

HON'BLE SMT JUSTICE ANIS

CRIMINAL REVISION CASE No.852 OF 2008

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ORDER:

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This Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is filed by the revision petitioner herein challenging the judgment dated 25.02.2008, passed by the I Additional Sessions Judge, Karimnagar, in Criminal Appeal No.109 of 2007, whereunder and whereby the conviction and sentence passed against the revision petitioner herein for the offence punishable under Section 306 of the Indian Penal Code, 1860 (for short, 'I.P.C') vide the judgment dated 01.03.2007 in Sessions Case No.875 of 2005 by the Assistant Sessions Judge, at Manthani, was confirmed.

2. The revision petitioner herein is the accused, whereas respondent is the complainant in Sessions Case No.875 of 2005 before the trial Court. For the sake of convenience, the parties hereinafter will be referred to as they are arrayed in the Sessions Case before the trial Court.

3. The brief facts of the case are that one Aili Venkatamma (hereinafter referred to as 'the deceased') after being divorced by her husband, was living with her children in the house of the accused, who is her cousin i.e., her paternal uncle's son. Due to the financial problems, the deceased gave Rs.5,000/- to the accused and thereafter, some petty quarrels arose between them. On 25.02.2004 at about 19:00 hours, the accused abused the deceased in filthy language and harassed her physically and mentally. Thus, due to the humiliation caused to her, deceased poured kerosene and set ablaze to herself. As the result of injuries, she died on 08.03.2004 while undergoing treatment after giving Dying Declaration to the learned Magistrate. Immediately, the mother of the deceased gave a complaint to the police, Manthani Police Station, who registered the same as a case in Cr.No.30 of 2004 for the offence punishable under Section 306 I.P.C. The Investigating Officer recorded the statements of the witnesses, conducted inquest over the dead body in the presence of mediators and thereafter, sent the dead body for post-mortem examination. After receiving the post-mortem report regarding the cause of

death that it is due to extensive burning, after accused was arrested on 10.05.2004, and after completing the investigation, the Investigating Officer filed charge sheet into the Court.

4. On appearance of the accused, the Judicial Magistrate of First Class, Manthani, took cognizance of the case and as the case is exclusively triable by the court of Session, he committed the case to the District & Sessions Judge, Karimnagar, who in turn made over the same to Assistant Sessions Judge, Manthani, for disposal according to law.

5. On appearance of the accused, the Assistant Sessions Judge, Manthani, framed a charge for the offence punishable under Section 306 I.P.C against the accused. During trial, to prove the case of prosecution, PWs.1 to 10 were examined and Exs.P1 to P11 and MOs.1 & 2 were got marked.

6. After closure of prosecution evidence, accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and reported no oral or documentary evidence on his behalf.

7. The trial Court, after hearing the arguments and after perusing the record, convicted the accused and sentenced him to undergo Rigorous Imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, and in default of payment, to undergo Simple Imprisonment for a period of one month for the offence punishable under Section 306 I.P.C.

8. Aggrieved by the conviction and sentence passed by the trial Court, accused preferred Criminal Appeal No.109 of 2007 before the I Additional Sessions Judge, Karimnagar, where the appellate Court after considering the oral and documentary evidence, after hearing both sides and after perusing the findings of the trial Court, dismissed the appeal by confirming the conviction and sentence passed by the trial Court.

9. Being aggrieved by the concurrent finding of both the Courts below, passed in Criminal Appeal No.109 of 2007 and S.C.No.875 of 2005, accused preferred the present revision case.

10. The learned counsel appearing for the revision petitioner/ accused argued

that the deceased was not staying with the accused and she was staying with her parents; that there are contradictions in the evidence of prosecution witnesses and the trial Court erred in placing reliance on the highly interested testimony of PW.1; that the prosecution failed to prove the ingredients of Section 306 I.P.C as there is no abetment made by the accused to commit suicide; that the deceased herself provoked the accused and finally prayed the Court to take lenient view as the accused also received injuries to his hands.

11. On the other hand, the learned Public Prosecutor appearing for the State of Telangana opposed for taking lenient view on that ground that the evidence adduced by the prosecution witnesses clearly established that the accused abetted the deceased to commit suicide; that during the life time, the accused harassed her mentally and physically and due to his provocation only, she committed suicide; that the deceased in her dying declaration-Ex.P3 clearly stated about the harassment made by the accused and it clearly supported the prosecution case, and finally prayed the Court to dismiss the revision case.

12. Now, the point for determination is --

Whether the revision petitioner herein is entitled to set aside the concurrent finding given by both the Courts below for the offence punishable under Section 306 I.P.C, as prayed for or not?

13. **P O I N T**: It is well settled that revisional jurisdiction normally to be exercised in exceptional cases, when there is some glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. The revisional Court is however not expected to act as if it is hearing an appeal and the jurisdiction is not to be ordinarily invoked or used merely because the lower Court has taken a wrong view of the law or mis-appreciated the evidence on record. This Court would not interfere exercising the powers under Sections 401 and 397 Cr.P.C. unless it is shown to be perverse or without evidence or not tenable in law.

14. PW.1-mother of the deceased lodged a complaint-Ex.P1 to the police stating that on 25.02.2004, the accused abused the deceased and caused physical and mental harassment when the deceased demanded the revision petitioner/accused to repay Rs.5,000/-, which was taken by him on the earlier occasion. After knowing that her daughter had poured kerosene, set ablaze

herself and admitted in the hospital, she immediately went to the hospital. There, the facts regarding the manner of incident were informed to her by the deceased and also that the accused is responsible for her death. The said facts were deposed by PW.1 in her evidence. A perusal of the judgments of the Courts below shows that the trial Court as well as the appellate Court rightly held that the testimony of other witnesses is not much relevant and basing on Ex.P3-dying declaration given by the deceased, it is proved that accused abetted the deceased to commit suicide. Further, the appellate Court while dealing with Ex.P3 clearly stated its contents, in which the deceased categorically stated the interaction taken with the accused before her death. Further, a perusal of Ex.P3-dying declaration proved that the accused instigated and provoked the deceased to commit suicide. Therefore, the trial Court as well as the appellate Court rightly held that the prosecution is able to prove the ingredients of the offence punishable under Section 306 I.P.C and convicted for the same.

15. The contention of the revision petitioner/accused is that the deceased was not staying with him and the deceased herself provoked the incident. The said contention cannot be accepted in view of the evidence of PW.1 and Ex.P3-dying declaration. Therefore, the concurrent finding of both the Courts below that the accused has committed the offence punishable under Section 306 I.P.C needs no interference.

16. Regarding the quantum of sentence, the learned counsel for the revision petitioner/accused requested that a lenient view may be taken as the accused has also received injuries to his hands. Thus, taking into consideration the facts and circumstances of the case, I am of the view that a lenient view shall be taken in favour of the accused by reducing the sentence of imprisonment from seven years to five years. Therefore, I am inclined to dispose of the revision as under.

17. The conviction recorded against the revision petitioner/accused by the Assistant Sessions Judge, Manthani, in S.C.No.875 of 2005 for the offence punishable under Section 306 I.P.C as confirmed by the I Additional District & Sessions Judge, Karimnagar, in Crl.A.No.109 of 2007 is hereby confirmed. But, the sentence of imprisonment of seven years imposed is hereby modified and reduced to five years. The sentence of fine is not interfered with. The period of

imprisonment already suffered by the revision petitioner/ accused is directed to be given set off.

18. Accordingly, the Criminal Revision Case is disposed of.

19. Miscellaneous petitions pending, if any, in this Criminal Revision Case shall stand closed.

ANIS, J

Date: 15.04.2015

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