

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.564 OF 2007

JUDGMENT:

This Criminal Appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is directed against the judgment, dated 01.05.2007, in Sessions Case No.78 of 2005 on the file of Sessions Judge, Mahila Court, Vijayawada, whereunder and whereby, appellant herein/A-1 was found guilty of the offences punishable under Sections 498-A and 306 IPC and was convicted under Section 235(2) Cr.P.C. and sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.500/-, in default of payment of fine, to undergo simple imprisonment for a period of two months for offence under Section 498-A IPC; and to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.1,000/-, in default of payment of fine, to undergo simple imprisonment for a period of three months for the offence under Section 306 IPC. A.2, A.4 and A.5 were acquitted under Section 235 (1) Cr.P.C. The case against A.3 was dismissed as abated.

2. The brief facts that are necessary for disposal of the present appeal may be stated as follows:

A.1 is son of A.2 and A.3. A.4 is the elder sister of A.1. A.5 is the daughter of A.4. Arlagadda Mary (hereinafter referred to as 'the deceased') is wife of A.1. They are residents of Israilpet, Vijayawada. L.Ws.1 and 2 -Erla Adma and Erla Kamalamma are father and mother of the deceased. The marriage of A.1 with the deceased was performed about 15 years prior to death of the

deceased. At the time of marriage, the parents of the deceased gave an amount of Rs.10,000/- towards dowry. After the marriage, the deceased joined A.1 to lead their marital life at Bangalore. During their wedlock, they were blessed with three children. Thereafter, A.1 addicted to vices and shifted family to Vijayawada, where he was working in a Bar & Restaurant at Mangalagiri, Vijayawada. The deceased and A.1 along with their children were staying in the ground floor, whereas A.2 to A.5 were living together in the first-floor of the same building. A.1 started harassing, ill-treating the deceased and demanding her to bring an amount of Rs.15,000/- from her parents for his vices. When the said demand was informed to her parents, they expressed their inability, for which A.1 used to beat her. A.1 also developed illicit intimacy with A.5, who is daughter of his elder sister A.4, and for that reason A.1 being instigated by A.2 to A.5, continued to harass and ill-treat the deceased by bearing her. Basing on the same, the deceased lodged a complainant against all the accused on 28.05.2003 in Payakapuram Police Station. Subsequently, the said complaint was withdrawn by the deceased at the intervention of the elders and all the accused assured that they would look after her properly. But, there was no change in the attitude of all the accused and continued to harass and ill-treat her both physically and mentally and A.1 also continued his illicit relationship with A.5.

On 20.10.2004 all the accused quarrelled with the deceased and harassed her and instigated for her death. The deceased being desperated with her life, committed suicide by hanging herself with a saree in the kitchen room on that night. Having come to know about the death of the deceased, P.W.1 lodged a report before

Machavaram Police Station. Basing on the said report, police registered case, took up investigation and visited the scene of offence. Thereafter, L.W.21 conducted inquest over the dead body of the deceased in the presence of inquest mediators and later the dead body was sent to Government General Hospital, Vijayawada for post-mortem examination. P.W.16-Dr.T.Sakunthala conducted autopsy over the dead of the deceased and issued post-mortem report opining that the deceased died due asphyxia due to hanging. P.W.17 examined the witnesses and recorded their statements. L.W.22 arrested A.1 and A.4 on 26.10.2004 and A.2 on 27.10.2004 and sent them to judicial custody. A.3 and A.5 surrendered themselves before the Court on 10.01.2005. After completion of investigation, police filed charge sheet against all the accused.

3. The learned II Additional Chief Metropolitan Magistrate, Vijayawada, took cognizance of the case against A-1 to A-5 for the offences under Sections 498-A and 306 I.P.C., furnished copies of the documents to them and committed the case to the Court of Sessions under Section 209 Cr.P.C.

4. On appearance of the accused and on hearing both sides, charges under Sections 498-A and 306 I.P.C. were framed against A.1 to A.5, read over and explained to them in Telugu for which, they pleaded not guilty and claimed to be tried.

5. To substantiate the case of the prosecution, P.Ws.1 to 17 were examined and Exs.P-1 to P-30 were got marked besides case property – M.O.1.

6. After closure of the evidence on the prosecution side, accused were examined under Section 313 Cr.P.C. for which, they denied the incriminating circumstances appearing against them in the evidence of prosecution witnesses. On behalf of the accused, none was examined and no documents were got marked.

7. The learned Sessions Judge, basing on the evidence adduced and after elaborate discussion, found A-1 guilty of the offences punishable under Sections 498-A and 306 I.P.C. and accordingly, convicted him under Section 235(2) Cr.P.C. and sentenced him as stated supra. A.2, A.4 and A.5 were acquitted under Section 235 (1) Cr.P.C. The case against A.3 was dismissed as abated.

8. Heard and perused the material available on record.

9. P.W.1 is father of the deceased. He deposed that A.1 used to ill-treat, harass and beat the deceased for additional dowry by developing illegal intimacy with A.5. P.Ws.2 and 3 are mother and brother of the deceased. They also deposed in the same manner as that of P.W.1. P.Ws.4 to 6 and 8, who are neighbours of the accused and the deceased, did not support the case of the prosecution and they turned hostile. The trial Court placed reliance on the evidence of P.Ws.1, 3 and 9 and convicted A.1 as stated above.

10. As far as the evidence of P.W.1 is concerned, even though he denied the suggestion that accused has no illicit intimacy with A.5 and on the said issue the deceased used to telephone to P.W.1 on 15 occasions and whenever she visits the house of her parents, she

used to inform about the ill-treatment in the hands of the accused, the fact remains that he was not examined by the police and the complaint also not written by him and the police according to their convenience have drafted the complaint and 161 Cr.P.C. statement. The other witnesses also denied the suggestions made by the appellant herein. The evidence of P.W.17, who is Investigating Officer, reads as follows:

“It is not mentioned in Ex.P.3-report about the dowry amount was given to the accused at the time of marriage and that A1 having addicted to vices used to beat the deceased and that A1 was having illicit intimacy with the deceased of his elder sister and was harassing the deceased for dowry. I did not obtain the G.D.entry relating to Ex.P1 and P2. It is not true to suggest that Exs.P1 and P2 were got fabricated for the purpose of this case.

It is true that PW1.Irla Adam did not state before me that A1 was not given any money to the deceased for the expenses of their house and that A1 and deceased were residing in the ground floor whereas A2 to A.5 were staying on the 2nd floor. It is also true that PW1 did not state that the deceased used to inform him over telephone about the illtreatment and harassment towards her by A1 and that the deceased informed him about the illicit intimacy between A1 and A5. It is also true that PW1 did not state to me that one year prior to the incident all the accused beat the deceased with a kitchen knife with an intention to kill her and the son of A1 interfered and snatched away that knife and that when PW2 went to the house of the accused and questioned about the said incident and then the accused also attempted to beat her.”

11. As seen from evidence of P.W.17, it is clear that the allegations and the evidence basing on which the learned judge convicting A.1 is not stated before the Investigating Officer during the course of investigation. In the entire evidence there are omissions, which necessarily amounting to contradictions. Further, the evidence of P.W.9, who is daughter of the deceased, has given totally a different version as her mother was murdered

by the appellant herein. But, the said fact was not stated before the Investigating Officer. Hence, this Court is of the view that whatever the evidence adduced before the Court by the said witnesses is not stated before the Investigating Officer. When it is not stated before the Investigating Officer, the same cannot be acted upon. Hence, the conviction and sentence imposed by the trial Court against the appellant is liable to be set side.

12. Accordingly, the Criminal Appeal is allowed setting aside the judgment, dated 01.05.2007, in Sessions Case No.78 of 2005 on the file of Sessions Judge, Mahila Court, Vijayawada and A.1 is acquitted for the offences punishable under Sections 498-A and 306 IPC. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

26.09.2016
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JUSTICE RAJA ELANGO

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Date: 26.9.2016

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