

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.30 OF 2008

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 10.1.2008, in Sessions Case No.71 of 2006 on the file of the Assistant Sessions Judge at Siddipet whereunder and whereby, appellants herein/A-1 and A-2 were found guilty of the offence punishable under Section 306 of the Indian Penal Code, 1860 (for short, "I.P.C.") and accordingly, convicted and sentenced to undergo rigorous imprisonment for a period of ten years each and to pay a fine of Rs.5,000/- each and in default of payment of fine, to undergo simple imprisonment for one year.

2. Case of the prosecution is as follows:

This case emerges on the complaint lodged by P.W.1 on 28.8.2004 at 9:15 A.M. to P.W.11, who registered a case in Crime No.137 of 2004 under Section 306 I.P.C., recorded the statements of P.Ws.1 to 3 and 5, and conducted inquest over the dead body of one Aadi Swamy (hereinafter, referred to as "the deceased") and sent dead body of the deceased for post mortem to the Doctor. P.W.10, who conducted autopsy over the dead body of the deceased, opined that the death occurred due to "organo phosphate poisoning" and P.W.12 – Sub Inspector of Police recorded the statements of P.Ws.4 and 6 to 8 and arrested A-1 on 6.9.2004 and filed charge sheet stating that the investigation revealed that P.W.1 was married to A-1 and blessed with a son i.e., the deceased and subsequently, A-1 developed illicit intimacy with one Mangamma (A-2) and later, A-1 married A-2 and blessed with a son and three daughters and started ill-treating P.W.1, who approached the caste elders, and panchayats were held in the

presence of P.Ws.2, 4 and 5 to 8. It is alleged that the son of P.W.1 filed a case against A-1 for partition of properties in the Court of the Junior Civil Judge at Gajwel and A-1 compromised with him before Lok Adalat at Siddipet by registering Ac.3.00 cents of land in his name and later, four children of A-1 appealed against Lok Adalat orders before this Court, which has issued stay order on the compromise of Lok Adalat. It is alleged that A-1 bore grudge on P.W.1 and her son. A-1 along with A-2, A-3 and A-4 forced P.W.1 and her son to vacate from the partition of the house of A-1 and also foisted a criminal case against P.W.1 in Doultabad Police Station and three days prior to 27.8.2004, A-1 to A-4 beat P.W.1 and her son and forcibly evicted them from the house and due to continuous harassment caused by A-1 to A-4, Aadi Swamy, who is the son of P.W.1, was frustrated with his life and consumed pesticide and committed suicide and as such, A-1, having married A-2 during subsistence of the marriage with P.W.1, caused continuous harassment on P.W.1 and her son along with A-2 to A-4 and thus, they are liable for punishment for the offence under Section 306 I.P.C.

3. The learned Judicial First Class Magistrate, Gajwel has taken cognizance of the case under Section 306 I.P.C. and after complying with the provisions under Sections 207 and 209 Cr.P.C., committed the case to the Court of Sessions, which has made over to the Court of the Assistant Sessions Judge at Siddipet for disposal according to law.

4. On appearance of the accused before the Assistant Sessions Judge at Siddipet, they were examined under Section 228 Cr.P.C. and charge under Section 306 I.P.C. was framed against them, read over and explained to them in Telugu for which, they pleaded not guilty and claimed to be tried.

5. To substantiate the charges, the prosecution examined P.Ws.1 to 12 and got marked Exs.P-1 to P-5.

6. After closure of the prosecution evidence, the accused were examined under Section 313 Cr.P.C. with reference to the incriminating circumstances appearing against them in the evidence of prosecution witnesses. They denied the same. On behalf of the accused, D.W.1 was examined and Exs.D-1 to D-10 were got marked.

7. The trial Court, after appreciating both oral and documentary evidence on record, found A-1 and A-2 guilty of the offence with which they were charged and accordingly, convicted and sentenced them as stated supra, and found A-3 and A-4 not guilty of the said offence and accordingly, acquitted them. Challenging the same, the present appeal is filed by A-1 and A-2.

8. Among the witnesses examined by the prosecution, P.Ws.1 to 3 are the important witnesses. P.W.1 is the mother of the deceased, P.W.2 is the uncle of the deceased and P.W.3 is the wife of P.W.2. The relevant portion of the evidence of P.W.1 recorded by the trial Court runs as follows:

"... All the accused have harassed me and my son Swamy and I gave complaint to the police and case registered at P.S. Doultabad, the same is pending before the JFCM Gajwel. My son unable to bear the harassment of accused and having disgusted with his life consumed pesticide and committed suicide at Gajwel. My son has gone to the house of my brother and informed him that he consumed pesticide having felt insulted by the accused. My son died in Govt. Hospital at Gajwel. Three days prior to committing suicide by my son, all the accused beat me and my son in front of our house at Doultabad Village and we were necked out...."

The relevant portion of the evidence of P.W.2 recorded by the trial Court runs as follows:

"....P.W.1 is my younger sister. A1 is husband of P.W.1. A2 is II wife of A1. Marriage of P.W.1 with A1 was performed 28 years ago and they lived together for 2-3 years and blessed with one son by name Swamy. Son of P.W.1 died by consuming pesticide. He came to my house and when there was some liquid oozing from his mouth, and on my questioning he informed me all the accused have harassed him and unable to bear the insult caused by accused,

he consumed pesticide. I have taken him to Govt. Hospital Gajwel, but he died within 20 minutes of reaching Gajwel Hospital. Son of P.W.1 also informed me that three days prior to consuming pesticide, the accused have harassed and beat P.W.1 and him and asked him to go away as he is burden upon them. The accused A1 to A4 are responsible for the death of son of P.W.1. Police examined me and recorded my statement.”

The relevant portion of the evidence of P.W.3 recorded by the trial Court runs as follows:

“....A-1 was not looking after P.W.1 and her son and harassing them and also beat them. About three years ago the son of P.W.1 consumed pesticide, he came to our house and informed that the accused have harassed him about 4 days ago and as such he consumed pesticide. We took him to the hospital but he died at hospital. The accused are responsible for the death of son of P.W.1.....”

In the entire evidence, even though it is stated by the said three witnesses that the deceased was subjected to harassment by the accused for which, he was forced to take extreme step of consuming pesticide and committing suicide, by reading of the entire evidence, it is clear that nowhere it is specifically stated about the nature of allegations or nature of ill-treatment caused by the accused, which amounts to harassment. Simply they informed the Court that the deceased was subjected to harassment. Admittedly, the relationship between A-1 and P.W.1 is husband and wife. It is evident from the record that P.W.1 left the company of A-1 along with the deceased and she is also prosecuting number of cases against A-1. Further, it is evident that A-1 filed a case for restitution of conjugal rights. It clearly indicates that P.W.1 left the company of A-1. A-2 is the second wife of A-1. There is no specific allegation against A-1 or A-2. The entire reading of the evidence adduced by the prosecution do not attract the offence under Section 306 I.P.C.

9. Section 306 I.P.C. 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.”

10. The main ingredients to attract an offence under Section 306 I.P.C. are as follows:

There should be an inducement. Such inducement should be of the nature which drives a person to commit suicide and it should also be established by the prosecution that except to commit suicide, the deceased has no other alternative and hence, the deceased has committed suicide.

11. In the present case, no such ingredients are proved by the prosecution. Hence, this Court is of the view that the prosecution failed to prove that the deceased committed suicide because of the abetment or inducement of the appellants herein. Hence, they are entitled to acquittal.

12. Accordingly, the Criminal Appeal is allowed setting aside the conviction and sentence recorded in the judgment, dated 10.1.2008, in Sessions Case No.71 of 2006 by the Assistant Sessions Judge at Siddipet against the appellants/A-1 and A-2 for the offence punishable under Section 306 I.P.C. and accordingly, they are acquitted of the said offence under Section 235(1) Cr.P.C. The fine amount, if any, paid by the appellants/A-1 and A-2 shall be refunded to them. The appellants/A-1 and A-2 shall be released forthwith, if they are not required in any other crime.

13. Miscellaneous petitions pending, if any, in this Criminal Appeal shall stand closed.

JUSTICE RAJA ELANGO

9.8.2016

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Date:9.8.2016

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