

SUPREME COURT OF INDIA

Dammu Sreenu

Vs.

State of A.P.

Crl.A.No.681 of 2003

(Dr. Mukundakam Sharma J.)

28.05.2009

JUDGEMENT

Dr.Mukundakam Sharma, J.

1. The appellant herein filed the present appeal seeking for his acquittal from the order of conviction under Section 306 of the *Indian Penal Code* (hereinafter referred to as 'the IPC') whereby he was sentenced to undergo rigorous imprisonment for three years.

2. The appellant herein allegedly had illicit relationship with the wife of the deceased Bitra Nagarjuna Rao. The wife of the deceased was also made a co-accused in the same offence under Section 306 IPC and she was convicted for the aforesaid offence and was sentenced initially to undergo rigorous imprisonment for a period of three years which, however, later on was altered to one year of rigorous imprisonment by the High Court of Andhra Pradesh. The said sentence of one year has been served out by Accused No. 2, the wife of the deceased Bitra Nagarjuna Rao.

3. The prosecution has alleged in its case that the present appellant had developed an illicit intimacy with Accused No. 2, who was the wife of the deceased Bitra Nagarjuna Rao. On the night of 31.12.1995, accused No. 2, the wife of the deceased went out of her house and returned to her matrimonial home only on the next day. The deceased, Bitra Nagarjuna Rao was unhappy with the aforesaid conduct and so, naturally questioned her about her behaviour because of which there was a quarrel between the two. Being disturbed and perturbed on account of the behaviour of his wife (Accused No. 2), the deceased, Bitra Nagarjuna Rao called the father of Accused No. 2 and asked him to take her away so as to give her proper counseling. Accordingly, she was taken away by her father. On the same day the present appellant (Accused No. 1) came to the house of the deceased and when he was questioned by the inmates of the house of the deceased, he stated that he had illicit relations with the wife of the deceased and that he would keep coming to the house of the deceased so long she does not object to the same. When he was told that Accused No. 2 had gone with her father, Accused No. 1 went to the house of the brother of Accused No. 2 and took her away despite the protest of PW-5, brother of Accused No. 2, in whose house his father kept her. The

appellant took her away and brought her back to the house of her brother only after 4 days and to her parents' house on 06.01.1996.

4. Having come to know about the aforesaid incident, the deceased felt humiliated and insulted. He committed suicide by hanging himself in the intervening night of 7th and 8th January, 1996. It is also to be noted, at this stage, that prior to his suicide, the deceased, Bitra Nagarjuna Rao expressed before his brother that it would be better to die as he felt very much insulted and humiliated. The deceased having committed suicide, his brother gave a report to the police which was registered as a case under Section 174 of *Criminal Procedure Code, 1973* (for short 'the CrPC') which was, during the course of investigation, altered to a case of Section 306 IPC.

5. The police after investigation submitted a charge-sheet against the accused. The accused, however, denied the charge. Accordingly, he was tried under the aforesaid charges. During the course of trial the prosecution examined as many as 13 witnesses and the appellant-accused was also examined under Section 313 of the CrPC wherein he denied his involvement in the offence.

6. The trial court appreciated the materials available on record and, thereafter, passed a judgment and order of conviction. He convicted the present appellant under Section 306 IPC and sentenced him to undergo rigorous imprisonment for a period of five years with a fine of Rs. 100/- in default to undergo simple imprisonment for one month. The trial court also convicted accused No. 2, i.e. wife of the deceased, under Section 306 IPC and sentenced her to undergo rigorous imprisonment for a period of five years.

7. Being aggrieved by the aforesaid judgment and order of conviction and sentence the appellant as also the wife of the deceased filed a common criminal appeal in the court of IInd Additional Sessions Judge, Guntur which was registered as Criminal Appeal No. 32 of 1998. The said appeal was allowed in part and the conviction and sentence awarded by the trial court was altered and reduced by the learned Additional Sessions Judge to 3 years simple imprisonment.

8. In revision the High Court maintained the order of conviction against the accused-appellant but altered the sentence of Accused No. 2, i.e. the wife of the deceased to one year imprisonment which she has already undergone.

9. Now this appeal is, therefore, filed only by appellant No. 1, who was convicted and ordered to undergo simple imprisonment for three years.

“An order to release appellant No. 1 on bail was passed pursuant to which Accused No. 1 is on bail. The appeal was listed before us for hearing during the course of which we heard the learned counsel appearing for the parties and were also taken through the records.”

10. According to the learned counsel appearing for the appellant, ingredients of abetment are totally absent as envisaged under Section 306 IPC read with Section 107 of the IPC and, therefore, Accused No. 1 is liable to be acquitted. It was submitted by him that on a proper interpretation of the facts as also the provisions of Section 306 IPC it cannot be said that the appellant herein was in any manner responsible for abetting the suicide committed by the deceased which was an independent act of the deceased.

“It was also submitted by him that the appellant did not in any manner substantially assisted the deceased in committing the offence of suicide and since there was no such participation of the appellant in abetting the offence of suicide, the conviction and sentence under Section 306 IPC is required to be set aside and quashed.”

11. The aforesaid submissions were, however, refuted by learned counsel appearing for the State contending inter alia that there is a concurrent find of facts by three courts below finding the appellant guilty of the offence under Section 306 IPC and, therefore, the said findings cannot be said to be in any manner as untenable or unjustified.

12. The fact that the appellant had illicit relationship with Accused No. 2, who was the wife of the deceased, is an admitted position for which there was no cross-examination on the point which was clearly stated by PW-5, who is the brother of Accused No. 2, in his statement on 2.1.1996 which is reproduced hereinbelow :

“On 2-1-1996 my father brought A2 to my house at Tsundururu and he informed that she is having illicit contact with A1 to change her behaviour brought her to my house to keep some time. On the same day evening A1 came to my house and took away A2. Some discussion take place between myself and A1 regarding coming to my house. Due to fear, I could not resist for taking away A2.”

13. We have carefully examined the aforesaid statement of PW-5 and on perusal of the statement we do not find that any suggestion was made to the said PW-5 that there did not exist an illicit relationship between Accused No. 1 and Accused No. 2. Besides, the close relatives of the deceased who were also examined as witnesses had categorically stated in their statements that on coming to know of the fact that Accused No. 1 has taken Accused No. 2 from the house of PW-5 and left her only on 06.01.1996 at her parents house, the deceased stated before the said inmates of his house that because of the said insult and humiliation he does not like to live. It is also proved that immediately thereafter in the night intervening 7th and 8th of January, 1996 the deceased committed suicide.

“The aforesaid fact leads to only one conclusion that it is on account of humiliation and insult due to the behaviour and conduct of Accused No. 1 and Accused No. 2 that he proceeded to commit the suicide.”

14. The facts which are disclosed from the evidence on record clearly establish that Accused No. 1 had illicit relationship with Accused No. 2 who is the wife of the deceased. It is also not in dispute that Accused No. 1 was visiting the house of the deceased to meet Accused

No. 2 and that he even went to the house of deceased when he came to know that the wife of the deceased was sent with her father for counseling and advise. He loudly stated that he would continue to have relationship with Accused No. 2 and would come to her house so long she does not object to the same. He also took her away from the house of PW-5, her brother and kept her with him for 4 days. Immediately after the said incident the deceased committed the suicide. Therefore, there is definitely a proximity and nexus between the conduct and behaviour of Accused No. 1 and Accused No. 2 with that of the suicide committed by the deceased. Besides, there is clear and unambiguous findings of fact of three courts that the appellant is guilty of the offence under Section 306 of IPC. Such findings do not call for any interference in our hand. This Court also does not generally embark upon reappreciation of evidence on facts which are found and held against the appellant.

15. Considering the entire facts and circumstances of the case we are, therefore, not inclined to interfere with the order of conviction as also the order of sentence passed against the accused-appellant. We uphold the order of the High Court and dismiss this appeal. The bail bond of the accused-appellant stands cancelled. He shall surrender forthwith to serve out the remaining period of the sentence.