

SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.1094 of 2008

JUDGMENT:

Aggrieved by the acquittal of the accused in CC.No.133 of 2004, by virtue of the judgment dated 05.06.2008, passed by the Munsif Magistrate, Vinukonda, the appellant filed this appeal.

2. Briefly, the facts of the case can be stated as under:

The defacto complainant, who is the appellant herein, took charge as Medical Officer, Government Hospital, Vinukonda on 22.05.2002 and he was in charge till 21.03.2003. He was awarded best Family Planning Surgeon by the District Medical and Health Officer, Guntur, the then Hon'ble Health Minister and the District Collector, Guntur, respectively. He also worked as in charge for the Primary Health Centers, Enugupalem and Bollapalli in addition to Government Hospital, Guntur. In the month of January 2004, one staff nurse by name K. Vara Lakshmi, who is the accused, absconded from duty, after putting signature in the attendance register. In spite of several oral instructions, she used to commit the same irregularity. He instructed the in charge UDC to obtain leave letter from her, but the accused, without submitting the leave letter and any explanation, created a drama at her residence, that she was attempting to commit suicide by hanging. In fact, there was no such attempt and there was no harassment. No case was registered against her. The husband of the said staff nurse, who is the accused in this case, is a quack Doctor running a clinic and the accused used to attend

that clinic by absconding from duty at Government Hospital, Vinukonda.

The accused made people believe that she attempted suicide by hanging. It is a pre-planned and pre-meditated act, with evil desires, so as to bring the complainant to terms with her. There was a news item published in Andhra Jyothi dated 07.02.2004 with baseless and false allegations. Due the above behaviour of the accused, the complainant suffered mental agony. The news item is defamatory, inasmuch as it had denounced him falsely and it lowers the respect and estimation in the hearts of the readers of the newspaper. Hence, the complaint was filed by the defacto complainant.

3. After following the legal formalities, the Court below tried the case and based on the evidence, it passed the impugned judgment, on which this appeal is preferred on the following grounds:

The Magistrate ought to have seen that the accused absconded from duty after putting signature in the attendance register, in spite of several oral instructions and ought to have seen that there was no harassment by the appellant, for an attempt to commit suicide by the accused. The Magistrate ought to have seen that the evidence of P.Ws.4, 5 and 6 corroborated to the extent of irregular attendance of the accused and ought to have seen that it establishes that they went to the residence of the accused on 06.02.2004 and noticed that there were no signs and symptoms of attempt to commit suicide. The Magistrate ought to have seen that the news item in the Andhra Jyothi is without any material evidence and false and ought to have seen that the news item is a clear imputation concerning the appellant

and intending to harm the reputation of the appellant. The Magistrate ought to have seen that Ex.D3 disclosed that the accused absconded from duty. The Magistrate ought to have seen that the Collector, Guntur furnished a letter dated 15.12.2006 to the appellant stating that as per the records available in their office, no such letter in Rc.No.392/E1/2004 dated 08.04.2004.

4. Based on the grounds raised in the appeal and the arguments, extended by the appellant in person, which are same as mentioned in the grounds of appeal, the following points can be taken up for consideration:

1. Whether the alleged news paper item is published at the instance of the accused.
2. Whether the offence punishable under Section 500 of the Indian Penal Code is made out against the accused.
3. To what relief.

POINT Nos.1 and 2:

5. A glance at Section 499 IPC, would be profitable, to appreciate whether the news item, if, was published, at the instance of the accused, amounts to defamation or not.

499. Defamation.—Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm

the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

6. The appellant vehemently contends that there is ample evidence to show that the accused absconded from duty and that Ex.D3 evidences the same. The absconding nature of the accused is spoken to, by not only by P.W.1 and P.W.4, with whom, allegedly, P.W.1 had intimacy as per the news paper publication, but also P.W.5, who is another staff nurse working in the same hospital.

7. All the above three witnesses consistently spoke about the regular absence of the accused from duties. The evidence of P.W.5 further shows that she went to the house of the accused but did not notice any signs or symptoms of hanging by the accused. With regard to any attempt, by the accused, to commit suicide, the evidence of P.Ws.2 and 3, who are the reporters of the news papers in Andhra Jyothi and Eenadu, would show that an information was passed on to them that the accused attempted suicide. Information was not stated to have been passed on by the accused, in which case it can be said

that, that information might have been false. When the information comes from someone, other than the accused, it suggests that the information was correct. P.W.5 cannot be considered as a witness, who had expertise to examine the scene of offence and arrive at a conclusion that there were signs or no signs of hanging. Moreover, hanging does not leave any remarkable signs. Hence, to the extent of the accused attempting to commit suicide, the evidence of P.Ws.2 and 3 can be relied upon and it can be said that there was an attempt of suicide by the accused.

8. The next question would be whether it is the accused, who reported about her attempt to commit suicide to P.Ws.2 and 3 so as to get it published in the news papers. In the above paragraph, it was observed that it is not the accused, who gave the information. The evidence of P.W.2 is that someone called him over phone and informed that the accused was trying to commit suicide. It is on such information that he went to the house of the accused, where he found her and it is only when he enquired with her as to what happened, she informed him that due to the harassment of the complainant, she tired to commit suicide. He also spoke about other news paper reporters, who were present there. On the basis of the information given by the accused, he had sent news item to their office and they got published the news item. The evidence of P.W.3 is also on the same lines. He spoke that on information, he went to the house of the accused, but he did not specify that the information was given by the accused. Hence, what comes out from the evidence of P.Ws.2 and 3 is that the news of the attempt to commit suicide by the accused came to them

through some other source, but not through the accused and on such information, they went to the house of the accused and it is when they enquired with the accused, that the accused disclosed to them the reason for her attempt to commit suicide.

9. The material aspect that is required for assessment of the guilt of the accused for the offence punishable under Section 500 IPC is whether the publication made, allegedly, containing imputation which would harm the complainant, is at the behest of the accused. The above discussion has already surfaced the innocence of the accused with regard to the publication made in the newspaper. It is only when the accused was enquired by the reporters, that she had to reveal the reason for her attempt to commit suicide and in that process, she revealed the reason but it is not with an intent to get the same published through P.Ws.2 and 3. It is only P.Ws.2 and 3, who decided to publish the information, which was divulged to them. Hence, the defamation, if any caused by the article, is due to the publication made by P.Ws.2 and 3 but not by the information given by the accused to them, without any intent of getting the same published.

When such is the conclusion on the role of the accused, in getting the news item published, the argument that she has been absconding and that the same is proved through the witnesses, does not have any relevance. Hence, in view of the above, this Court opines that there is no need for any interference with the judgment of the Court below.

The points are accordingly answered.

The criminal appeal is dismissed. As a sequel,
the miscellaneous applications, if any pending, shall stand closed.

February 22, 2018
DSK

T. RAJANI, J

