

**HON'BLE SRI JUSTICE M.S.K.JAISWAL**

**Criminal Revision Case No.823 of 2007**

**ORDER:-**

This revision is directed against the Judgment dated 18-07-2007 in Criminal Appeal No.62 of 2003 on the file of the VI-Additional District and Sessions Judge (FTC), Mahabubnagar. The petitioner herein is the accused. The S.I. of Police, Shadnagar, after investigating into Cr.No.250 of 2001, filed the charge-sheet alleging offences punishable under Sections 498-A and 306 I.P.C. The petitioner/accused was tried in S.C.No.456 of 2001 on the file of the additional Assistant Sessions Judge (FTC), Mahabubnagar, and by Judgment, dated 13-03-2003, the petitioner/accused was found guilty of the charges punishable under Sections 498-A and 306 of I.P.C., and was sentenced to undergo R.I. for two years for the offence under Section 498-A of I.P.C., with a fine of Rs.250/-; and to suffer R.I. for three years for the offence under Section 306 I.P.C., with a fine of Rs.250/-.

2. Aggrieved by the said conviction and sentence, the petitioner/accused preferred the Criminal Appeal, which was dismissed and the conviction and sentence was confirmed.

3. The petitioner/accused preferred the present revision contending that both the Courts below have erred in appreciating the evidence on record in proper perspective and have erroneously found the petitioner/accused guilty of the charges alleged, that the evidence on record do not at all make out any ingredients of the offences alleged and the admission made by the prosecution witnesses creates any amount of doubt about the involvement of the petitioner/accused for the unfortunate death of the deceased – Laxmi. It was further contended that there are so many material inconsistencies and discrepancies in the evidence as well as the investigation which clearly shows that it is not the accused who is responsible for the incident. Without properly appreciating the evidence on record, the Courts below have convicted

the accused and hence the same be set aside.

4. Briefly stated the case of the prosecution is that the petitioner/accused and the deceased Laxmi were married about twenty years prior to 2001. They lived happily for sometime. Laxmi has not begotten children. Therefore, she herself performed the second marriage of her husband/petitioner/accused with one Lalita of Gollapalli Thanda. This was about three years prior to 2001. About three months prior to 06-09-2001, the petitioner/accused and the second wife-Lalita were blessed with a son. The petitioner/accused started treating the first wife-Laxmi cruelly and was scolding and beating her frequently. On 05-09-2001, the petitioner/accused and his second wife-Lalita went to Gollapalli Thanda with their son for some treatment. At that time, one Sali (PW.4) who is the wife of PW.2, who is the own brother of Laxmi, came and stayed with the deceased. In the night of 05-09-2001, the deceased committed suicide by hanging herself with the help of a rope. Next day morning i.e., on 06-09-2001, the father and brothers of the deceased Laxmi, who are examined as PWs.1 to 3, were informed about the death and accordingly they all went to Tanda, where they found the deceased lying dead in front of the house. The father of the deceased-PW.1 lodged the complaint-Ex.P.1 alleging that the deceased committed suicide unable to bear the harassment and cruel treatment at the hands of the petitioner/accused.

5. The plea of the accused is one of denial. His specific defence, during the course of Section 313 Cr.P.C. examination, is that on the date of the incident, himself and his second wife-Lalita went to Gollapalli Thanda and at that time PW.4-Sali was with the deceased. He further stated that he does not know what happened, but next day morning i.e., on Thursday at about 09.00 a.m., he came to know that his deceased wife committed suicide. He further contended that a false case has been foisted against him by PWs.1 to 3 due to other disputes.

6. The prosecution in order to prove its case has examined PWs.1 to 6 and produced Exs.P.1 to P.7. No defence is produced.

7. It is the contention of the learned Counsel appearing for the petitioner/accused that it is more than evident from the evidence of PWs.1 to 4, who are all the father, brothers and sister-in-law of the deceased, that the deceased committed suicide on the night of 05-09-2001 and at that time, the petitioner/accused along with his second wife were not in the village. Learned Counsel further submits that even according to the prosecution witnesses, what is all that is alleged is that on and often the petitioner/accused was beating and ill-treating the deceased wife more particularly after he married second wife and was blessed with a son. Learned counsel further submits that the investigation is perfunctory and it is more than evident that the investigation, which was conducted by an Assistant Sub-Inspector of Police-PW.8, was in the nature of table investigation and the original complaint lodged by the husband of the deceased on 06-09-2001 before 12.00 noon in the afternoon has been suppressed and this fact is evident from the manner in which the investigation proceeded. Learned Counsel further submits that, as a matter of fact, PW.4 was alone in the house in the company of the deceased and admittedly, there were certain financial transactions in between the deceased and her own brother, who is the husband of PW.4. Due to that transaction, some disputes appear to have taken place in between PW.4 and the deceased, due to which she committed suicide. Learned Counsel further submits that this is the reason why admittedly even though PWs.1 to 3, who are father and brothers, went to the scene of offence immediately on coming to know about the death of the deceased and found the dead body in front of the house, they returned back to their village even without attending the cremation of their daughter/sister. Learned Counsel submits that if it is really the accused who is responsible for the unfortunate suicide by the wife, PWs.1 to 3 would not have returned without even attending the cremation. On the other

hand, it is specifically admitted by all the prosecution witnesses that it is the accused who performed the cremation etc., of the deceased/wife. Learned Counsel further submits that it is also admitted that on Friday i.e., on 07-09-2001, the prosecution witnesses went to the house of the accused and forcibly took away Television, utensils, two cows etc., from the house of the accused. When the accused went to the police station to lodge the complaint about this incident, it is said that he has been roped in the present case and taken into custody. Learned Counsel further submits that both the Courts below have not at all appreciated the material on record in proper perspective and committed error in holding the petitioner/accused guilty.

8. On the other hand, learned Public Prosecutor submits that both the Courts below have appreciated the evidence on record in proper perspective and lapse if any in the course of investigation, cannot be taken as advantage by the accused and since the evidence of PWs.1 to 3 is clear that it is the accused who was subjecting his deceased wife to cruel treatment, the conviction and sentence is justified.

9. Heard both sides.

10. The point for consideration is as to whether the prosecution proved its case against the accused beyond reasonable doubt so as to sustain the conviction and sentence or whether it needs to be modified, set aside or varied?

11. **Point:-** The admitted facts in brief are that the deceased Laxmi was the first wife of the petitioner/accused and Lalita is the second wife. It is the deceased herself who performed the second marriage of her husband with Lalita in view of the fact that she was not able to conceive. The second marriage was performed about three years prior to 2001. Just about three months prior to the incident, which took place on 05-09-2001, the petitioner/accused and Lalita were blessed with a son. It is also admitted that on 05-09-2001, the

petitioner/accused along with his second wife went to Gollapalli Thanda for treatment of the son. It is also admitted that at that time, PW.4 – the brother's wife of the deceased, and the deceased alone were in the house. In the morning of 06-09-2001 i.e., Thursday, both the petitioner/accused and PWs.1 to 3 came to know about the death of the deceased and they came to Tanda and found the deceased lying dead having committed suicide by hanging with the help of a rope.

12. When the allegation of the prosecution is that it is the cruel treatment of the petitioner/accused which has driven the deceased-wife to commit suicide, the contention of the petitioner/accused is that the reasons for the deceased to commit suicide are not known to him, but, admittedly, at the time when the deceased committed suicide, it is her sister-in-law/PW.4 and the deceased who were in the house and some quarrel took place in between them with regard to money transaction, due to which the deceased might have committed suicide.

13. Ex.P.1 is the complaint, which is lodged by PW.1 at about 12.00 noon on 06-09-2001. The same was registered by the S.I. of Police and the Express FIR was issued. In the complaint, which is lodged by PW.1 – the father of the victim, it is alleged that after the second marriage, now and then, the petitioner/accused used to scold, abuse and beat the deceased wife and on a Saturday his deceased daughter came and informed him about the ill-treatment and on 06-09-2001 (Thursday) in the morning, he came to know that the deceased died. Therefore, as per Ex.P.1, the cause of the deceased for the suicide is that the petitioner/accused was, now and then, scolding, abusing and beating the deceased wife.

14. On similar lines is the evidence of PW.1, the father and also the two brothers of the deceased, who are examined as PWs.2 and 3. What is all that they say is that now and then the petitioner/accused used to scold, abuse and beat the deceased and unable to bear the same, she committed suicide.

15. The deceased and the petitioner/accused belong to Scheduled Tribe community and they were living in a Tanda. The deceased wife herself performed the second marriage of her husband with Lalita. The petitioner/accused, the deceased wife and the second wife Lilita were working as coolies in the mango garden of one Manohar. Learned Counsel therefore submits that for people such as the petitioner and the deceased even if it is believed merely because the husband was scolding, abusing and beating the wife now and then cannot taken as a factor which could have driven the deceased wife to resort to the extreme step of committing suicide by hanging herself. For the people such as the petitioner/accused and the deceased, such a conduct cannot be taken as amounting to either the offence punishable under Section 498-A I.P.C., or Section 306 I.P.C. Learned Counsel appearing for the petitioner/accused relied upon certain authorities on this aspect, which are to the following effect:-

In **AMALENDU PAL @ JHANTU v. STATE OF WEST BENGAL (2010(1) SCC 707**, the Supreme Court made the following observations in paras 15 and 16:-

“Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306IPC., the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the **cruelty and harassment** meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of **harassment** without their being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 I.P.C., is not sustainable.

In order to bring a case within the purview of Section 306 of I.P.C., there must be a case of suicide and in the commission of the said offence, the person who is said to

have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 I.P.C.”

In **KISHORE LAL v. STATE OF M.P. (2007 AIR (SC) 2457)**, the Supreme Court in paras 6 and 7 observed as under:-

“Section 107 I.P.C., defines **abetment** of a thing. The offence of **abetment** is a separate and distinct offence provided in the Act as an offence. A person, **abets** the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete **abetment** as a crime. The word “instigate” literally means to provoke, incite, urge on or bring about by persuasion to do any thing. The **abetment** may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act **abetted** is committed in consequence of **abetment** and there is no provision for the punishment of such **abetment**, then the offender is to be punished with the punishment provided for the original offence. ‘**Abetted**’ Section 109 means the specific offence **abetted**. Therefore, the offence for the **abetment** which a person is charged with the **abetment** is normally linked with the proved offence.

In case of alleged **abetment** of **suicide** there must be proof of direct or indirect acts of incitement to the commission of **suicide**. The mere fact that the husband treated the deceased wife with cruelty is not enough. Merely on the allegation of harassment conviction in term of Section 306 I.P.C., is not sustainable. There is ample evidence on record that the deceased was disturbed because she has not given birth to any child. PWs.8, 10 and 11 have categorically stated that the deceased was disappointed due to the said fact and her failure to beget a child and she was upset due to this.”

In **GIRDHAR SHANKAR TAWADE v. STATE OF MAHARASHTRATE (2002 AIR (SC) 2078)** the Supreme Court in

paras 17 and 18 observed as under:-

“As regards the core issue as to whether charges under Section 306 and 498-A of I.P.C., are independent of each other and acquittal of one does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither are we inclined to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon – the documentary evidence (namely those three letters), in our view, falls short of the requirement of the statute: even on an assumption of the fact that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in-laws' place and requests the **husband** to treat her well – at best some torture and a request to treat her well. This by itself would not bring home the charge under Section 498-A. Demand for dowry has not seen the light of day.

A faint attempt has been made during the course of submissions that Explanation (a) to the Section stands attracted and as such, no fault can be attributed to the Judgment. This, in our view, is a wholly fallacious approach to the matter by reason of the specific finding of the trial Court and the High Court concurred therewith that the death unfortunately was an accidental death and not suicide. If suicide is left out, then in that event question of applicability of Explanation (a) would not arise – neither the second limb to cause injury and danger to life or limb or health would be attracted. In any event the wilful act or conduct ought to be the proximate cause in order to bring home the charge under Section 498-A and not *de hors* the same. To have an event sometime back cannot be termed to be a factum taken note of in the matter of a charge under Section 498-A. The legislative intent is clear enough to indicate in

particular reference to Explanation (b) that there shall have to be a series of acts in order to be a **harassment** within the meaning of Explanation (b). The letters by themselves though may depict a reprehensible conduct, would not, however, bring home the charge of Section 498-A against the accused. Acquittal of a charge under Section 306, as noticed hereinbefore, though not by itself a ground for acquittal under Section 498-A, but some cogent evidence is required to bring home the charge of Section 498-A as well, without which the charge cannot be said to be maintained. Presently, we have no such evidence available on record.”

16. Bearing in mind the above authoritative pronouncements and applying the same to the facts of the present case, at the outset, it can be said that the allegations as contained on the face of it do not fall within the penal provisions of Section 498-A I.P.C., or 306 I.P.C. Merely because, a husband scolds, abuses or beats his first wife now and then and more particularly, the last such physical violence is said to have taken place prior to Saturday, the deceased wife committed suicide on Thursday of the next week cannot be said to be due to the physical cruelty said to have perpetrated by the husband. Admittedly, at the time when the deceased committed suicide, during the day time itself, her husband/the accused and his second wife went out of the village for treatment of their son. Therefore, there was no possibility of there being immediate provocation for the deceased to commit suicide. More particularly, in view of the admitted fact that at the time when she is said to have committed suicide, she was in the company of PW.4, who is none other than the wife of her own brother.

17. Be that as it may, upon perusing the oral and documentary evidence on record, I find myself to be in agreement with the contention of the petitioner/accused that neither the oral evidence nor the documents proved the case of the prosecution against the accused beyond reasonable doubt. There are several circumstances, which raised serious doubt about the entire story as propounded by the

prosecution and its witnesses.

18. The first aspect is about the fact of lodging the F.I.R. PW.1 is the father of the deceased and PWs.2 and 3 are the brothers of the deceased. It is admitted by three of them that they went to the village and found the deceased lying dead and this was at about 03.00 p.m. in the afternoon of 06-09-2001. It is also admitted by PWs.1 to 3 that by the time they went there, the accused and the police officers were also present. It is also admitted by the prosecution witnesses that the complaint was drafted by somebody and the father-PW.1 affixed his thumb impression and by that time, the time was about 5.00 p.m., in the evening. This is the consistent version of PWs.1 to 3. According to them, the complaint was lodged only after 03.00 p.m., on 06-09-2001, which is Ex.P.1. As against that, the record depicts that Ex.P.1 is lodged at about 12.00 noon on 06-09-2001 and on its basis, the crime was registered by the S.I. of Police, who has not been examined by the prosecution. Having registered the FIR at about 12 O' clock in the afternoon on 06-09-2001, the same reached the jurisdictional Magistrate at about 10.45 a.m., on 07-09-2001 through a police constable and the distance between the Court and the police station is just one K.M. That means, it took nearly 22 hours for the police to send the FIR to the jurisdictional Magistrate which was just at a distance of about 1 KM.

19. That apart, even according to the prosecution, the complaint was lodged at 12.00 noon. FIR was registered and the investigation was entrusted to the ASI of Police even though the S.I. of Police was very much in the police station and the fact is that the crime was of a grave nature. The ASI of Police – PW.6 went to the village, which was at a distance of 4 KM., from the police station. It is in the evidence of the Investigating Officer – PW.6 that he reached the scene of offence by about 12.45 in the afternoon. Thereafter, PW.6 observed the scene of offence, took the photographs, drew the rough sketch and examined the witnesses. Thereafter, he held the inquest over the dead body. With regard to the timings, the Investigating Officer admits and the said

fact is also borne out from the documents that the scene of offence panchanama – Ex.P.5 was conducted at about 12.30 p.m. When the A.S.I. of Police reached the village at about 12.45 p.m., how the scene of offence panchanama was conducted at about 12.30 p.m., is not explained. That apart, after conducting scene of offence panchanama, the statements of witnesses are said to have recorded and the inquest over the dead body was held in between 02.00 p.m., to 04.00 p.m., as is evident from the inquest panchanama – Ex.P.2 and as admitted by the Investigating Officer-PW.8. That means, the dead body was lying at the spot till 04.00 p.m., on 06-09-2001. However, the Medical Officer – PW.5 conducted the post-mortem examination on the deceased on 06-09-2001 in between 12.10 p.m., to 12.50 p.m., and this fact also borne out from Ex.P.3 – post-mortem report. As per the prosecution, by the time the post-mortem concluded at 12.50 p.m., on 06-09-2001, even the scene of offence panchanama was not conducted and the dead body was at the scene of offence till beyond 04.00 p.m. It is not explained as to how the Medical Officer conducted the post-mortem in the hospital in between 12.10 p.m., to 12.50 p.m., on 06-09-2001.

20. The above admitted facts makes one believe that the investigation was perfunctory and has not been done properly. That is exactly what the petitioner/accused contends. According to the petitioner/accused immediately after going to the village and finding the dead body, he along with the listed witness No.5, who is the VAO, went to the police station and lodged the complaint suspecting the involvement of PW.4, the wife's brother of the deceased, who was in the company of the deceased at the time when she is alleged to have committed suicide and this complaint of the accused was much before 12.00 noon in the afternoon. Therefore, the police people have conducted the scene of offence and the inquest etc., all before 12.00 noon and sent the dead body for post-mortem examination, which the Doctor performed at about 12.10 p.m., to 12.50 p.m. Subsequently, for the reasons best known to the investigating agency, the complaint from

PW.1 was taken after 04.00 p.m., on 06-09-2001, and in that the allegation was made against the petitioner/accused. Therefore, the scene of offence panchanama and inquest panchanama were shown to have been conducted in between 12.45 in the afternoon till 04.00 p.m., in the evening on 06-09-2001. This falls to the ground in view of the categorical statement of PW.5 – the Doctor that the dead body of the deceased was in the hospital between 12.00 noon to 01.00 p.m., on 06-09-2001 and during that period, the post-mortem was conducted. Learned Counsel submits that the police could manipulate the FIR, the scene of offence panchanama and the inquest panchanama, but they could not do so insofar as the post-mortem report and the evidence of the Doctor was concerned. Another strong circumstance, which supports the case of petitioner/accused is that, admittedly, PWs.1 to 3 being the father and brothers of the deceased were not in the village when the dead body was cremated. This is an unusual conduct of father and brothers. If the father and brothers have suspected the involvement of the petitioner/accused and lodged the complaint at 12.00 noon, they would have been very much present and as a matter of fact, performed the cremation and it is the accused, who should make himself scarce. However, in the instant case, it is PWs.1 to 3 who disappeared from the village and it is the petitioner/accused who performed the cremation etc., of the deceased. This conduct strengthens the contention of the petitioner/accused that PW.4, who is the wife of the brother of the deceased and who was in the company of the deceased on the night of 05-09-2001 when the deceased committed suicide, is responsible for the suicide of the deceased and therefore apprehending arrest, all PWs.1 to 4 though came to the village, went away from there immediately and did not return till the next day i.e., Friday when they came and forcibly took away certain articles from the accused by assaulting the petitioner/accused.

21. As already stated, except for the evidence of PWs.1 to 3 which is to the effect that some time in the past, the petitioner/accused used to

beat, abuse and scold the deceased, absolutely no evidence has been produced by the prosecution. The house where the deceased and the accused were living was surrounded by several houses, as noticed from the scene of offence panchanama-Ex.P.5. Not even a single witness from the neighbourhood or the tanda where the deceased and accused were living has been examined. Curiously, the explanation that is offered by the Investigating Officer is that when he visited the village, the neighbouring houses were locked and therefore he could not examine any of the witnesses.

22. It is also noticed from the evidence of the prosecution witnesses and PW.4 who was in the company of the deceased may be knowing the reason for the deceased to commit suicide. However, PW.4 has been cited only as a witness for the inquest panchanama and her evidence is only to the effect that at about 04.00 p.m., the police obtained her thumb impression on the inquest panchanama – Ex.P.2. In the cross-examination, she admits that she was with the deceased on the date when she died. However she says that she do not know as to how the deceased died. As against the above, PW.3 – the cousin brother of the deceased, deposed that PW.4 went to the house of the accused one day prior to the death of the deceased, that the deceased – Laxmi and the petitioner/accused demanded for return of the money from Bali (husband of PW.4) and also PW.2, that PW.4 was in the house when the petitioner/accused went to Gollapalli Tanda and the deceased demanded money from PW.4. PW.3 further asserted that PW.4 knows better how the deceased died.

23. Certain important admissions made by PWs.1 to 3 may be noticed. In the cross-examination of PW.1, he admits that the police prepared the complaint – Ex.P.1 and obtained his thumb impression at about 05.00 p.m., in the evening, that it is the accused himself who brought the police, that PW.4 went to the house of the accused a day prior to her suicide, that they have not attended the cremation of the dead body of the deceased, that the accused himself cremated the

body, and that on the next day of the cremation, himself along with his sons went to the house of the accused and brought Television, a fan, three copper pots, silver, clothes, one wall clocks, two cows and utensils and that all those articles were with him.

24. PW.2 admits that the police came to the village at the instance of the accused and the VAO (L.W.5), that they did not cremate the body of the deceased and that next day, they went to the house of the accused and brought the articles mentioned above.

25. Upon carefully perusing the evidence on record, both oral and documentary, I have no hesitation in holding that the prosecution miserably failed to prove its case against the accused beyond reasonable doubt and both the Courts below have not at all adverted to the material aspects and have delivered the verdict of the guilt against the accused on the basis of the evidence which is far from satisfactory. Instead of supporting the case of the prosecution, the oral and documentary evidence clearly show that the accused is not at all responsible for unfortunate suicide by the deceased wife and that there are circumstances which point towards the other relations of the deceased whose conduct might have led the deceased to commit suicide and in order to save their own skin, PWs.1 to 3 have made the allegations that due to the abusing, beating and scolding by the husband now and then, the deceased committed suicide on 05-09-2001. In that view of the matter, the impugned Judgment cannot be sustained and the same is liable to be set aside.

26. In the result, the Criminal Revision Case is allowed acquitting the petitioner/accused of all the charges. The bail bonds executed by the accused shall stand cancelled. The fine amount, if any, paid by the petitioner/accused shall be refunded.

Miscellaneous petitions, if any, pending in this revision shall stand closed.

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**M.S.K.Jaiswal, J**

27<sup>th</sup> October, 2015

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