. Then he and others by name Rama Swamy,

Dasharath and others poured water on the injured and also on pendal. They shifted Laxmi Narsamma to Gandhi Hospital. He stated that the

marriage of deceased had been performed with the accused only 29 days before the occurrence.

8. In his cross-examination he stated that on his enquiry from the deceased Laxmi Narsamma, he was told that she was suffering with stomach pain

and she had poured kerosene over herself and set fire. The accused was not present in the house. They called the accused from the agricultural

fields of Vittal Reddy. The accused had left the house in the evening at about 6 P.M. The accused did not know about the occurrence till he sent

the message to him while he was working at the fields of Vittal Reddy.

The parents of accused were also not present in the house during that night. After the accused came to his house, Vittal Reddy, the Sarpanch of

the village brought a van and shifted the injured to Gandhi Hospital. One day before the occurrence, PW-3 and Balaih came to the house of

accused. In his re-examination. he stated that after hearing the hue and cry of Laxmi Narsamma he went to the house of the accused and he did not

know what had happened in the house before he reached there. He denied the suggestion that deceased did not tell him anything about the

occurrence.

9. PW-5 did not support the prosecution story and was declared hostile. PW-6 was a witness to the inquest conducted by M.R.O. He signed

inquest panchanama Ex. P-2. They found that the body of the deceased was completely burnt. One Bixapathi also signed Ex. P-2. Ex. P-2 was

drafted at Gandhi Hospital.

10. PW-7 is the witness to the panchanama relating to inspection of scene of offence by the investigating officer. He denied that M.O. 1 plastic can

and M.O. 2 matchbox were recovered in his presence. He was declared hostile and cross-examined. P.W.8 is the M.R.O., who conducted

inquest. He examined parents of the deceased and recorded their statements.

11. PW-9 is the Civil Assistant Surgeon, who conducted the postmortem on the body of deceased. He found ante-mortem mixed with flame burns

all over the body except scalp, partly the soles region. Burnt area had blackened. Cause of death was shock due to burns. Deceased had

sustained 98% burn injuries. He denied the suggestion that a person sustaining 98% burn injuries would not be fit and conscious to make a

statement. Deceased had died on 25-4-2000 at about 11.35 a. m., according to Ex. P-4. The time and date of admission of the patient was 25-4-

2000 at 11.35 a.m. He stated that by oversight, he had mentioned the time of death as: 11.35 a.m., and instead, it was 10 P. M. on 25-4-2000. In

his re-examination, he further clarified that in his postmortem examination report at page No. 8, the time of death was mentioned as 11.35 a.m. by

mistake, but he perused the report Ex. P-4 and stated that the death had occurred actually at 10 p.m. on 25-4-2000.

12. PW-10 was the Metropolitan Magistrate, who recorded the dying declaration of the deceased. He recorded the dying declaration on 25-4-

2000 between 3.10 and 3.30 p.m. He put some preliminary questions to the patient to ascertain whether she was in a fit state of mind to make a

statement. After he was satisfied, he recorded the statement. He obtained the left toe impression of the deceased. He also obtained endorsement

of the duty Doctor with regard to the condition of the patient. The dying declaration is Ex. P-5. We will deal with this dying declaration after

narrating the statements of other witnesses because, the whole controversy revolves around this dying declaration.

13. PW-11 is the Sub-Inspector of Police, who received complaint Ex. P-1 from PW-1 and registered a case in Crime No. 64 of 2000 u/s 307 of

I.P.C. He recorded the statement of PW-1 at the Police Station. He rushed to the scene of offence and recorded the statements of PWs. 2 to 4,.

He shifted the injured person to Gandhi Hospital, Secunderabad for treatment. He also conducted panchanama of scene of offence in Ex. P-3. He

also prepared rough sketch of the scene. He also seized M. Os. 1 and 2 from the scene. He sent a requisition through Head Constable to the

XXIII Metropolitan Magistrate, Hyderabad for recording the dying declaration. Ex. P-8 was the requisition. On 26-4-2000 he received death

intimation of Laxmi Narsamma and he went to the Gandhi Hospital and got conducted inquest through M.R.O. He also sent requisition for

conducting autopsy and autopsy was conducted over the dead body. He changed the offence in the F.I.R. from Section 307 of IPC to Section

302 of I.P.C.

14. PW-12 is the Inspector of Police who took up investigation from PW-11 and recorded the statement of Balaiah. On 6-5-2000, he arrested

the accused. After he received the post-mortem examination report and dying declaration, he filed the charge sheet.

15. Now, coming to the dying declaration recorded by the Magistrate PW-10, in reply to the question, ""What has happened to you?"", the

deceased stated,

Today morning 5 ''o'' clock I asked my husband fifty rupees for purchase of foot wear. My husband did not give paise. He poured on me

kerosene and set fire in the house for asking amount. Then my father-in law and Junior brother-in-law slept outside. Nobody came. I cried came

out running. My father-in-law, Junior brother-in-law neighbours came subsided fire. I sent message to my father. My father came brought straightly

in a jeep to here, This is only happened.

16. The learned Counsel for appellant submits that there is no direct evidence of the offence having been committed by the appellant. On the other

hand suggestions were put to the witnesses in their cross-examination that the accused was not at all in the house when the occurrence took place

and he was working somewhere else as a farm servant, and as a matter of fact, one of the prosecution witnesses i.e. PW-4 had deposed that he

sent a word to the accused about the occurrence. He further submits that the dying declaration Ex. P-5 cannot be relied upon for the reason that in

addition to this dying declaration, there are three oral dying declarations having been allegedly made before PWs. 1 to 3. PWs. 1 to 3 gave a

different version. They stated that the deceased had told them that the accused suspected her relationship with her brother-in-law Balaiah,

therefore, he poured kerosene over her and set her on fire. Whereas in the dying declaration recorded by the Magistrate PW-10, the reason given

for accused committing the offence was that the deceased had asked for fifty rupees for purchase of chappals, and on this, the accused had got

angry and poured kerosene on her and set her on fire. Since two versions are given in two sets of dying declarations, it is contended by the learned

Counsel for the appellant that it will not be safe to rely on either of the dying declarations.

17. The learned Public Prosecutor, on the other hand, submits that there is no discrepancy with regard to the statement made by the deceased

before P.Ws. 1 to 3, and before the Magistrate P.W. 10 with respect to the actual occurrence, which resulted in the death of the deceased. She

was categoric in her statement before P.Ws. 1 to 3 and also before the Magistrate P.W. 10 that kerosene was poured on her body by the accused

and he set her on fire.

18. May be there is some discrepancy as to what was the reason for the accused to do such an act, but that could not lead to a conclusion that the

statement made by the deceased before P.Ws. 1 to 3 or before the Magistrate P.W. 10 with regard to the actual occurrence of burning, could not

be believed.

19. The learned Counsel for appellant has also submitted that in the dying declaration, the Doctor endorsed that the patient was conscious,

coherent and she was fit to give the statement. He submits that this dying declaration cannot be relied upon in view of the judgment of the Supreme

Court in Paparambaka Rosamma and Others Vs. State of Andhra Pradesh, . The learned Public Prosecutor, on the other hand, submits that the

law laid down by this judgment is no longer applicable as this judgment was specifically reversed by the Supreme Court in the judgment in Laxman

Vs. State of Maharashtra, . After considering the case law on the subject, the Supreme Court held,

For the reasons already indicated earlier, we have no hesitation in coming to the conclusion that the observations of this Court in Paparambaka

Rosamma v. State of Andhra Pradesh to the effect that, ""...in the absence of a medical certification that the injured was in a fit state of mind at the

time of making the declaration, it would be very much risky to accept the subjective satisfaction of a Magistrate who opined that the injured was in

a fit state of mind at the time of making a declaration"" has been too broadly stated and it is not the correct enunciation of law. It is indeed a hyper-

technical view that the certification of the doctor was to the effect that the patient is conscious and there was no certification that the patient was in

a fit state of mind specially when the Magistrate categorically stated in his evidence indicating the questions he had put to the patient and from the

answers elicited was satisfied that the patient was in a fit state of mind where after he recorded the dying declaration. Therefore, the judgment of

this Court in Papararhbaka Rosamma v. State of Andhra Pradesh must be held to be not correctly decided and we affirm the law laid down by this

Court in Koli Chunilal Savji and Another Vs. State of Gujarat, .

20. Coming to the conflict in the two dying declarations with regard to the reasons for the occurrence, the learned Counsel for appellant has placed

reliance on the judgment in Babu Ram and Others Vs. State of Punjab, . This judgment is altogether in different circumstances. There were two

dying declarations, both were to the same effect and both were believed. One of the accused, who was the husband of the deceased, had been

acquitted by the Supreme Court on the ground that in both the dying declarations, the part attributed to have been played by the husband was that

when the deceased was trying to go out of their home, he had attempted to bolt the door. Therefore, this judgment, in no way, helps the appellant.

21. Reliance has also been placed by the learned Counsel for appellant on the judgment in State of Gujarat Vs. Khumansingh Karsan Singh and

others, . In this case, the case of the prosecution was that on the day of occurrence when the deceased was attending some kitchen work, her

mother-in-law sprinkled kerosene on her from a small lamp and set her on fire. In the first dying declaration, she had stated that her husband was in

the house asleep. This dying declaration was recorded by a Head Constable and in this, she implicated her mother-in-law alone. Second dying

declaration was made to her father wherein she implicated both her husband and mother-in-law. Third dying declaration was recorded by an

Executive Magistrate, wherein also, she implicated both her husband and mother-in-law. In the first dying declaration she implicated her mother-in-

law, whereas in 2nd and 3rd dying declarations she implicated her mother-in-law as well as her husband. The High Court, in appeal, found that it

was not safe to rely on such dying declarations, and the Supreme Court held,

We do not think that the view taken by the Courts below is so erroneous as would require interference by this Court in exercise of jurisdiction

under Article 136 of the Constitution. There is no doubt that there is inconsistency between the first dying declaration and the subsequent two

dying declarations which betrays the possibility of her being amenable to tutoring. It is quite clear the relationship was strained due to the bad blood

between her and her mother-in-law. The possibility of false involvement could not be ruled out and the High Court, therefore, thought that in the

absence of corroborative evidence, it is unsafe to rely mainly on the inconsistent dying declarations.

22. Since this Court has found that there is no contradiction between the dying declarations as narrated by P.Ws. 1 to 3 and as recorded by the

Magistrate P.W. 10 over the question as to who poured kerosene and who lit fire, therefore, any discrepancy with regard to the reason would not

make the dying declarations unreliable. May be the deceaased had been burnt to death by the accused for the reasons she narrated to P.Ws. 1 to

3, but she wanted such reasons not to be told in public because, the reason given to P.Ws. 1 to 3 was that her husband had suspected her

character. Therefore, we do not find any reason not to believe these dying declarations.

23. The learned Counsel for appellant has further contended that the trial Court has not given its due attention to the plea of alibi. But we have

found from the record that no plea of alibi was raised. Although some suggestions were put to some of the witnesses that the accused was a farm

servant and he was working in the farms of one Vittal Reddy, even that Vittal Reddy was not produced as a witness, and as a matter of fact, no

proof was produced before the Court that the accused was not present in the house when the occurrence took place. Even in his examination u/s

313, Cr.P.C., such a plea was not raised. It is a settled law that when a plea of alibi is taken, it is for the person raising the plea of alibi, to prove

such a plea.

24. Lastly, it was contended that all the incriminating circumstances were not put to the accused in his examination u/s 313, Cr.P.C., and therefore,

the accused got prejudiced and in this connection, the learned Counsel for appellant has relied on a judgment in Naval Kishore Singh Vs. State of

Bihar, . We have gone through the questions put to the accused in his examination u/s 313, Cr.P.C., and all the incriminating evidence had been put

to him and he had simply denied it.

25. For these reasons, we do not find merit in this appeal, which is accordingly dismissed. The conviction and sentence as imposed by the trial

Court in its judgment is confirmed.