

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

Criminal Revision Case No. 1193 of 2007

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ORDER:

This Criminal Revision Case arises out of the judgment dated 20.08.2007 in Criminal Appeal No.111 of 2006 passed by the Sessions Judge, Karimnagar, whereby and whereunder, the learned Sessions Judge has partly allowed the appeal filed by the petitioner/Accused.

2 . The petitioner/Accused was charge-sheeted on the file of the learned Assistant Sessions Judge, Manthani, in S.C.No.619 of 2005 for the offences punishable under Sections 498-A and 306 IPC. The learned Assistant Sessions Judge, after full-fledged trial, vide judgment dated 20.07.2006, has convicted the petitioner/Accused for the offences punishable under Sections 498-A and 306 IPC, and sentenced him to undergo Rigorous Imprisonment for a period of two years, besides a fine of Rs.1,000/-, in default to suffer Simple Imprisonment for one month, for the offence under Section 498-A IPC; and also sentenced him to undergo R.I. for a period of seven years, besides a fine of Rs.1,000/-, in default to suffer S.I. for one month, for the offence under Section 306 IPC; and ordered that both the sentences should run concurrently, with a further direction that the remand period, if any, undergone by the petitioner/Accused should be given set-off against the sentence of imprisonment.

3 . Aggrieved by the same, the petitioner/Accused has preferred Crl.A.No.111 of 2006 on the file of the Sessions Judge, Karimnagar. The lower appellate Court, after considering the evidence on record, partly allowed the appeal, holding that the charge against the petitioner/Accused for the offence punishable under Section 306 IPC was not made out, and consequently, acquitted him for the said offence. However, the lower appellate Court found the petitioner/Accused guilty for the offence punishable under Section 498-A IPC and confirmed the conviction and maintained the sentence that was passed i.e., R.I. for a period of two years, besides a fine of Rs.1,000/-, in default to suffer

S.I. for one month. Aggrieved by the same, the present Criminal Revision Case is filed.

4. Sri T. Ramachander Rao, learned counsel for the petitioner/Accused, contends that having disbelieved the case of the prosecution with regard to the offence punishable under Section 306 IPC, the learned Sessions Judge ought not to have accepted the case of the prosecution insofar as the offence punishable under Section 498-A IPC also. The learned counsel would further submit that the evidence on record do not in any way establish that it is the petitioner/Accused, who has subjected his wife to such a cruel treatment so as to drive her to commit suicide. The learned counsel would further submit that the evidence on record, both ocular and documentary, clearly show that unable to bear the stomachache, the deceased poured kerosene on herself and set fire and the petitioner/Accused is not at all responsible for the unfortunate death of his wife. As a matter of fact, it is the petitioner/Accused and his parents, who have taken the deceased to Hospital and got her admitted, where she underwent treatment for about four days and succumbed to it thereafter. The learned counsel would submit that conviction of the petitioner/Accused for the offence under Section 498-A IPC, therefore, cannot be sustained and the same is liable to be set aside.

5. The learned Public Prosecutor, on the other hand, submits that the evidence of the prosecution witnesses is consistent and clearly establish the fact that the deceased was being subjected to harassment by the petitioner/Accused on several occasions and he was in the habit of consuming alcohol and beat and abuse the deceased on the ground that she has delivered three female children, but is not delivering a male child. The learned Public Prosecutor further submits that the evidence on record, more particularly that of the learned Magistrate, who recorded the dying declaration, clearly shows that just before the deceased committed suicide, it is the petitioner/Accused, who has abused and beat her, and vexed with such a conduct of the petitioner/Accused in the past, the deceased thought it wise to resort to extreme step of committing suicide.

6. The case of the prosecution, in brief, is as under:

On 08.12.2004 at 9-00 hours Sri Koduri Ramaswamy came to the Police Station and lodged a complaint stating that his sister-Cheeti Yashoda was given in marriage to the accused about 18 years back and they were blessed with three daughters. Since last four years, the petitioner/Accused – Cheeti Mallesh is harassing his sister mentally and physically suspecting her character and also due to non-begetting a male child, that on 04.12.2004 at about 10.30 p.m., Cheeti Yashoda poured kerosene on her and set fire herself and was admitted in Surya Hospital, Godavarikhani, with burnt injuries. On enquiry, his sister-Yashoda told that due to unbearable harassment made by the accused, she was fed up with her life and tried to commit suicide by pouring kerosene, the same was informed to him by Cheeti Narsaiah on 05.12.2004 at 3.00 a.m., and that while undergoing treatment, she died on 08.12.2004 at about 6.00 hours in Surya Hospital, Godavarikhani and he requested action against the accused.

7. In order to prove its case, the prosecution examined P.Ws.1 to 16 and produced documentary evidence under Exs.P-1 to P-12.

8. The petitioner/Accused was examined under Section 313 Cr.P.C., and denied the evidence on record totally and stated that the deceased committed suicide due to stomachache. No evidence was produced in defence.

9. After hearing and considering the evidence on record, the Assistant Sessions Judge disposed of the matter with the result as stated supra.

10. Now, the points for consideration are:

1. Whether the prosecution proved its case beyond reasonable doubt, so as to sustain conviction of the petitioner/Accused for the offence punishable under Section 498-A IPC or not? and
2. Whether it needs to be modified, set aside or varied?

11. The relationship between the deceased-Cheeti Yashoda and the petitioner/Accused is not in dispute. The petitioner/Accused married the deceased nearly 20 years prior to an unfortunate incident, which took place in the early hours on 05.12.2004 at 3.00 a.m. It is also on record that the deceased and the petitioner/Accused were blessed with three daughters. The

case of the prosecution is that the petitioner/Accused was subjecting his wife to harassment and cruel treatment on the ground that she has delivered three daughters, whereas it is the contention of the petitioner/Accused that there is no such kind of harassment and the deceased had resorted to such an extreme step only because of her incapacity to withstand the stomachache.

12. The evidence of kith and kin of the deceased clearly shows that immediately after the incident in the night, they were informed about the deceased setting fire to herself and they reached the Hospital, where she was admitted. What is all in the evidence of prosecution witnesses viz., P.Ws.1, 2, 3 and 7 is that the deceased informed them that she set fire to herself unable to bear the harassment of the petitioner/Accused. On the same day on 05.12.2004 at about 11.00 a.m., P.W.12, who is the jurisdictional Magistrate, has recorded the Dying Declaration of the deceased under Ex.P-9. After satisfying himself about the mental condition of the deceased to give evidence, her statement was recorded, wherein the victim has clearly deposed that her husband beat and abused her on previous night and unable to bear the harassment, she poured kerosene on herself and set fire. She further deposed that even in the past 2 or 3 times, her husband beat her on the ground that she is blessed with three female daughters. She further stated that howsoever good her conduct may be, the petitioner/Accused used to come in an intoxicated condition and used to abuse and beat her.

13. As against the above statement made by the deceased to the jurisdictional Magistrate and also the relatives, there is evidence of P.W.4 – Dr. K.M.N. Srinivas, Medical Practitioner, who issued Ex.P-2 Medical Certificate, wherein it is clearly stated that the deceased set herself fire unable to bear the stomachache.

14. Even accepting the statement, which the deceased made to P.W.4, at the initial point of time, that she attempted to commit suicide by pouring kerosene and set fire due to stomachache, but the fact remains that the deceased, in her dying declaration, stated that on previous night, it is the petitioner/Accused, who beat and abused her and even in the past, on 2 or 3 occasions, the petitioner/Accused beat her on the ground that she delivered three female children. If that statement of the deceased is accepted, what is established is that a few hours prior to the incident and also sometime in the

past, on 2 or 3 occasions, the petitioner/Accused abused and assaulted his wife. In order to attract the offence under Section 498-A IPC, what all that is required to be seen is, whether the petitioner/Accused has subjected the deceased woman to cruelty, which was in the nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health.

15. In the instant case, what happened was, on previous night, as spoken to by the deceased in her dying declaration made to the Magistrate at about 11.00 a.m. on 05.12.2004, a few hours prior to the victim resorted to extreme step of setting fire on herself, the petitioner/Accused has subjected her to cruel treatment inasmuch as he beat and abused her.

16. The learned lower appellate Court has properly appreciated the evidence on record and has rightly convicted the petitioner/Accused for the offence punishable under Section 498-A IPC, while acquitting him for the offence punishable under Section 306 IPC on the ground that there was no satisfactory evidence with regard to abetment of the deceased to commit suicide. Upon re-appraisal of evidence, I see no reason to take any view other than the view taken by the lower appellate Court.

17. There are no merits in this Criminal Revision Case and the same is liable to be dismissed, confirming the conviction of the petitioner/Accused for the offence punishable under Section 498-A IPC.

18. At this juncture, learned counsel for the petitioner/Accused submits that the petitioner/Accused is now aged about 50 years and even prior to the incident to till date, it is the petitioner/Accused, who is taking care of three daughters left behind by the deceased, out of whom, one daughter died, another daughter is married and one more daughter is yet to be married. Therefore, the learned counsel submits that a lenient view can be taken, more particularly keeping in view the fact that the evidence on record, at best, shows that on three or four occasions in a span of nearly 20 years of matrimonial life, the petitioner/Accused had an occasion to abuse or beat the deceased, that too under the influence of alcohol.

19. In that view of the matter, I feel that a lenient view can be taken against the petitioner/Accused and the sentence imposed against him is liable to be modified.

20. Having regard to the facts and circumstances of the case, while confirming the conviction of the petitioner/Accused for the offence punishable under Section 498-A IPC, the sentence imposed against him is modified to that of the petitioner/Accused shall undergo R.I. for a period of three months and shall pay a fine of Rs.5,000/-, in default to suffer S.I. for one month. The petitioner/Accused is entitled for the benefit under Section 428 Cr.P.C.

21. Subject to the modification of sentence as indicated above, this Criminal Revision Case is disposed of. As a sequel, miscellaneous petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M.S.K. JAISWAL

06.11.2015.

Msr

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

06.11.2015

Msr