

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.301 of 2008

JUDGMENT:

This appeal is filed by the sole accused challenging the judgment of the Sessions Judge, Mahila Court, Visakhapatnam in S.C.No.38 of 2004 dated 16.11.2004, whereby the learned Sessions Judge convicted the accused for the offence under Section 306 IPC and sentenced him to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.

The brief facts of the prosecution case are that the marriage of deceased-Lakshmi took place with the accused eight years prior to the occurrence. P.W.1 is the father of the deceased. After the marriage the deceased followed the accused, who is working as C.I.S.F. Constable, to Calcutta to lead conjugal life. Sometime after the marriage, the accused addicted for consumption of liquor and during intoxication, he started harassing the deceased for additional dowry of Rs.40,000/- and also used to beat her. On his transfer to Assam, he left the deceased in the house of P.W.1 promising to take her back. Three years thereafter, the accused was transferred to Visakhapatnam. After joining at Visakhapatnam, the accused asked P.W.1 to send the deceased to his house. One month prior to the incident, P.W.2, son of P.W.1 took the deceased to the house of accused and left there. While so, due to unbearable harassment and ill-treatment by the accused on account of additional dowry, the deceased vexed with her life poured kerosene on her body and lit fire

at her residence on 7.8.2003 prior to 1600 hours, as a result of which, the deceased sustained 100% severe burns and was shifted to Sanjeevi Hospital, Visakhapatnam for treatment. On intimation from hospital authorities at about 4.30 p.m., P.W.8-Sub-Inspector of Police rushed to the hospital, found the deceased and recorded her statement and sent requisition to the Magistrate concerned for recording the dying declaration of deceased. Upon the strength of statement of deceased, he registered a case in Crime No.176 of 2003 under Section 309 IPC and later on receipt of death intimation and on the report of P.W.1, he altered the section of law from Section 309 IPC to Sections 498-A and 306 IPC, took up the investigation. After complying all the formalities and on completion of investigation, he laid the charge sheet against the accused for the said offences.

In order to bring home the guilt of the accused, the prosecution examined P.Ws.1 to 8, marked Exs.P.1 to P.21 and exhibited M.Os.1 & 2. On behalf of defence, no oral or documentary evidence was adduced.

The learned trial judge after perusal of the record, framed the charges for the offences under Sections 498-A and 304-B IPC and after evaluating the evidence brought on record, acquitted the accused for the offences under Sections 498-A and 304-B IPC, but convicted him for the offence under Section 306 IPC.

Heard the learned counsel for the appellant and learned Public Prosecutor. Perused the material available on record.

P.W.1 is the father of the deceased who deposed the factum of marriage of deceased with the accused and he deposed that at the request of accused, his son-P.W.2 took the deceased to the house of accused and 28 days thereafter, he came to know that the deceased died and immediately, he went to the hospital and found the body of the deceased. He gave Ex.P.1 complaint. P.W.2 reiterated the evidence of P.W.1. P.W.3 is the photographer who took the photographs of scene of offence. P.W.4 is the Magistrate who recorded the dying declaration of deceased under Ex.P.13, wherein she stated that the accused used to beat her in a drunken state and instigated her to die and on the date of incident, accused had an altercation with her and in that connection, she poured kerosene on her body and set fire to herself. P.W.5 is the Mandal Revenue Officer, who conducted inquest over the dead body of the deceased and prepared inquest report under Ex.P.2. P.W.6 deposed that on 10.8.2003 at about 11.45 a.m., he conducted post-mortem examination over the dead body of the deceased and issued Ex.P.14 post-mortem report. P.W.7 is the doctor who treated the deceased in the hospital and made his endorsement stating that the deceased was conscious and was in fit state of mind to give statement, which is marked as Ex.P.16. He deposed that the deceased was brought to the hospital in a critical condition with 100% burn injuries. P.W.8 is the S.I. of police, who registered the case, conducted investigation, recorded the statement of deceased in the hospital, seized the material objects and laid the charge sheet.

The evidence adduced by the witnesses more particularly, P.Ws.1 and 2 even admitted to be true, it does not disclose any

offence under Section 306 IPC since the said witnesses have not stated anything regarding abetment by the appellant-accused that forced the deceased to commit suicide. Their evidence speaks only regarding the quarrel that took place between the deceased and the appellant herein and they have not even deposed regarding the demand of additional dowry by the appellant and it is in that connection a quarrel took place with the deceased. The trial Court mainly relied on the dying declaration of deceased recorded by P.W.4-Magistrate under Ex.P.13 and the other recorded by P.W.8, marked as Ex.P.17. The dying declaration-Ex.P.13 recorded by the magistrate is around 5.30 p.m. and whereas, the subsequent dying declaration-Ex.P.17 recorded by P.W.8 is at around 6.15 p.m. If the dying declaration recorded by the magistrate is earlier in nature, there is no scope for registration of F.I.R. under Section 309 IPC. The difference between the two dying declarations is mainly to the effect that the accused informed the deceased that he would purchase some medicines and asked her to consume the same and die. The said words are missing in the subsequent dying declaration i.e. Ex.P.17 recorded by P.W.8.

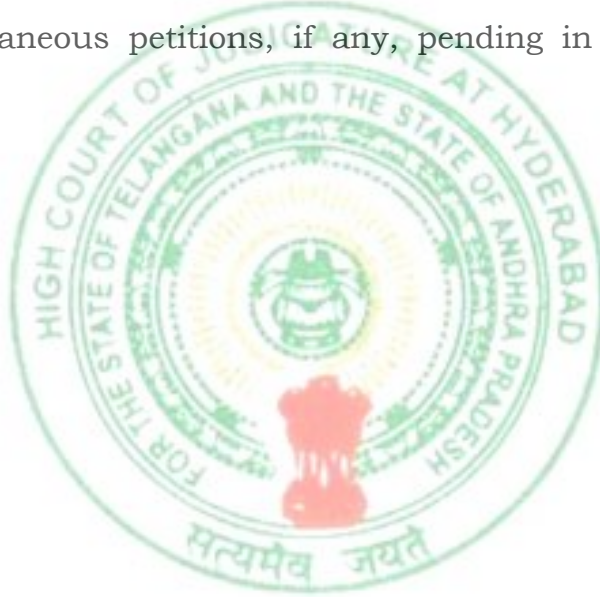
That apart, even admitting the entire dying declaration to be true, still, it does not disclose any abetment by the appellant that forced the deceased to commit suicide. Even according to the deceased, the accused was at home and there took place a quarrel between the deceased and the appellant. Upon the said quarrel, aggrieved over the attitude of the appellant, the deceased poured kerosene, lit fire and died due to the burn injuries. In the circumstances, this Court is of the view that though it is an

unfortunate death of a lady, the ingredients of Section 306 IPC are not proved by the prosecution so as to convict the appellant for the said charge. Hence, the conviction and sentence recorded by the trial Court is not sustainable under law and liable to be set aside.

In the result, the appeal is allowed setting aside the impugned judgment. The conviction and sentence imposed by the trial Court on the appellant for the offence under Section 306 IPC is hereby set aside and he is acquitted of the said charge. The fine amount, if any, paid by the appellant shall be returned to him.

Miscellaneous petitions, if any, pending in this appeal, shall stand closed.

24.08.2016
Tsr



RAJA ELANGO,J

