

**THE HON'BLE SRI JUSTICE RAJA ELANGO**

**CRIMINAL APPEAL No.703 of 2016**

**JUDGMENT :**

1. This appeal is filed by the State against the judgment dated 21.7.2008 passed in CrI.A.No.49 of 2008 by the Principal Sessions Judge, West Godavari, Eluru.

2. The case of the prosecution is as follows:

On 6.12.2004 at about 7 p.m., P.W.1 along with her son came to the police station and gave a report alleging that her marriage with A1 was performed about 20 years back and out of her wedlock, she was blessed with three sons. A1 is working as Reserve Police Constable and A2 is the kept mistress of A1. A1 developed illegal intimacy with A2 and started harassing P.W.1 for money and he sent her out of the house many times by beating her. A1 brought A2 to the police quarters and kept her in the house in the year 2004 and after strong protest by P.W.1, A1 put up separate house with A2 in Ameena Pet, Eluru. While so, on 6.12.2004 at about 5.30 p.m., A1 came to the house and asked her to go out of the house. When she refused, he took up his belt and beat her indiscriminately by closing the doors. When neighbours intervened, A1 abused them and necked out P.W.2 from the house. On the basis of her complaint, a case was registered and investigated into. After completion of the investigation, charge sheet was filed.

3. The learned Special Judicial Magistrate of First Class( Excise), Eluru, West Godavari District, took the case on file for the offence under Sections 498-A and 323 IPC. When the accused were examined on the above said

allegations, they denied the same and claimed to be tried.

4. During the course of trial, P.Ws. 1 to 11 were examined and Exs.P1 to P8 were marked on behalf of the prosecution. No oral or documentary evidence was adduced on behalf of the accused.

5. On appreciation of oral and documentary evidence, the trial Court found A1 guilty for the offence under Sections 323 and 498-A IPC, convicted and sentenced him to undergo rigorous imprisonment for a period of five months and one month respectively for the said offences. A2 was acquitted. Aggrieved by the conviction and sentence imposed by the trial Court, A1 filed appeal viz., CrI.A.No.49 of 2008 before the Principal Sessions Judge, Eluru. The learned Sessions Judge allowed the appeal by setting aside the conviction and sentence imposed by the trial Court against A1 for the offence under Sections 498-A and 323 IPC. Aggrieved by the acquittal of A1, the State filed the present appeal.

6. Heard and perused the material available on record.

7. Learned Additional Public Prosecutor submitted that the evidence of the prosecution witnesses establishes the guilt of A1 and that the lower appellate Court has not appreciated the evidence in a proper perspective and that the reasons recorded by the lower appellate Court for acquitting A1 are not sustainable.

8. The learned Principal Sessions Judge, Eluru acquitted the accused on the following grounds:

- 1) P.Ws.3 to 7, who are shown as independent witnesses, turned hostile and

they did not support the case of the prosecution.

2) P.W.1, who is the wife of A1, deposed in her chief-examination that A1 developed illegal intimacy with A2 and subjected P.W.1 to harassment and he beat her with a belt as a result of which she sustained injuries and that she was necked out of the house. But in the cross-examination, A1 could be able to disprove the said allegations. P.W.1 in her cross-examination deposed that she has not mentioned any of the names of the witnesses either in her complaint or in the statement recorded by the police.

3) The allegations made against A1 are not supported by P.W.1 in her evidence. There are material omissions which amount to contradictions. Therefore, the lower appellate Court extended benefit of doubt in favour of A1.

4) The evidence spoken to by the doctor that he examined P.W.1 on 6.12.2004 and found injuries as mentioned in Ex.P7 wound certificate, does not reveal that those injuries were caused by A1 with the belt. There is inconsistency with regard to the nature of the injuries sustained by P.W.1.

9. Considering the above observations made by the lower appellate Court and the evidence of P.W.1, this Court is of the view that the prosecution has failed to prove the guilt of A1 beyond all reasonable doubt and therefore, the appellate Court acquitted A1 for the offence under Sections 498-A and 323 IPC. This Court is not inclined to interfere with the judgment of the lower appellate Court.

10. Accordingly, the Criminal Appeal is dismissed. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

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**RAJA ELANGO, J**

1<sup>st</sup> August, 2016

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