

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

**CRIMINAL REVISION CASE No.1162 of 2008**

**ORDER:**

This Criminal Revision Case is directed against the judgment in CrI.A.No.21/2007, dated 31.03.2008 on the file of the III Additional Sessions Judge, Karimnagar, by and under which, the conviction and sentence as imposed by the trial Court against the revision petitioner/accused was modified.

2. Heard the learned counsel appearing for the revision petitioner/accused and the learned Additional Public Prosecutor, representing the State.

3. The case of the prosecution is that the deceased Muthukula Laxmi is the wife of the petitioner/accused and their marriage took place 6 years prior to 2004 and they were blessed with two female children. After 4 years of the marriage, the petitioner/accused started subjecting her to cruelty both mentally and physically and suspected her fidelity. On 20.08.2004 at 8 a.m the petitioner/accused beat the deceased wife indiscriminately by suspecting her fidelity and being vexed with his torture, the deceased wife committed suicide by pouring kerosene and set fire. After recording the statement of the deceased wife, the police registered the case against the accused and after investigation filed the charge sheet.

4. Before the trial court, the accused was examined under section 239 Cr.P.C, and the charges under sections 498-A and 306 IPC have been framed against the accused, for which he pleaded not guilty.

5. To bring home the guilt of the accused, the prosecution examined PWs 1 to 13 and got marked Exs.P1 to P13. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.P.C putting all incriminating material available against him. Accused denied the material evidence and no oral and documentary evidence was

adduced on his behalf.

6. On appreciation of oral and documentary evidence, the trial Court found the petitioner/accused guilty of the offences alleged, convicted and sentenced him to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.1,000/-, in default to suffer simple imprisonment for a period of one month for the offence under section 306 IPC, and further sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of one month for the offence under Section 498-A IPC.

7. Challenging the conviction and sentence passed by the trial Court, the petitioner/accused preferred appeal in CrI.A.21/2007 before the lower appellate Court. The learned Sessions Judge, on re-appreciation of oral and documentary evidence, allowed the appeal in part, by setting aside the conviction and sentence imposed by the trial Court against the petitioner/accused for the offence under Section 306 IPC and confirming the conviction and sentence imposed under Section 498-A IPC. Aggrieved by the same the petitioner/accused filed the present criminal revision case.

8. Now the point that arises for consideration in this revision is whether the conviction and sentence imposed by the Courts below against the revision petitioner/accused for the offence under Section 498-A IPC is legal and sustainable.

9. The admitted facts are that the deceased Laxmi was married to the petitioner/accused and out of their wedlock, two daughters were born. The petitioner/accused used to suspect the deceased and in an inebriated condition, used to treat her cruelly and beat her. On the night of 19-08-2004 and the early hours of 20-08-2004, the petitioner/accused alleged to have beat the deceased and having vexed with her life, she poured kerosene on herself and set fire and died four days thereafter.

10. The petitioner/accused was prosecuted for the offences

punishable under Sections 306 and 498-A of IPC. Even though the trial Court found the accused guilty of both the charges, the appellate Court has acquitted the petitioner/accused for the offence punishable under Section 306 of IPC. Therefore, the only accusation that stands proved against the petitioner/accused is one punishable under Section 498-A of IPC. In order to bring home the charge thereunder, what is required to be seen is as to whether the petitioner/accused treated the wife with cruelty.

11. In the instant case, as many as five kith and kin of the deceased-Laxmi have been examined as PWs.1 to 3, 5 and 6. All of them turned hostile and categorically denied that the deceased committed suicide due to any cruel acts on the part of the accused. PW.1 is the sister-in-law, PW.2 is the co-sister, PW.3 is the younger sister, PW.5 is the mother and PW.6 is the younger sister of the deceased. All of them in one voice denied that the deceased committed suicide for which the accused is responsible. They all denied having stated before the police as in Exs.P.1, P.2, P.3, P.4 and P.5. Therefore, no material evidence is forthcoming from the close relations of the deceased about the reason for the deceased to set fire herself and put an end to her life.

12. The main stay of the case of the prosecution, however, is the dying declaration said to have been recorded by PW.9 – the Executive Magistrate/MRO which is Ex.P.7. At about 09.40 a.m., on 20-08-2004, the Executive Magistrate recorded the dying declaration in the hospital following due procedure. It is in the evidence of PW.9 – the Executive Magistrate and also evident from Ex.P.7 that the deceased has informed the Executive Magistrate that the husband used to harass her by beating and on that day, in the morning also, the husband beat her and having become intolerant of harassment by her husband, she poured kerosene on herself and set fire.

13. It is settled proposition of law that even in the absence of

there being any other evidence on record, the dying declaration can be made the solitary basis for determining the guilt or otherwise of the person in the dock. However, the same should be cogent, convincing, consistent and shall inspire confidence of the Court and shall be recorded in accordance with the rules. In the instant case, the Executive Magistrate has clearly stated that after taking due precautions and certification from the Medical Officer, he recorded the dying declaration, in which the deceased has briefly stated that she poured kerosene and set fire to herself on the ground that the accused/husband beat her in the morning and also the previous night. From the evidence of the mother, sisters and other relatives of the deceased, what is evident is that they do not know the cause for the deceased to commit suicide but the deceased herself clearly stated that unable to bear the continuous cruel treatment by the accused, she set fire to herself.

14. The appellate Court has correctly appreciated the material on record and while giving the benefit of doubt to the accused insofar as the charge of abetment to commit suicide is concerned, the petitioner/accused was found guilty of having committed the offence punishable under Section 498-A of IPC. Upon re-appreciation of the material on record, I see no reason to take any view other than the view that has been taken by both the Courts below insofar as the charge punishable under Section 498-A of IPC.

15. With regard to the quantum of sentence, the petitioner/accused is sentenced to undergo R.I. for two years and to pay a fine of Rs.1,000/- for the offence punishable under Section 498-A of IPC. It is submitted by the learned Counsel appearing for the petitioner/accused that the incident took place nearly ten years back and that the deceased has left behind two daughters who are now aged about 15 years and 12 years. It is submitted that the petitioner/accused is taking care of the two daughters and that the

incident is not of such magnitude that the petitioner/accused should be sentenced to undergo R.I. for two years.

16. It may be recalled that the only allegation that is alleged and proved against the petitioner/accused is that in an intoxicated condition, he beat the deceased wife in the night of 19-08-2004 and also in the morning of 20-08-2004 and unable to bear the same, she committed suicide.

17. Taking into consideration the above, I feel that the ends of justice would be met if the petitioner/accused is sentenced to undergo R.I. for a period of six months. Fine amount is sustained. Petitioner/accused is entitled to the benefit of Section 428 Cr.P.C. Subject to this modification, the Criminal Revision Case is liable to be dismissed.

18. In the result, the Criminal Revision Case is dismissed, confirming the conviction recorded by the Courts below against the petitioner/accused for the offence under section 498-A IPC, however, the sentence of imprisonment is reduced from two years rigorous imprisonment to six months rigorous imprisonment. Rest of the sentence of imposition of fine shall stand sustained. The trial Court shall take steps, in accordance with law, for apprehending the revision petitioner/accused for serving the sentence.

Pending miscellaneous applications, if any, shall stand closed in consequence.

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**M.S.K.JAISWAL,J**

Date: 21.12.2015

Dsr/Smr