

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1164 OF 2015

JUDGMENT:

This criminal appeal is filed by the appellant/*de facto* complainant by invoking the provision under Section 372 of the Code of Criminal Procedure (Cr.P.C.), challenging the order of acquittal, dated 16.10.2015, passed in S.C.No.137 of 2014 by the Principal Assistant Sessions Judge at Mahabubnagar, whereby and whereunder the learned Sessions Judge found the respondents 2 to 8/A-1, A-2, A-4, A-6, A-7, A-8 & A-10 not guilty of the offence punishable under Section 306 IPC and acquitted them for the said offence.

2. The case of the prosecution, in brief, is as follows:

On 23.07.2013 at about 20.00 hours, A-1, A-2, A-4, A-6, A-7, A-8 & A-10 came to the house of the *de facto* complainant, who is P.W.1, abused and beat the husband of P.W.1, namely Thukya, in connection with the missing of the daughter of A-1. The husband of P.W.1 Thukya felt depressed and on the same day night at about 12.00 a.m., he consumed pesticide poison and committed suicide. Thereby, A-1, A-2, A-4, A-6, A-7, A-8 & A-10 have committed the offence under Section 306 IPC. Hence, the complaint.

3. The learned Judicial Magistrate of First Class, Kalwakurthy, has taken the cognizance against A-1, A-2, A-4, A-6, A-7, A-8 & A-10 for the offence punishable under Section 306 IPC, and after complying with the legal requirement of furnishing the copies under Section 207 Cr.P.C., committed the case with committal proceedings, dated 26.03.2014, to the Court of Sessions, Mahabubnagar, under Section 209 Cr.P.C.,

since the alleged offence under Section 306 IPC is exclusively triable by the Court of Sessions. The Principal District and Sessions Judge, Mahabubnagar took the case on file for the said alleged offence and made it over to the Court of Assistant Sessions Judge, Mahabubnagar, for trial and disposal according to law.

4. After apprehension of the accused, the learned Sessions Judge framed the charges under Section 306 IPC against A-1, A-2, A-4, A-6, A-7, A-8 & A-10. The charges were read over and explained to them in Telugu and they pleaded not guilty and claimed to be tried.

5. To substantiate the case of the prosecution, P.W.1 to P.W.6 were examined and Exs.P-1 to P-7 were marked.

6. After completion of the evidence on behalf of the prosecution, the accused were examined under Section 313 Cr.P.C. and the incriminating material was put to them, for which they denied the same. On behalf of the accused, none was examined and no documents were marked.

7. The learned trial Judge, basing on the evidence adduced and after elaborate discussion, found A-1, A-2, A-4, A-6, A-7, A-8 & A-10 not guilty for the offence under Section 306 IPC and accordingly, acquitted them. Challenging the same, the *de facto* complainant filed the present appeal.

8. Heard and perused the material available on record.

9. Learned trial Judge acquitted A-1, A-2, A-4, A-6, A-7, A-8 & A-10 on the ground that the evidence of P.Ws.1 and 2, who are claimed to be the eye witnesses, do not tally and materially contradict with each other.

According to P.W.1, the occurrence took place in her house, but according to P.W.2, who is the son of P.W.1, the occurrence took place in their shop and further, the evidence of P.W.2 is also highly unbelievable and he has improved his version before the Court and improved it whatever he has stated before the investigation officer and he also admitted in the cross-examination that on hearing the incident over phone, he came to the house and heard about the incident and saw that his father was beaten. Hence, admittedly P.W.2 is not an eye witness to the occurrence, whereas P.W.1 was present at the time of occurrence.

10. The learned trial Judge not only relied on the evidence adduced, but also relied on a decision of the Apex Court reported in **Gangula Mohan Reddy Vs. State of A.P.** [\[11\]](#), wherein the Apex Court, stated as follows:

“Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. So, clearly mensrea to commit the offence should be present to convict a person under Section 306 I.P.C. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he or she committed suicide.”

11. Without going into the contradiction and also the improbability of the evidences concerned, admitting the entire case of the prosecution that the deceased committed suicide on the ground that the accused have abused and beat the deceased, then also an offence under Section 306 IPC is not attracted. To prove the

offence under Section 306 IPC, there should be a specific evidence that due to inducement of the accused persons, the deceased has committed suicide and the deceased has no other alternative except to commit suicide. Hence, this Court is of the view the order of acquittal recorded by the trial Court is in concurrence with law.

12. Further, in a case of acquittal, if the trial Court considered the two views and basing on one of the views, which is in favour of the accused, acquits the accused, normally, the appellate Court will not interfere with the judgment of the trial Court unless and otherwise, the evidence adduced by the prosecution clinchingly points towards the guilt of the accused. In the present case, the learned trial Judge has considered all aspects and acquitted the accused. Hence, this Court is not inclined to interfere with the judgment of acquittal of the trial Court and the appeal fails and is liable to be dismissed.

13. Accordingly, the Criminal Appeal is dismissed confirming the judgment, dated 16.10.2015, in S.C.No.137 of 2014, on the file of the Principal Assistant Sessions Judge, at Mahabubnagar. Miscellaneous petitions pending, if any, in this criminal appeal shall stand closed.

RAJA ELANGO, J

Date: 22nd July, 2016

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HONOURABLE SRI JUSTICE RAJA ELANGO

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