

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.52 OF 2008

JUDGMENT:

This Criminal Appeal, under Section 378 (3) & (1) of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C."), is filed by the State against the judgment, dated 30.06.2006, in Sessions Case No.26 of 2004 on the file of Assistant Sessions Judge, Proddatur, whereunder and whereby, respondent/accused was found not guilty of the offences punishable under Sections 498-A and 306 I.P.C. and acquitted for the said offences under Section 235(1) Cr.P.C.

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

The marriage of the deceased with the accused was performed three years prior to the date of incident, and lived with the accused along with his first wife by name G.Basiroon (PW.5), who is no other than the sister of P.W.1. As P.W.1 went to Gulf countries, the accused with the consent of P.W.5 planned to marry the deceased as she is the only daughter and whole property of her father may be succeeded by the deceased. The accused with the said intention, used to visit the house of the deceased, developed love affair with her and married her three years prior to occurrence against the will of her parents. Since then, the parents of the deceased were not having talking terms with the deceased or the accused. After the marriage, the deceased blessed with a female child. The accused is doing plastic scrap business and the deceased also used to help the accused in the said business. Since the date of marriage, the accused used to harass the deceased both physically and mentally on one pretext or the other. While so, on 04.07.2003, as the accused was suffering from small-pox, deceased was looking after the business affairs. But, three days prior to the occurrence, the accused was not talking with the deceased and

due to that the deceased was not taking food. Therefore, that day at about 7:00 AM., when the accused questioned the deceased why she was not taking food in the house since three days and beat her, for which the deceased threatened that she will die and then the accused asked her to die. Due to unbearable harassment, the deceased went inside the bathroom and poured kerosene and set fire herself and received burnt injuries all over body. After hearing the cries of the deceased, the accused and P.W.5 went and took the deceased to Government Hospital, Proddatur, where she gave statement to the police. The learned Principal Junior Civil Judge, Proddatur, also recorded dying declaration of the deceased. Thereafter, for better treatment, she was shifted to S.V.R.R. Hospital, Tirupati, but she succumbed to injuries on 20.07.2003.

3. After apprehension of the accused, the learned Magistrate framed the charges under Sections 498-A and 306 IPC against the accused. The charges were read over and explained to him in Telugu and he pleaded not guilty and claimed to be tried.

4. To substantiate the case of the prosecution, P.W.1 to P.W.10 were examined and Exs.P-1 to P-12 were marked besides case properties – M.Os.1 to 5.

5. After closure of the evidence on the prosecution side, the accused was examined under Section 313 Cr.P.C., for which he denied the incriminating circumstances appearing against him in the evidence of prosecution witnesses. On behalf of the accused, none was examined, but Exs.D1-161 Cr.P.C statement of P.W.1 and Ex.D.2-Dying declaration were marked.

6. The learned trial Judge, basing on the evidence adduced and after elaborate discussion, found the accused not guilty for the offences under Sections 498-A and 306 IPC and accordingly,

acquitted him. Challenging the same, the State filed the present appeal.

7. Heard and perused the material available on record.

8. The prosecution relied upon two dying declarations i.e., Ex.D.2-dying declaration recorded by the learned Magistrate and Ex.P.8-dying declaration recorded by the Investigating Officer. The learned trial Judge prior to appreciating the evidence of other witnesses, mainly relied upon the dying declarations made by the deceased. In Ex.P.8-dying declaration given to the Investigating Officer she stated that as she has not taken food for three days, her husband not talking with her and then her husband questioned why she is not taking food, for which she replied that she will die, for which her husband asked her to die and she went to the bath-room, poured kerosene and set herself to fire. Whereas in Ex.D.2-dying declaration recorded by learned Magistrate she stated that she committed suicide due to stomach-ache. Due to unbearable stomach-ache, she went inside the bath-room and poured kerosene and set fire herself. This Court after perusing two dying declarations, came to the conclusion that the said two dying declarations do not disclose any offence, more particularly to attract the offence punishable under Section 306 IPC, since the deceased committed suicide in a spur of moment over an altercation between herself and her husband. The learned trial Judge, after perusing the entire evidence, acquitted the accused.

9. Further, in a case of acquittal, if the trial Court consists of 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.

10. Accordingly, this Criminal Appeal is dismissed confirming the judgment, dated 30.06.2006, in Sessions Case No.26 of 2004 on the file of Assistant Sessions Judge, Proddatur.

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

JUSTICE RAJA ELANGO

04.08.2016
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THE HONOURABLE SRI JUSTICE RAJA ELANGO

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