

THE HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1601 of 2008

JUDGMENT:

1. This appeal is filed by the appellant-accused No.1 against the Judgment dated 28.11.2008 passed in S.C.No.392 of 2007 by the IX Additional District & Sessions Judge, Krishna, Machilipatnam.

2. The case of the prosecution is as follows:

The deceased-Suryavathi is the daughter of P.W.1 and the wife of A1 and daughter-in-law of A2 and A3. The marriage of the deceased was performed with A1 on 28.5.2005 as per the customs prevailing in their community. At the time of marriage settlement, it was agreed that an amount of Rs.60,000/- would be paid towards dowry. During the marriage, an amount of Rs.40,000/- was paid to the accused as dowry and P.W.1 agreed to pay the balance dowry amount of Rs.20,000/- later. A1 harassed the deceased by suspecting her fidelity. The deceased was subjected to ill-treatment and harassment by the accused for want of balance dowry amount. In the month of Ashadamasam, the deceased went to her parents' house and after completion of Ashadamasam, the accused did not come to the deceased for taking her back to their house. In this regard, P.W.1-mother of the deceased, P.Ws.2 to 4 approached the accused as to why they did not respond properly. The deceased presented a report to Inaguduru Police Station on 26.11.2005. Thereafter, the accused agreed to take back the deceased to their house with a promise to keep the deceased along with A1 in a separate house. Accordingly, A1 kept the deceased in a rented portion in Godugupet. Even then, A1 did not stop the harassment towards the deceased. A2 and A3 also instigated A1 to demand the deceased to bring balance dowry amount. Being vexed with

the said harassment, the deceased committed suicide by pouring kerosene over her body and set fire herself on 23.12.2005 at about 22 hours at her rented house. P.W.1-mother of the deceased took the deceased to Government Hospital for treatment. On 23.12.2005 P.W.11-Head Constable rushed to the Government Hospital, Machilipatnam and recorded the statement of the deceased. Basing on the said statement, P.W.11 registered a case for the offence under Section 498-A IPC. On receipt of hospital intimation, P.W.8-II Additional Judicial First class Magistrate, Machilipatnam recorded the dying declaration. The deceased succumbed to injuries on 26.12.2005. Later, the section of law viz., Section 306 IPC was added. Subsequently, basing on the statements of the witnesses during inquest, the section of law was altered from 498-A, 306 IPC to 304-B IPC. After completion of the investigation, charge sheet was filed.

3. The learned II Additional Judicial First Class Magistrate, Machilipatnam took cognizance of the offence under Section 304-B IPC against the accused and committed the case to the Court of Sessions, Krishna, Machilipatnam. The learned District & Sessions Judge numbered it as S.C.No.392 of 2007 and made over the same to the trial Court viz., IX Additional District & Sessions Judge, Krishna, Machilipatnam for disposal.

4. The trial Court framed a charge under Section 498-A IPC against A1 to A3; Section 304-B IPC against A1 and a charge under Section 304-B r/w 34 IPC against A2 and A3, read over and explained to them, for which they pleaded not guilty and claimed to be tried.

5. During the course of trial, P.Ws.1 to 13 were examined and Exs.P1 to P18 and M.Os.1 and 2 were marked on behalf of the prosecution. Ex.D1 was marked on behalf of the accused.

6. On appreciation of oral and documentary evidence, the trial Court having found the appellant-A1 guilty for the offence under Section 498-A IPC convicted and sentenced him to suffer rigorous imprisonment for a period of three years and to pay a fine of Rs.3,000/- in default to suffer simple imprisonment for three months for the said offence, while acquitting the appellant-A1 for the offence under Section 304-B IPC and while acquitting A2 and A3 for the offence under Section 498-A IPC and Section 304-B r/w 34 IPC. Aggrieved by the conviction and sentence imposed by the trial Court, the appellant-A1 filed this appeal.

7. Learned Counsel for the appellant-A1 submitted that the appellant did not suspect the fidelity of his wife and he did not subject her to any ill-treatment and that there is no cogent evidence on record to show that the appellant-accused subjected the deceased to cruelty.

8. Learned Additional Public Prosecutor submitted that the conviction and sentence imposed by the trial Court against the appellant-A1 for the offence under Section 498-A IPC do not warrant any interference by this Court.

9. Now, the point that arises for consideration in this appeal is :

“Whether the conviction and sentence imposed by the trial Court for the offence under Section 498-A IPC against the appellant-A1 warrant any interference by this Court?”

10. It is the case of the prosecution that the accused subjected the deceased to cruelty by demanding dowry and by suspecting her fidelity, on account of which, the deceased committed suicide.

11. Section 498-A IPC reads as follows:

Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) 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; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

It is not in dispute that the deceased committed suicide by pouring kerosene. It is to be examined as to whether the harassment caused by the accused drove the deceased to commit suicide. Ex.P6 is the dying declaration and Ex.P10-statement of the deceased. In Ex.P6 dying declaration and Ex.P10 complaint, the deceased stated that A1-her husband suspecting her fidelity abused her and therefore, she poured kerosene on her person and lit fire. From this statement, it can be said that due to misunderstandings between the deceased and A1, the deceased took an extreme step. Ex.P6 and P10 clearly go to show that A1 subjected the deceased to cruelty by suspecting her fidelity. There is nothing on record to disbelieve the dying declaration. The statement made by the deceased would attract the ingredients of Section 498-A IPC.

12. After evaluating the evidence of the prosecution witnesses and Exs.P6 dying declaration, the trial Court came to the conclusion that the

appellant-A1 is guilty of the offence under Section 498-A IPC. After considering the evidence on record and the dying declaration, this Court is of the view that the trial Court has rightly convicted the appellant for the offence under Section 498-A IPC.

13. At this juncture, the learned Counsel for the appellant submitted that the appellant was in prison for a considerable period and therefore, a lenient view may be taken.

14. Considering the above submission, this Court is inclined to reduce the sentence of imprisonment.

15. In the result, the conviction recorded by the trial Court against the appellant-accused No.1 for the offence under Section 498-A IPC is confirmed. However, the period of sentence of three years rigorous imprisonment imposed for the said offence is modified to that of the period, which the appellant-A1 has already undergone, while confirming the sentence of fine with default sentence.

16. Accordingly, the Criminal Appeal is partly allowed. Consequently, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

Dated:30th August, 2016

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THE HONOURABLE SRI JUSTICE RAJA ELANGO



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30.8.2016

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