

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

AND

THE HON'BLE SRI JUSTICE GUDI SEVA SHYAM PRASAD

CRIMINAL APPEAL No.251 OF 2013

JUDGMENT: (per Hon'ble Sri Justice A.V.Sesha Sai)

In the present Criminal Appeal preferred by the sole accused in S.C.No.307 of 2011, on the file of the XIII Additional District and Sessions Judge, Narasaraopet, Guntur District, challenge is to the judgment dated 21.08.2012, rendered by the said Court. By way of the said judgment, the learned Sessions Judge convicted the accused/appellant herein for the offences punishable under Section 498-A, sentencing the accused to undergo Simple Imprisonment for two years and to pay a fine of Rs.1,000/- and in default to under Simple Imprisonment for two months and life imprisonment for the offence under Section 302 of I.P.C and to pay a fine of Rs.2,000/- and in default to undergo the simple Imprisonment for four months.

2. The case of the prosecution, in brief, is that the Marriage of the accused/appellant herein and one Smt.Anupalepu Anuradha (PW.1) took place 10 years back and out of their wed-lock they begot two children and they lived happily for some time and thereafter the accused was addicted to vice of consumption of alcohol and started harassing PW.1 which compelled PW.1 to go to her parents house at Rasoolpet, Phirangipuram village. It is the further case of the prosecution that about one year back the accused came to PW.1 at Rasoolpet and promised to look after her well, but he could not keep

up the same and continued the vice of consumption of alcohol by taking away the earnings of PW.1 also. It is the further case of the prosecution that on the intervening night of 21/22-12-2010, at about 12.30 midnight, the accused in a drunken state came to the house of PW.2, who is no other than the mother-in-law of the accused and asked PW.1 and the children to come out of the house, but out of fear L.Ws.1, 2, 4, 6 and 7 remained inside by shutting the doors while witnessing the activities of the accused through window. It is the further case of the prosecution that on hearing the shouting of the accused the deceased Smt.Subbamma, who was residing in the adjacent room came out and questioned about the nuisance of the accused and asked him to go to his native place and the accused thereupon grew wild and picked up a reaper and beat the deceased on her head and in view of the bleeding injuries caused, she fell down on the ground and with an intention to kill her, lifted the water pot and threw it on her head and the same caused severe injuries and with the result, she died.

3. During the course of trial, prosecution examined PWs.1 to 9 and marked Exs.PWs.1 to 9 apart from MOs.1 to 4. On behalf of the accused, no witnesses were examined nor any exhibits were marked.

4. On the basis of the material available, the learned Sessions Judge framed the following point for determination:

“Whether the prosecution proved the guilt of the accused for the charges under Section 498-A and 302 I.P.C beyond reasonable doubt?”

5. The learned Sessions Judge, by way of the impugned Judgment convicted the accused for the offences under Sections 498-A and 302 IPC and sentenced him, as mentioned in paragraph No.1 of this order.

6. Heard the learned counsel for the appellant and the learned Public Prosecutor for the prosecution apart from perusing the material available on record.

7. Learned counsel for the appellant contends that the learned Sessions Judge grossly erred in convicting the accused for the offences punishable under Sections 498-A and 302 I.P.C; that the prosecution grossly failed in establishing the guilt of the accused beyond reasonable doubt, as such, the benefit of doubt should have been extended to the accused and the accused should have been acquitted; that no finger prints of the accused were noticed on Ex.MO.1; that the prosecution did not examine any uninterested witness to demonstrate that the accused killed the deceased; that the learned Sessions Judge thoroughly erred in relying on the interested testimony of PWs.1 to 4 and that in view of the property disputes PWs.1 to 4 falsely implicated the accused in the present crime; that in the absence of any ingredients of Section 498-A I.P.C, the learned Sessions Judge grossly erred in convicting the accused under the said provision of law.

8. On the contrary, it is contended by the learned Public Prosecutor that there is no error in the impugned judgment and in view of the cogent, valid and convincing reasons assigned by the learned Sessions Judge, the impugned judgment does not warrant any interference of this Court under Section 374 of the Code of Criminal Procedure.

9. In the above background, now the issue that emerges for consideration of this Court is_ “Whether the judgment rendered by the learned Additional District and Sessions Judge warrants any interference of this Court under Section 374 of the Code of Criminal Procedure and whether the prosecution proved the guilt of the accused beyond reasonable doubt?

10. The material available on record discloses that PW.1 (wife of the accused), PW.2, the mother-in-law of the accused, PWs.3 (younger sister of PW.2), PW.4 (brother-in-law of the accused, who is physically challenged person), who were residing in the same house as on the date of incident, categorically, with one voice and without any contradictions, deposed about the intoxicated condition of the accused at the time of offence and about the objection taken by the deceased and the beating of the deceased by the accused with a wooden reaper and pot and the resultant death of the deceased.

11. PW.5, in his evidence stated about the location of his house opposite to the house where the incident took place and he also stated that he heard the cries from the house of PW.2 but did not go there by thinking that it was a routine quarrel between the accused and PW.1 and he also stated that he saw the dead body of Smt.Subbamma with head injury on the next day morning. He also denied the suggestion that Smt.Subbamma died of falling on wall.

12. PW.6, Village Revenue Officer, spoke about the collection of MOs.1 to 4 by the police and according to him he was present at the

time of preparation of Exs.P.2 and P.3 and he also stated that he signed the same.

13. PW.7 is the Doctor who conducted autopsy on the dead body of the deceased and he categorically stated about the injuries found on the dead body and he also stated that injuries 1 and 2 were possible with MOs.1 and 2. He also denied the suggestion that the death was due to fall on the blunt edges of wall.

14. Prosecution marked the post-mortem report as Ex.P.4 wherein the injuries inflicted were categorically shown and the Doctor opined that the deceased died of head injury. This Court finds no contradictions in the evidence adduced by the prosecution and in other words it is consistent. The Court below turned down the contention that as PWs.1 to 4 are interrelated and interested, their evidence cannot be relied upon and for turning down the said contention, the learned Sessions Judge relied upon the Judgment of the Hon'ble Apex Court in the case of *RAMAPARTAP AND OTHERS v. STATE OF HARYANA (1983 STP(LE) 1153 (SC)*. The learned Judge also turned down the contention advanced on behalf of the accused about the property dispute at paragraph 16 of the judgment by accepting the arguments of the learned Public Prosecutor that in the absence of any proof of properties possessed by the accused the said contention cannot be countenanced.

15. The evidence available on record, discloses that obviously by sudden provocation on the ground that the deceased admonished and questioned him, the accused who was in drunken state, picked up the

wooden reaper which was lying there and beat the deceased and also had thrown the water pot on her which resulted in death. Therefore, in the absence of any preparation and motive, the offence committed by the appellant does not fall under Section 302 I.P.C and on the other hand it constitutes the offence under Part II of Section 304 I.P.C i.e., culpable homicide not amounting to murder.

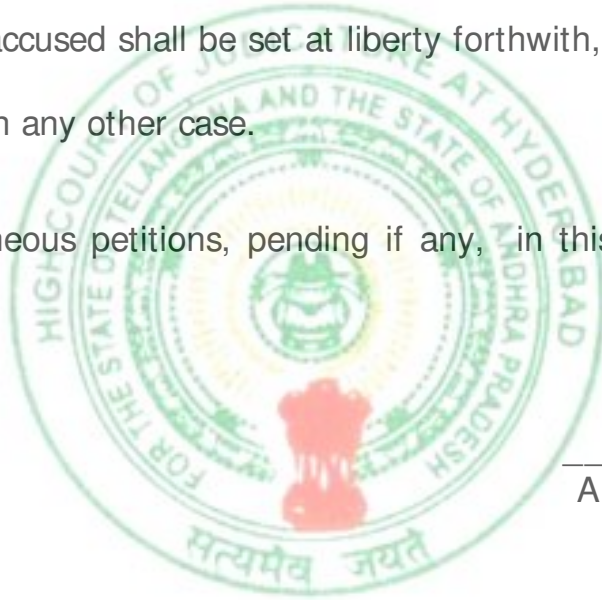
16. So far as the charge under Section 498-A I.P.C is concerned, it is not the case of the prosecution that prior to the death of the deceased the *de facto* complainant made any complaint to the police about harassment by the accused nor the *de facto* complainant as PW.1 stated in her evidence that the accused harassed her by demanding the dowry.

17. The prosecution has failed to prove the ingredients of Section 498-A IPC. There is no material to connect the accused with the crime as the prosecution has not brought out any specific incident of harassment and cruelty, as contemplated under Section 498-A IPC. Therefore the appellant-accused is found not guilty for the said offence and the sentence of imprisonment imposed by the trial Court, to that extent, is set aside. The punishment for the offence under Section 304-II IPC is ten years imprisonment or fine or with both. Since the accused is already in jail for the past six years, the sentence of imprisonment, for the offence punishable under Section 304-II IPC, is restricted to the period already undergone. Accordingly, appellant-accused is acquitted for the offence under Section 304-II IPC. Further, the trial Court convicted the appellant-accused for the offence under

Section 498-A IPC and sentenced to undergo imprisonment for a period of two years. Since the offence under Section 498-A IPC is not proved before the trial Court, the appellant-accused is acquitted for the said offence also.

18. In the result, the Criminal Appeal is allowed in part, modifying the conviction, imposed by the trial Court under Section 302 IPC, to that of Section 304-II IPC and, as the appellant-accused is already in jail for the past six years, the sentence of imprisonment imposed by the trial Court is restricted to the period already undergone. Consequently, the appellant/accused shall be set at liberty forthwith, if not required in connection with any other case.

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



A.V.SESHA SAI, J

GUDI SEVA SHYAM PRASAD, J

Date:24.11.2018
Grk/Tsy



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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CRIMINAL APPEAL No.251 of 2013

Dated: 24.11.2018

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