

THE HON'BLE SRI JUSTICE RAJA ELANGO

Crl.A.M.P.No.12 of 2016

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CRIMINAL APPEAL No.444 of 2008

JUDGMENT:

The above Criminal Appeal is filed by the appellant-accused against the conviction and sentence imposed by the Sessions Judge, Mahila Court, Visakhapatnam, in S.C.No.79 of 2004, vide judgment, dated 13.03.2008.

The case of the prosecution in brief is as follows:

One Marupalli Dhana Lakshmi (victim) is the wife of the accused. They had two daughters. In or about 1999, HIV positive was detected on accused. Thereafter, the victim and the accused were stopped their conjugal life. The accused developed suspicion on the fidelity of the victim and subjected the victim with physical and mental harassment. The elders of the family of the victim as well as the accused advised him to live peacefully, but the accused without heeding their words, persisted his violent attitude and wanted to put an end to the life of the victim. On the intervening night of 21/22.04.2004, while the victim and all the family members were in deep sleep, the accused beat the victim with an iron rod and poured began spray mixed liquor in her mouth with an intention to put an end to her life and he also consumed the said liquor. Thereafter, he himself went to the police station and surrendered before the police. The police admitted the accused in Pratima Nursing Home and thereafter, registered a case in Crime No.30 of 2004. After completion of investigation, the police filed charge sheet against the petitioner for the offences punishable under Sections 307 and 309 IPC.

The VIII Metropolitan Magistrate, Visakhapatnam took cognizance of the case for the offences under Sections 307 and 309

IPC and after following the procedure contemplated under Section 209 Cr.P.C., the learned Magistrate committed the case to the Court of Sessions, Visakhapatnam, as the said offences are exclusively triable by the Court of Sessions. Thereafter, the case was made over to the trial Court. After hearing the learned counsel for the accused and the Additional Public Prosecutor, the trial Court framed charges under Sections 307 and 309 IPC and on appearance of the accused, the charges were read over and explained to him, for which he pleaded not guilty and claimed to be tried.

During the course of trial, P.Ws.1 to 9 were examined and Exs.P1 to P7 and M.Os.1 to 5 were marked on behalf of the prosecution. No oral evidence was adduced on behalf the accused. But Ex.D1 was marked on his behalf.

On appreciation of oral and documentary evidence, the trial Court having found the accused not guilty of the offences under Sections 307 and 309 IPC, acquitted him for the said offences. However, the learned trial Court found the accused guilty of the offence under Section 326 IPC and convicted him for the said offence and accordingly, sentenced him to suffer simple imprisonment for a period of three (3) years and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for a period of one month. Aggrieved by the conviction and sentence imposed by the trial Court, the appellant – accused filed the present appeal.

When this matter has come up for hearing, the above CrI.M.P. is filed along with the affidavit of the victim, seeking permission to compound the case. It is stated in affidavit that the matter was settled out of Court and presently she is living with her husband i.e., the accused, and she has no grievance against him. The appellant and the victim, who appeared before this Court, submitted through their respective Counsel that they entered into compromise and therefore,

the compromise may be recorded and the appellant-accused may be acquitted for the offence under Section 326 IPC.

In the light of the facts and circumstances involved in the present case and particularly in view of the settlement arrived at in the present case and the dictum laid down in ***Gian Singh Vs. State of Punjab and another***^[1], this Court is of the view that as the parties to the dispute settled the issues amicably, it is a fit case wherein the conviction and sentence imposed by the trial Court on the appellant-accused can be set aside.

In the result, the Crl.M.P.No.12 of 2016 is ordered and the Criminal Appeal is allowed setting aside the conviction and sentence imposed by the Sessions Judge, Mahila Court, Visakhapatnam, in S.C.No.79 of 2004, vide judgment dated 13.03.2008, for the offence under Section 326 IPC. Consequently, the appellant-accused is acquitted for the said charge. The fine amount, paid if any, shall be refunded to him. Bail bonds shall stand cancelled and the sureties are discharged.

Miscellaneous petitions pending if any, shall stand closed.

RAJA ELANGO, J

January 05, 2016

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[\[1\]](#) (2012) 10 SCC 303