

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1061 OF 2007

JUDGMENT:

Appellant – A-1 filed this Criminal Appeal by invoking the provision under Section 374 (2) of the Criminal Procedure Code (in short 'Cr.P.C.') being aggrieved by the judgment, dated 16.07.2007 rendered in Sessions Case No.18 of 2005 by the Additional Metropolitan Sessions Judge-cum-III Additional District & Sessions Judge, Fast Track Court, at L.B. Nagar, R.R. District, whereby and whereunder the learned Sessions Judge found A-2 to A-5 not guilty for the offence under Section 304-B read with 34 IPC and accordingly, acquitted them. A-1 was found guilty of the offences punishable under Sections 498-A and 306 IPC, convicted and sentenced him to undergo Rigorous Imprisonment for a period of two (2) years and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for a period of three (3) months for the offence under Section 306 IPC and to undergo Rigorous Imprisonment for a period of five (5) years and to pay a fine of Rs.1,000/-, in default to suffer Simple Imprisonment for a period of three (3) months for the offence under Section 306 IPC.

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

On 14.07.2004 at 11.00 hours, P.W.1 N. Bheemaiah, Revenue Inspector of Malkajgiri Mandal, lodged a complaint before the Neredmet Police Station, stating that on the same day at about 10.00 a.m., he came to know that a woman has committed suicide by hanging in Flat No.1, Plot No.36, G.K. Nagar Officers Colony, upon which he went there and on enquiry, he came to

know the name of the deceased as Anitha Singh, W/o. Jithender Singh and their marriage was performed on 09.03.2003 and since one year they are staying in the said flat and they used to quarrel frequently. P.W.1 further stated that on the night of 12.07.2004 around 10.00 or 11.00 p.m., a quarrel took place between Anitha and her husband. On 13.07.2004 morning at 8.00 a.m., Jithender Singh (A-1) left his house to attend duties and when he returned house at about 9.00 p.m., the bed room door was bolted from inside and there was no response from his wife and he slept in varandah on that night. On the next day morning i.e., on 14.07.2004 at about 7.30 a.m., A-1 got doubt that his wife was not responding even after knocking the door, then he went out and found through the rear window that his wife Anitha Singh was hanging to the ceiling fan with her chunni and then A-1 forcibly got opened the door. P.W.1 further stated that he found some writings on the wall in Hindi as “SONU THUM KABHI SUKHI NAHI RAH SAKTHE – SONU BHAGVAN THUMHE KABHI MAF NAHI KAREGA – EKBAR BALLE BAYYA SE PUCHNA IS LADKI KYA GALTHI THI – JO UNHONE MERE SATH AISA KIYA – MERA GHAR BARBAD KARKE KYA UNKO DUNIYA KI KUSHI MIL GAYEE.” On seeing those writings on the wall, he felt that the deceased might have committed suicide, unable to bear the harassment and torture of her husband and then, he requested the police for taking necessary action.

Basing on the said complaint, the Sub-Inspector of Police, Neredmet, registered the case in Crime No.227 of 2004 under Sections 306 & 498-A IPC and investigated into the case. During the course of investigation, the scene of offence was visited and

videograph of scene was taken with the help of Videographer and scene of offence was conducted in the presence of P.Ws.5 & 6 and inquest was also conducted by the M.R.O. (P.W.7) in the presence of the same witnesses and the dead body of the deceased was sent for post mortem examination to Gandhi Medical Hospital. The Assistant Professor has conducted autopsy over the dead body of the deceased and information was sent to the parents of the deceased at Agra. On 15.07.2004 Kaptan Singh, the father of the deceased (P.W.8), along with his relatives Sri Manoj Kumar (P.W.9), Lalith Singh (P.W.10) came to the Neredment Police Station. On 16.07.2004, P.W.8 submitted a report alleging that his daughter Anitha was subjected to cruelty for additional dowry of Rs.2,00,000/- and she was murdered by her husband Jithender Singh (A-1), his brothers Beerendar Singh Chehar (A-2), Devendar Singh Chehar (A-3) and in-laws Bhavsingh (A-4) and Smt. Ramasree (A-5). Basing on that report, the Section of law was altered from Sections 306 & 498-A IPC to Section 304-B IPC and the ACP, Malkajgiri, took up further investigation. On 19.07.2004, A-1 to A-3 were arrested and A-1 admitted that he has torn the pages in the diary and burnt them. From the evidence collected, it is established that A-1 to A-5 harassed the deceased for additional dowry of Rs.2,00,000/- on many occasions and the deceased died other than the normal circumstances within seven years of her marriage and thereby A-1 to A-5 caused the death of deceased which is punishable under Section 304-B read with 34 IPC and further A-1 is also liable for the offence punishable under Section 201 IPC for tearing and destroying the diary pages written by the deceased to conceal the evidence.

3. The X Metropolitan Magistrate, Cyberabad, Malkajgiri, took cognizance of the case on file in P.R.C.No.151 of 2004. The case was committed to the Sessions Division, Cyberabad. The learned Sessions Judge took up the case on file and numbered it as S.C.No.18 of 2005 and made over the same to the Additional Metropolitan Sessions Judge-cum-III Additional District & Sessions Judge (FTC), at L.B. Nagar, Ranga Reddy District, for commencement of trial and disposal according to law.

4. On appearance of the accused, charge under Section 304-B read with 34 IPC was framed against A-1 to A-5 and charge under Section 201 IPC was framed against A-1, read over and explained to them in Hindi, for which, they pleaded not guilty and claimed for trial.

5. To substantiate its case, the prosecution got examined PWs.1 to 13 and marked Exs.P-1 to P-15 and M.Os.1 and 2. On behalf of defence, no oral or documentary evidence was adduced.

6. After appreciating the oral and documentary evidence available on record, more particularly, the evidence of P.W.8, who is the father of the deceased, the learned trial Judge observed that though it was stated by P.W.8 that all the accused i.e., A-1 to A-5 have harassed the deceased for additional dowry, sufficient evidence is not produced before the Court to prove their presence in the house of A-1, except the presence of A-3. There is no specific evidence to prove that A-3 harassed the deceased though he lived along with A-1 and the deceased. Similarly, though in the writings of the deceased on the wall, the name of some person was referred to as 'Balle Bhayya', there is no proof that it is only A-2. Hence, the learned trial Judge held that the evidence on record

was not sufficient to prove the guilt of A-2 to A-5 for the offence punishable under Section 304-B IPC and found A-2 to A-5 not guilty for the offence under Section 304-B read with 34 IPC and accordingly, acquitted them.

7. The learned trial Judge convicted A-1 on the basis of the evidence of P.W.8. From the evidence of P.W.8, it was established that on 13.07.2004, the deceased was beaten by A-1 when he was in a heavily drunken state with belt and she was confined in a room soon before her death and the conduct of A-1 abetted the deceased to commit suicide and the writings of the deceased on the wall of the matrimonial home indicates that there was harassment and an abetment to commit suicide by A-1. Hence, the learned trial Judge found A-1 guilty of the offences punishable under Sections 498-A and 306 IPC, convicted and sentenced him as stated above. Aggrieved by the said conviction order, the present appeal is filed by the appellant/A-1.

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

9. As far as the offence under Section 306 IPC is concerned, the learned trial Judge was of the view that the entire facts and circumstances of the case narrated by P.W.8 coupled with the fact that earlier there was a complaint made by the deceased in Agra and subsequently, a legal notice was issued by the appellant/A-1, which is marked as Ex.P-10, informing the father of the deceased to advise his daughter to give mutual consent divorce. Hence, this Court is of the view that the said evidence adduced by P.W.8 as well as the writings of the deceased on the wall of her matrimonial house, which is in the nature of

suicide note does not disclose that there was an abetment which necessitated the deceased to commit suicide. To attract an offence under Section 306 IPC, there should be positive evidence on record that the deceased has no other alternative except to commit suicide due to the circumstances prevailing prior to commission of the suicide. Hence, this Court is of the view that the conviction and sentence imposed by the trial Court can be set aside for the offence under Section 306 IPC.

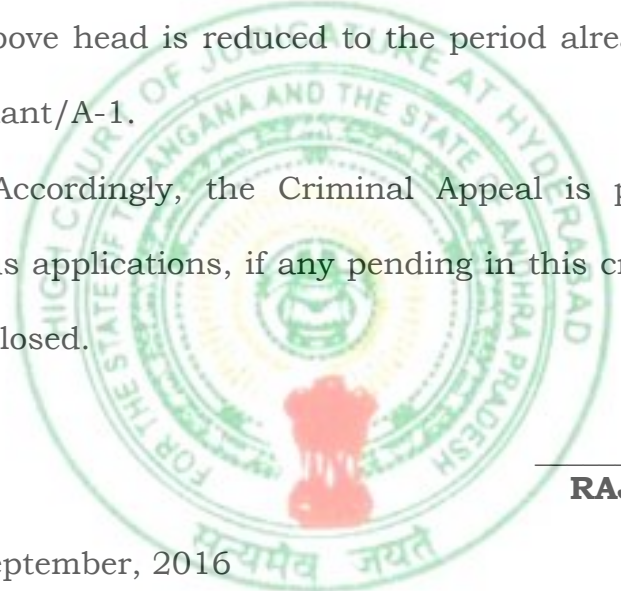
10. As far as the offence under Section 498-A IPC is concerned, the evidence of P.W.8 clearly indicates the fact that prior to the commission of suicide, it was informed by the deceased that she was confined and beaten by the appellant herein which necessitated her to take an extreme step of committing suicide. From the said evidence, it can be said that there was harassment within the meaning of 'cruelty' as provided under Section 498-A IPC. According to Explanation (a) of Section 498-A IPC, the word "cruelty" means any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. A perusal of the evidence on record indicates that a case was made out against A-1 for the offence punishable under Section 498-A IPC. The said fact will attract the offence under Section 498-A IPC. Hence, the conviction imposed by the trial Court for the offence under Section 498-A is hereby confirmed.

11. Considering the facts and circumstances of the case and the time elapsed, this Court is inclined to reduce the sentence of imprisonment for the offence under Section 498-A IPC imposed

by the trial Court to that of the period, which the appellant/A-1 has already undergone.

12. In the result, the conviction recorded by the Additional Metropolitan Sessions Judge-cum-III Additional District & Sessions Judge (FTC), at L.B. Nagar, Ranga Reddy District, against the appellant/A-1 for the offence under Section 306 IPC is set aside and the appellant/A-1 is acquitted of the said offence. The conviction recorded by the trial Court against the appellant/A-1 for the offence under Section 498-A IPC is confirmed. But, however, the sentence of imprisonment imposed by the learned trial Judge under the above head is reduced to the period already undergone by the appellant/A-1.

13. Accordingly, the Criminal Appeal is partly allowed. Miscellaneous applications, if any pending in this criminal appeal, shall stand closed.



RAJA ELANGO, J

Date: 30th September, 2016

KL

HONOURABLE SRI JUSTICE RAJA ELANGO



CRIMINAL APPEAL No.1061 OF 2007

Date: 30th September, 2016

KL