

* THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

+ CRIMINAL APPEAL No.99 OF 2011

% Date 04-02-2019

Shaik Dasthagiri

... Appellant

V.

\$ The State through SHO
PS Gangadhara

...Respondent

! Counsel for the Appellant : Sri K. Venumadhav

^ Counsel for the Respondent : Additional Public Prosecutor

< GIST :

> HEAD NOTE:

? CASES REFERRED:

1. (1997) 1 Crimes 499 (AP)

HIGH COURT FOR THE STATE OF TELANGANA,
AT HYDERABAD

MAIN CASE NO: Crl.A.No.99 OF 2011

Between:

Shaik Dasthagiri

.. Appellant

And

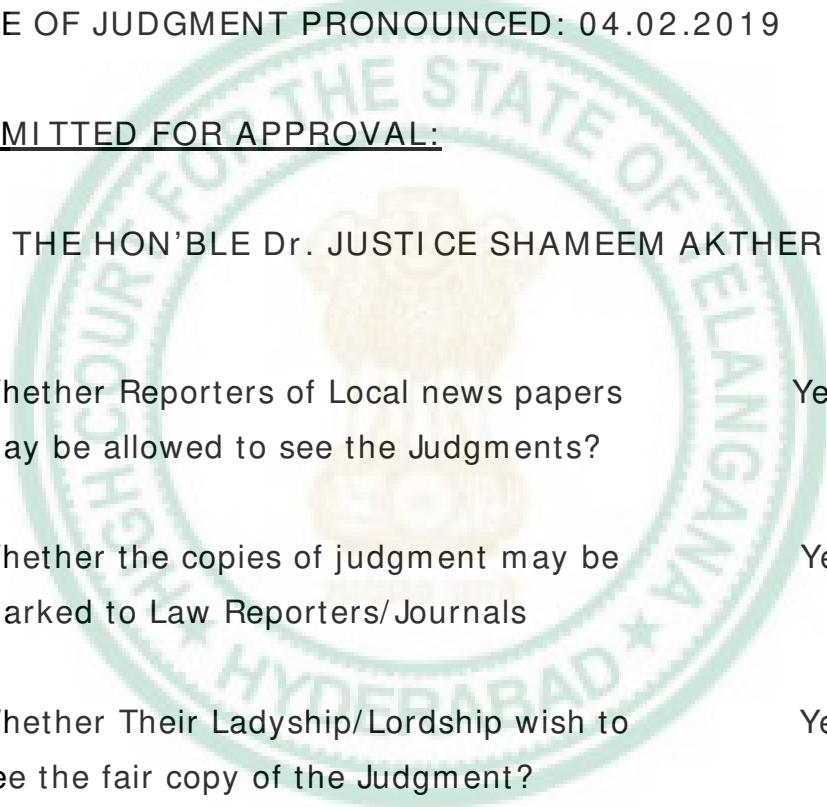
The State through SHO,
PS Gangadhara

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 04.02.2019

SUBMITTED FOR APPROVAL:

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

- 
1. Whether Reporters of Local news papers may be allowed to see the Judgments? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/ Journals Yes/No
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER**CRIMINAL APPEAL No.99 OF 2011****JUDGMENT:**

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973, is filed by the appellant/accused aggrieved by the judgment, dated 22.12.2010, rendered in S.C.No.179 of 2010 on the file of the Principal Sessions Judge, Karimnagar, whereby and whereunder, the appellant/accused was convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of Rs.2,000/-, in default to suffer simple imprisonment for one year for the offence punishable under Section 306 I.P.C.

2. Heard learned counsel for the appellant/accused and the learned Additional Public Prosecutor representing the respondent/State and perused the record.

3. Learned counsel for the appellant/accused would contend that all the prosecution witnesses turned hostile; that basing on the contents in Ex.P23 – Dying Declaration, recorded by PW.17 – Additional Judicial Magistrate of First Class, Karimnagar, without there being any clear utterance or intention on the part of the appellant/accused to abet the deceased to commit suicide, the trial Court convicted and sentenced the appellant/accused for the offence punishable under Section 306 I.P.C., which is untenable and unsustainable in law and ultimately, prayed to set aside the conviction and sentence recorded against the appellant/accused by the trial Court.

4. The learned Additional Public Prosecutor supported the case of the prosecution and the impugned judgment and contended that all the material witnesses did not support the case of the prosecution, except PW.17, who recorded the Dying Declaration of the deceased- Shamim Sulthana and ultimately, prayed to sustain the conviction and sentence recorded against the appellant/accused by the trial Court.

5. In view of the submissions made by the learned counsel for both sides, the following points have come up for determination:

- “1. Whether the appellant/accused abetted his wife (deceased) to commit suicide?
2. Whether the conviction and sentence recorded against the appellant/accused for the offence punishable under Section 306 I.P.C. is liable to be set aside?”

Points 1 and 2:

6. Since all the material witnesses, except PW.17 – the Additional Judicial Magistrate of First Class, turned hostile, the evidence of PW.17 and the contents in Ex.P23 – Dying Declaration, recorded by PW.17, are the material evidence against the appellant/accused.

7. PW.17, Smt. S. Sreevani, who worked as Additional Judicial Magistrate of First Class, Karimnagar, at the relevant time, in her evidence, deposed that on 03.09.2009, she received a requisition from the out-post Police Station Government Hospital, Karimnagar, to record the Dying Declaration of injured Shamim Sulthana. Ex.P22 is the requisition received by her. Immediately, she went to

the Government Hospital, Karimnagar, and identified the injured Shamim Sulthana with the help of a duty Doctor. She has put formal questions to the injured Shamim Sulthana and observed that the injured was in conscious and coherent state of mind. The duty Doctor also opined the same. She recorded the statement of the injured. The injured Shamim Sulthana stated that when she asked her husband to go for work, he refused. As such, a dispute arose between them. Her husband (accused) asked her to leave the house. Then she became angry and poured kerosene herself and set ablaze. PW.17 obtained the thumb impression of the injured on the Dying Declaration. Ex.P23 is the Dying Declaration. The duty Doctor, having examined the injured, made an endorsement in Ex.P23 that the deceased Shamim Sulthana was conscious, coherent and in a fit state of mind. PW.17 also stated that she took all precautions before recording the Dying Declaration of the deceased Shamim Sulthana.

8. Ex.P23 is the Dying Declaration of the deceased Shamim Sulthana. A perusal of the same discloses that there is an endorsement of the Doctor to the effect that the patient (Shamim Sulthana) was conscious, coherent and in a fit state of mind to give statement. The signature of the Doctor is also present under the endorsement. It further discloses that when PW.17 asked the injured (Shamim Sulthana) as to what happened, she answered as follows:

“There was a quarrel at the house. I told my husband to go for work. My husband said he will not go. I have three children. Quarrel took place. He

said, either to stay at home or go away. I got anger. I myself poured kerosene and set ablaze.”

9. Under these circumstances, it is appropriate to extract the provisions of Section 306 I.P.C., which reads as under:

“306. Abetment of suicide – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

10. To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary as held in **Pallem Deniel Victor** **vs. State of Andhra Pradesh**¹. In order to convict a person under Section 306 I.P.C., there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act, which leads the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she commits suicide.

11. As seen from the record, none of the relatives of the deceased or any person supported the case of the prosecution. There is only the evidence of PW.17, who recorded the Dying Declaration of the deceased under Ex.P23, wherein, it is mentioned that there was a quarrel with regard to the appellant/accused going to work and the appellant/accused directed the deceased to stay at home or to go away. This utterance, as indicated in the evidence of PW.17 as well as in the contents of Ex.P23, does not show that there was

¹ (1997) 1 Crimes 499 (AP)

any *mens rea* on the part of the appellant/accused to commit the offence. Further, there is no clear utterance or provoking situation putting the deceased into a circumstance or position to commit suicide. The appellant/accused neither aided nor abetted or instigated the deceased, by direct or indirect acts, to commit suicide. Under these circumstances, the ingredients under Section 306 I.P.C. are not being established against the appellant/accused. The finding of the trial Court is not in consonance with the evidence of PW.17 as well as the contents in Ex.P23 – Dying Declaration. Without there being requisite evidence constituting an offence under Section 306 I.P.C., the trial Court convicted and sentenced the appellant/accused for the said offence, which is erroneous and unsustainable in law. Under these circumstances, the conviction and sentence recorded against the appellant/accused for the offence punishable under Section 306 I.P.C. is liable to be set aside.

12. In the result, this Criminal Appeal is allowed and the conviction and sentence recorded vide Judgment, dated 22.12.2010, in Sessions Case No.179 of 2010 on the file of Principal Sessions Judge, Karimnagar, against the appellant/accused for the charge under Section 306 I.P.C. is set aside. The appellant/accused is found not guilty of the said charge and accordingly, he is acquitted of the said charge. The appellant/accused shall be set at liberty forthwith, if he is not required in any other case or crime. The fine amount, if any, paid by the appellant/accused shall be refunded to him.

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

Dr. SHAMEEM AKTHER, J

February 04, 2019.

Note: L.R. Copy to be marked.
B/O.
MD



THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER



CRIMINAL APPEAL No.99 OF 2011

February 04, 2019

MD