

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.553 of 2005

JUDGMENT:

Petitioner/accused filed this criminal revision case by invoking the provisions under Sections 397 & 401 of the Criminal Procedure Code, being aggrieved by the judgment, dated 11.02.2005 rendered in Criminal Appeal No.106 of 2003 by the III Additional District & Sessions Judge, Kakinada, whereby and whereunder the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of five (5) years and to pay a fine of Rs.500/-, in default of suffer Rigorous Imprisonment for a period of three (3) months for the offence punishable under Section 306 IPC and the conviction and sentence of the petitioner/accused to undergo Rigorous Imprisonment for a period of two (2) years and to pay a fine of Rs.500/-, in default to suffer Rigorous Imprisonment for a period of three (3) months for the offence under Section 498-A IPC and both sentences to run concurrently, recorded in judgment, dated 21.04.2003, in S.C.No.271 of 2002, by the II Additional Sessions Judge, Kakinada, was confirmed.

2. The brief facts, that are necessary for the disposal of the present Criminal Revision Case, may be stated as follows:

The Sub-Inspector of Police, Port Police Station, Kakinada, registered a case in Crime No.32 of 2001 under woman burns basing on the statement of the deceased Unnam Surekha and investigated into the matter. During investigation, it is revealed that the marriage between Unnam Kruparao @ Raju (accused) and deceased was performed in New Life Church, Sanjayanagar,

Kakinada. Prior to the marriage, the accused and deceased fell in love. They lived together in the house of Chandravathi in Sajayanagar and were blessed with two children. The accused is working as painter in motor mechanic shed. The accused is habituated to drinking and womanizing. The accused used to come to the house in late nights in drunken condition and beat the deceased. The accused developed illicit intimacy with one Ramadevi for which the deceased objected. The deceased requested the accused not to continue his illegal contacts. The deceased warned the accused that if he did not stop moving with other girls, she would commit suicide. Despite that the accused did not mend his habits. While so, on 28.07.2001 at about 9.00 p.m., the accused came to the house in a drunken condition. The deceased picked up quarrel with the accused and warned him to give up his bad habits. The deceased warned that she would pour kerosene and commit suicide. The accused abetted her to commit suicide. Immediately, Surekha poured kerosene over her body and set fire to herself. The accused did not take any steps either to extinguish the flames or to save her life. The accused left the deceased to burn completely.

The IV Additional Judicial Magistrate of First Class, Kakinada, recorded the statement of Surekha. Surekha died on 29.07.2001 at about 6.00 a.m. due to burn injuries. The Sub-Inspector of Police visited the scene of offence, prepared the rough sketch and recovered the material objects in the presence of mediators. He examined and recorded the statements of the witnesses. The Mandal Revenue Officer also recorded the statements of witnesses. The Mandal Revenue Officer conducted

inquest over the dead body of the deceased. On 02.08.2001, the Sub-Inspector of Police apprehended the accused and produced before the Court for judicial custody. After completion of the entire investigation, the Sub-Inspector of Police filed charge sheet against the accused under Sections 498-A and 306 IPC.

3. On appearance of the accused before the trial Court, the charges under Sections 498-A & 306 IPC were framed against the accused, read over and explained to him in Telugu, for which, he pleaded not guilty and claimed for trial.

4. To substantiate its case, prosecution got examined PWs.1 to 14 and marked Exs.P-1 to P-25 and M.Os 1 to 6. On behalf of defence, no oral or documentary evidence was adduced.

5. After appreciating the oral and documentary evidence available on record, the trial Court found the accused guilty of the offences punishable under Sections 498-A & 306 IPC, and accordingly, convicted and sentenced him as stated above. Aggrieved by the conviction order, the petitioner filed Crl.A.No.106 of 2003. The lower appellate Court dismissed the appeal by confirming the order of the trial Court, by judgment, dated 11.02.2005. Challenging the same, the present revision case is filed.

6. Heard and perused the entire material available on record.

7. After hearing the arguments of the learned counsel for both sides and after perusing the material available on record, this Court is of the view that there are no reasons to set aside the conviction against the petitioner/accused for the offence under Sections 498-A & 306 IPC. When this Court expressed its opinion

that this Court is not inclined to interfere with the concurrent findings of the Courts below, learned counsel for the petitioner submitted that he will confine his arguments only to the extent of the period of imprisonment imposed against the petitioner.

8. The trial Court as well as the lower appellate Court discussed the evidence at length. On perusal of the entire evidence adduced, Ex.P-21 – Dying Declaration of Unnam Suresh, dated 29.07.2001 and Ex.P-22 – Statement of Unnam Surekha recorded by Sub-Inspector of Police, dated 29.07.2001, and from the evidence of P.Ws.1 to 13, who are related to the deceased also, the trial Court has come to a conclusion that the petitioner committed offences punishable under Sections 306 & 498-A IPC. Except the said allegation, no other allegation was deposed by the witnesses against the petitioner.

9. The lower appellate Court discussed the evidence as follows:

“14. A perusal of the testimony of P.W.11 (doctor) reveals that he sent intimation Ex.P-17 to the Magistrate to record dying declaration. The testimony of P.W.13 (Magistrate) reveals that on 28.7.2001 at about 11-15 a.m., he received intimation from G.G.H., Kakinada to record dying declaration of Smt. Surekha. Then he rushed to the hospital and recorded the statement of Surekha. His testimony further reveals that he put some questions to Surekha to ascertain her mental condition. The testimony of P.W.13 reveals that after satisfying with the mental condition of Surekha he recorded dying declaration (Ex.P-21). As seen from the testimony of P.W.13 the deceased Surekha told him that her husband had illicit intimacy with one Ramadevi and when she requested the accused to discontinue his illicit intimacy he beat her on 28.7.01, therefore she poured kerosene on her and set fire to herself. As per the contents of Ex.P-21 dying declaration the

accused had illicit intimacy with one Ramadevi. In that connection they used to quarrel with each other. On some occasions the accused beat her when the deceased questioned about his illicit intimacy. On the date of incident the accused beat her and directed her to die, therefore, she poured kerosene and set fire to herself. Ex.P.21 contains the endorsement of the duty doctor (P.W.11) which is Ex.P-18. As per the certificate of the Doctor (P.W.11) the deceased Surekha was conscious, coherent and in fit state of mind to give statement. As per the oral testimony of P.W.11 the deceased was conscious and coherent throughout recording of the statement. The testimony of P.W.14 (S.I of Police) also reveals that he recorded the statement of the deceased Surekha Ex.P-22. In Ex.P-22 also the deceased Surekha categorically stated that the accused had illicit intimacy with Ramadevi and used to beat her. On the date of incident also the accused beat her when she questioned the illegal contacts of the accused. A perusal of Ex.P-22 further reveals that the accused did not take any steps to extinguish the flames on the body of Surekha. P.W.14 also obtained the endorsement of the duty doctor (P.W.11) about condition of the deceased Surekha. The testimony of P.W.11 also reveals that he endorsed on the statement recorded by S.I of police that Surekha was conscious at the time of recording of statement, which is Ex.P-19. In the cross-examination P.W.13 categorically stated that except himself, duty doctor none other present. In the cross-examination P.W.13 denied the suggestion that P.Ws.1 and 2 were present at the time of recording of statement of the deceased. P.W.14 also categorically stated that P.Ws.1 and 2 were not present at the time of recording of statement by him. A perusal of Exs.P-21 and P-22 clearly reveals that the deceased Surekha gave statement voluntarily in a fit state of mind.”

10. The evidence threw light on the case of the prosecution. Admitting the entire evidence adduced, as discussed

by the lower appellate Court, to be true, whether an offence under Section 306 IPC would attract is a point to be decided.

11. Section 306 IPC runs as follows:

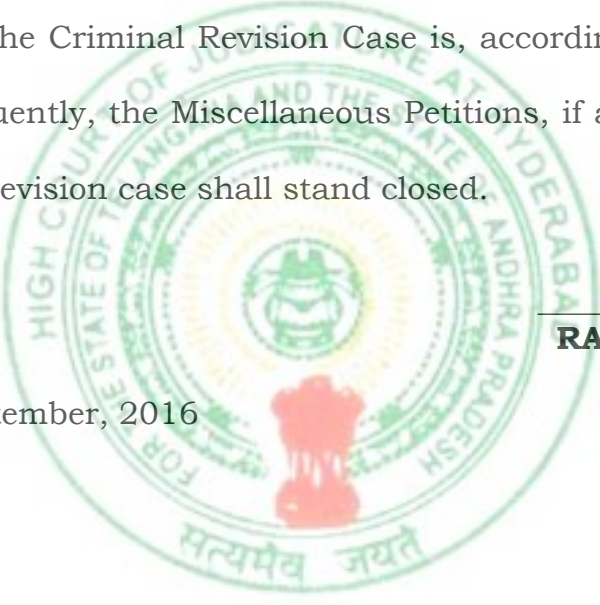
“306. Abetment of suicide. - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

12. The present facts and circumstances of the case does not disclose an element of abetting the person to commit suicide and further the present complaint arise over a sudden quarrel between the husband and wife in connection with the illicit relationship with one Rama Devi. Hence, this Court is of the view that the same does not arise under Section 306 IPC. Hence, the conviction and sentence for the offence under Section 306 IPC is set aside. As far as the offence under Section 498-A IPC is concerned, considering the evidence of P.Ws.1 to 13 and Ex.P-21-Dying declaration, the act of the accused herein strive the deceased to commit suicide within the ambit of Section 498-A IPC. Hence, the conviction imposed by the trial Court for the offence under Section 498-A IPC is confirmed. As far as the sentence is concerned, the sentence is modified to the period that the petitioner/accused has already undergone and fine amount, if any, is not interfered.

13. In the result, the conviction and sentence recorded against the petitioner/accused by the II Additional Assistant Sessions Judge, Kakinada, in S.C.No.271 of 2002, vide Judgment, dated 21.04.2003, as confirmed by the III Additional District & Sessions Judge, Kakinada, in Crl.A.No.106 of 2003, vide judgment,

dated 11.02.2005, for the offence under Section 306 IPC is set aside and the conviction recorded against the petitioner by the trial Court, as confirmed by the lower appellate Court for the offence under Section 498-A IPC is hereby confirmed. However, the sentence of imprisonment imposed by the trial Court, as confirmed by the lower appellate Court, for the offence under Section 498-A IPC is modified to that of the period, which the petitioner has already undergone. However, the sentence of fine imposed by the trial Court for the offence under Section 498-A IPC shall not be interfered with.

14. The Criminal Revision Case is, accordingly, allowed in part. Consequently, the Miscellaneous Petitions, if any, pending in the criminal revision case shall stand closed.



RAJA ELANGO, J

Date: 6th September, 2016

KL

HONOURABLE SRI JUSTICE RAJA ELANGO



CRIMINAL REVISION CASE No.553 of 2005

Date: 6th September, 2016

KL