

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.A.No.111 OF 2017

JUDGMENT:

This criminal appeal is filed under Section 374(2) of Cr.P.C. challenging the conviction and sentence passed by the I Additional District and Sessions Judge, Mahabubnagar in S.C.No.66 of 2016 finding the appellant guilty, for the offences punishable under Section 323 of IPC, sentencing him to undergo simple imprisonment for three months, while, acquitting him for the offences punishable under Section 306 of IPC and to pay fine of Rs.1,000/-, in default sentenced him to undergo simple imprisonment for fifteen days.

2. Aggrieved by the conviction and sentence passed by the trial Court, the present appeal is filed challenging the findings on various grounds mainly contending that the appellant, being the father-in-law of the deceased, in a sudden provocation beat her and that would not fall within Section 323 of IPC and on that ground the appellant is liable to be acquitted.

3. During hearing, learned counsel for the appellant contended that the appellant is closely related to the deceased i.e. father-in-law of the deceased. But in a heat of passion the incident took place and he allegedly beat her and the offence punishable under Section 323 of IPC is not a cognate offence to the offence punishable under Section 306 of IPC. Therefore,

the conviction recorded by the trial Court and sentence against this appellant is erroneous and prayed to set aside the same.

4. Learned Additional Public Prosecutor supported the findings of the trial Court in all respects and contended that when the offence is cognate, there is material against the petitioner to attract offence punishable under Section 323 of IPC more particularly when the incriminating material appeared in the evidence of prosecution witness, which is put to the accused in the examination under Section 313 of Cr.P.C., the Court can record conviction of the accused based on such evidence and there is absolutely no error in recording such finding and prayed to dismiss the appeal.

5. In the present case, there is no dispute regarding death of daughter-in-law of the appellant by name Mudavath Sharada by setting fire to her body i.e. suicidal death. The said fact is supported by the medical evidence i.e. P.W.9-Dr C.Narsimha Kumar and other witnesses including Exs.P.7 and P.8. Therefore, the undisputed fact is that the death of the deceased Sharada was unnatural and it is a suicidal death.

6. Learned Sessions Judge framed a charge against the appellant for the offence punishable under Section 306 of IPC, but found him not guilty for the said offence in view of the law declared by the Apex Court in **Mahender Singh v State of Madhya Pradesh**¹ and **V.Adinarayana and another v State of**

¹ 1995 SCC (CrI) 1157 = 1996 CrI.LJ 894

A.P.², however, found him guilty for the offence punishable under Section 323 of IPC applying Section 222(2) of Cr.P.C.

7. Section 222 of Cr.P.C. deals with the procedure to be followed when an offence proved including the offence charged. According to Section 222(4) of Cr.P.C. nothing in this section shall be deemed to authorise a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of minor offence have not been satisfied. This section lays down an exception to the general rule that an accused person can be convicted of a particular offence only if he was charged with the same. It empowers the trial Court, in cases specified therein to convict an accused person with respect to an offence even though he was not charged with the same. This section lays down the limit under which a person, who has been charged with a particular offence, can be convicted of any other offences. In order that the conditions prescribed under Section 222 of Cr.P.C. may be fulfilled, it is necessary that under Sub-sections (1) and (2) of the Section 222 of Cr.P.C, the offence for which the accused is sought to be convicted must be, minor in relation to the offence with which he is charged, which may be called the major offence. When the offence with which the accused is sought to be convicted is totally independent of the offence with which he is charged and the two offences do not form part of a same transaction under Section 322 of IPC cannot be inferred.

² 1999 CJ (AP) 1127

8. Now the question is:

Whether the offence punishable under Section 323 of IPC is a cognate or minor offence to an offence punishable under Section 306 of IPC, if so, whether the conviction and sentence recorded by the Sessions Court be sustained.

9. The expression minor offence is not defined anywhere in the Code. It has to be interpreted not in any technical, but in ordinary sense. A minor offence means an offence made out by some of the ingredients of major offence. The minor offence referred to in Section 222(1) of Cr.P.C is certainly an offence which is component part of the major offence. But the minor offence referred to in Sub-section (2) of Section 222 of Cr.P.C need not be a component part of the major offence. Section 222 (2) of Cr.P.C. indicates that the minor offence must be more or less a cognate offence, because it is the proof of certain additional facts which reduce it to a minor offence. The first requisite that an offence may be minor in relation to the offence charged is that the punishment provided for committing minor offences must be in all cases less than that provided by law for committing the major offence. The element of punishment is essentially associated with the offence. In order that an offence may be minor offence, it is necessary therefore, that it must be punishable with minor punishment. The minor offence means an offence made out by some of the ingredients of the major offence. An offence punishable under Section 323 of IPC is minor offence with respect to an offence

of grievous hurt punishable under Section 325 of IPC and an offence of causing assault or using criminal force punishable under Section 325 of IPC is a minor offence with respect to an offence of causing assault a criminal force with a view to dishonour a person punishable under Section 355 of IPC.

10. Thus, the minor offence made out by some of the ingredients of the major offence, otherwise Section 322(1) cannot be applied. But according to Section 322(2) of Cr.P.C. a minor offence must be more or less a cognate offence because it is a proof of certain requirements of major offence. Here, the major offence with which the appellant was charged is 306 of IPC. But the trial Court found the appellant guilty for the offence punishable under Section 323 of IPC. Certainly, it is not a minor or cognate offence to the offence punishable under Section 306 of IPC. But the main cause for committing suicide by Sarada was that due to beating by the accused when she was about to enter into the house, blaming her for not handing over the household card.

11. Therefore, two incidents i.e. beating Sharada and later committed suicide are not simultaneous and though commission of suicide is a consequence to insult she felt.

12. Section 306 of IPC deals with punishment for abetting commission of suicide and whereas Section 323 of IPC deals with punishment for causing hurt voluntarily. These two offences are not cognate and it is not a minor offence to the

major offence punishable under Section 306 of IPC. But the trial Court applying Section 222(2) of Cr.P.C. found him guilty though no charge was framed against him under Section 323 of IPC.

13. In one of the judgments of the Supreme Court in **Dinesh Seth v State of N.C.T. of Delhi**³, the Apex Court while dealing with an offence punishable under Section 304-B of IPC found the appellant guilty for the offence punishable under Section 498-A of IPC since both the offences punishable under Section 304-B and 498-A of IPC are of similar agreement i.e. relating to harassment of a women by the husband or his relatives demanding dowry. Therefore, such offence punishable under Section 498-A of IPC is cognate offence for the offence punishable under Section 304-B of IPC. Though no charge was framed against the appellant therein, the Apex Court found that he was guilty of the offence punishable under Section 498-A of IPC for the reason that in the examination of accused under Section 313 of Cr.P.C. the incriminating material that appeared against him in the evidence of prosecution witness was put to him.

14. Here also, the trial Court during examination of the accused under Section 313 of Cr.P.C put the incriminating material against him which constitutes an offence punishable under Section 323 of IPC, but no charge was framed. Therefore, in the absence of any charge for the offence

³ 2008(14) SCC 94

punishable under Section 323 of IPC, when it is not a minor or cognate offence for the major offence punishable under Section 306 of IPC, conviction of appellant is illegal. The offence punishable under Section 309 of IPC may be a minor offence, but Section 323 of IPC is not a minor or cognate offence of the offence punishable under Section 306 of IPC.

15. The Sessions Judge did not consider the main requirement to invoke the power under Section 222(2) of Cr.P.C, but recorded conviction and sentence against the appellant to undergo imprisonment for the offence punishable under Section 323 of IPC, though no charge was framed. The conclusion arrived at by the Sessions Judge that the offence punishable under Section 323 of IPC is a minor offence is without any basis. Therefore, finding the appellant guilty and sentencing him to undergo simple imprisonment for three months is an error apparent on the face of record and it is contrary to Section 222(2) of Cr.P.C. Hence, I find that the conviction recorded by the trial Court and sentencing him to undergo imprisonment for the offence punishable under Section 323 of IPC is erroneous and the same is liable to be set aside on the ground that in the absence of any charge which cannot be convicted for the said offence since it is not a minor or cognate offence.

16. In view of the foregoing discussion, the contentions of the learned counsel for the appellant that in the absence of any

charge for the offence punishable under Section 323 of IPC, the conviction of the appellant is erroneous, is sustained. Therefore, the conviction and sentence recorded by the Sessions Court are liable to be set aside.

17. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed by I Additional Sessions Judge (Fast Track Court) Special Sessions Court for Trial of Cases Relating to the Atrocities against Women-cum-X Additional Sessions Judge, at Mahabubnagar in S.C.No.66 of 2016, dated 31.01.2017 are hereby set aside. The appellant is found not guilty of the charge with which he was not charged and he is acquitted of the same. He shall be set at liberty forthwith, if not required in any other crime. The bail bonds executed by the accused shall stand cancelled. The fine amount, if any, paid by the appellant-accused, shall be refunded.

Pending miscellaneous petitions in the appeal, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

23.02.2017
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