

Bail Slip: The Petitioner/ Accused was directed to be released on bail by the order of the High Court dated 18-11-2021 in I.A. No. 1 of 2020 in CrI.A.No. 344 of 2020

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**FRIDAY, THE TWENTY NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL NO: 344 OF 2020

Crl.Appeal Under Section 374 (2) of CrI.P.C. against Judgment dated 14-05-2020 in S.C. No. 236 of 2017 on the file of the Court of the II Additional District and Sessions Judge (FTC) at Mancherial

Between:

Jummidi Bheem Rao, S/o. Damoji, aged 26 years, Occ, Mobile Phone Repairing Work, R/o. Dabba Village of Chinthala Manepalli (erstwhile Koutala) Nandal, Kumram Bheern Asifabad (erstwhile Adilabad) District.

...APPELLANT/ Accused

AND

The State of Telangana, Rep.by its Public Prosecutor, High Court for State of Telangana, At Hyderabad.

..Complainant /RESPONDENT

Counsel for the Appellant: SRI. S. SURENDER REDDY

Counsel for the Respondent: THE PUBLIC PROSECUTOR

The Court delivered the following: Judgment

HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.344 OF 2020

JUDGMENT:

1. The appellant is questioning the conviction for the offence under Section 306 of IPC and sentenced to undergo Rigorous Imprisonment for a period of seven years and also sentenced to undergo Rigorous Imprisonment for a period of three years under Section 498-A of IPC and further sentenced to undergo Rigorous Imprisonment for a period of two years under Section 506 of IPC by Judgment dated 14.05.2020 in SC No.236 of 2017. Fine was also imposed, which was paid.
2. Charge sheet dated 28.08.2016 was filed under Sections 302 and 506 of IPC and accordingly, charges under Sections 302 and 506 of IPC were framed against the accused. On conclusion of trial, the trial Court, having found not guilty for the offence under Section 302 of IPC, sentenced as aforementioned.
3. Briefly, the case of the prosecution is that on 12.05.2014, P.W.1, who is the father-in-law of the appellant filed complaint Ex.P1 alleging that on 11.05.2014, he

received information from P.W.3 stating that the deceased was serious and asked P.W.1 to reach immediately. When P.W.1 reached Mancheri, he found his daughter dead. Both P.W.3 and the appellant were absconding. In the said complaint, P.W.1 also mentioned that he was suspecting the appellant for committing murder of the deceased and requested for taking necessary action.

4. The said complaint was registered as First Information Report under Ex.P16 under Sections 174 of Cr.P.C. Thereafter, on 02.10.2016, after two years one month, an alteration memo was filed by P.W.16 altering section of law to Sections 302 and 506 of IPC against the appellant. The reason for altering the Section of law was that P.W.16 collected certified copies of Section 164 CRPC statements on 10.05.2016 and in the said statements, P.Ws.1 to 4 mentioned that a quarrel took place between the deceased and the appellant and the appellant picked up quarrel and pushed the deceased from second floor of under construction building, resulting in the deceased sustaining head injury and dying as a consequence. Thereafter, on 28.08.2016, charge sheet was filed.

5. Heard learned counsel for the appellant and learned Assistant Public Prosecutor appearing for the respondent-State.

6. Learned counsel for the appellant submits that the prosecution has not explained under what circumstance there is a delay of two years and one month in altering the provision of law from Section 174 Cr.P.C to Sections 302 and 506 of IPC. He further states that the basis for filing charge sheet under Sections 302 and 506 of IPC are mainly the statements of P.Ws.3 and 4, who turned hostile to the prosecution case. Further there is not even a whisper of any kind of harassment that was meted out to the deceased by the appellant in the complaint lodged by PW1. The trial Court, having framed charges under Sections 302 and 506 of IPC has committed error in coming up with a new case and convicting the appellant for the offences under Sections 306, 498-A and 506 of IPC.

7. On the other hand, learned Assistant Public Prosecutor submitted that the Court can alternatively convict the accused for the offence under Section 306 of IPC, though charge is framed under Section 302 of IPC, on

the facts and circumstances of a given case. Though there is a delay in the investigation, the same cannot be fatal.

8. The investigation done in the case concluded that the appellant has committed murder, however after a period of 2 years and one month. The explanation given by the Investigating Officer is that he collected Section 164 Cr.P.C statements from the Court and accordingly altered the Section of law after two years and one month. As seen from the lower Court record, Section 161 Cr.P.C statements of P.Ws. 3, 4, 9 and 10 were recorded on 12.05.2014 i.e., the day of filing the complaint. The statements disclose the allegation of murder. The explanation given by the Investigating Officer that after collection of Section 164 Cr.P.C statements, he has filed alteration memo is illogical and unconvincing. The prosecution has failed to explain not only the delay caused in altering the section of law but also the reason as to why there is no mention of any harassment in the complaint made under Ex.P1. It is evident that the 161 statements were not recorded on the day mentioned. The doubtful nature of investigation is further fortified by the fact that though there is a mention in Ex.P1 complaint

that P.W.3 was missing, according to P.W.16, the Investigating Officer, P.W.3 was examined on 12.05.2014 itself. It is apparent that when P.W.3 was absconding, the question of recording the statement under Section 161 Cr.P.C. on 12.05.2014 would not arise. Further, the alleged Section 164 Cr.P.C statements were not produced before the trial Court on the basis of which, the Investigating Officer claims to have altered the provision of law Sections 302 and 506 of IPC. Section 164 Cr.P.C statements are not confronted to the witnesses during trial, for which reason also, there arises any amount of suspicion on the case of the prosecution as projected being correct.

9. The statement made by P.W.1 during chief examination regarding dowry, subsequent demand and giving Rs.30,000/- to the accused are all omissions during the complaint made to police. Further, in the cross-examination of P.W.1, P.W.1 admits regarding non mentioning of dowry, additional dowry and any kind of quarrel between the deceased daughter and the appellant. The witness P.W.3 who was allegedly absconding and who is the person informing P.W.1 about his daughter being

serious has turned hostile to the prosecution case. Similarly P.W.4 who is the wife of P.W.3 and allegedly present when the deceased fell from the second floor of the building also turned hostile. In the said circumstances, there are no witnesses to speak about what transpired on the day when the deceased fell from the building sustaining head injury.

10. The learned Sessions Judge relied upon the evidence of P.Ws.9 and 11 to infer that the deceased might have been subjected to physical and mental cruelty resulting in her committing suicide. Further, the learned Sessions Judge also found that no explanation was given, when the appellant was examined under Section 313 of Cr.P.C. The said non-explanation was found fault with by the Trial Court. The burden is always on the prosecution to prove its case. To draw any presumption, it is necessary that prosecution lays a foundation to draw such presumption. Exaggeration & omissions during trial, without justification, cannot form basis for court to shift the burden on the accused to explain his defence.

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11. For the reason of P.Ws.1, 2 and 11 stating about the alleged harassment meted out by the appellant, the learned Sessions Judge found that the burden shifts to the appellant to explain and since the appellant failed to explain, conviction was recorded.

12. As discussed above, the inordinate delay of two years and one month for the police to alter the section of law remains unexplained in the background of Section 161 Cr.P.C statements being recorded on the same day of the complaint. The statements recorded by the police, in the circumstances, can be concluded that no such statements were recorded by the police on the day of the complaint appears to have been fabricated.

13. When the evidence of P.W.1, father and P.W.2, mother cannot be given any credibility in the back ground of there being no independent corroboration for the allegations made. Though no corroboration is required for the allegation of harassment for additional dowry or otherwise, in the present facts and circumstances, wherein there is a delay of two years and one month in altering the Section of law, it cannot be ruled out that the allegations were made

for the purpose of this case. As already discussed, there is nothing in Ex.P1, which was registered at the earliest point of time to infer any kind of harassment meted out to the deceased.

14. The charges framed against the appellant on 07.08.2019 are as follows:

"Firstly:

That you, on 11.05.2014 at about 2120 hours at Sri Sri Nagar, Macherial, within the limits of Mancheria P.S, you/accused pushed your wife namely Jummiddi Ujwala (deceased) from the terrace and caused her death due to a petty quarrel and vexed with the behaviour of the deceased and that thereby committed an offence punishable under Section 302 IPC and within my cognizance.

Secondly:

That you/accused on the date and place mentioned above that you/accused threatened the LWs-2 and 3 (Kondagorla Nirmala and Barsagade Srirang) with dire consequences not to reveal the death fact of deceased/Jummiddi Ujwala to the complainant/Kondagorla Anand Rao (LW-1), and thereby committed an offence punishable under Section 506, IPC and within my cognizance."

15. The charge specifically reads that the appellant pushed the deceased from the terrace and caused her death. There is no whisper of any kind of harassment meted out to the deceased regarding any dowry. In the said circumstance also, when no charge is framed regarding any kind of harassment and not even making a vague reference to any

kind of cruelty or harassment, the appellant was prejudiced for the said reason. Though, during the course of statements made before the court, the witnesses stated about harassment which admittedly were omissions from their previous statement, I am of the considered view that cumulatively, the suspicious and improbable investigation along with the exaggerated statements of witnesses and hostility of the alleged eye witnesses P.Ws.3 and 4, benefit of doubt has to be extended to the appellant.

16. For the aforesaid reasons, the prosecution failed to prove that the appellant has committed the offence under Sections 306, 498-A and 506 of IPC. Accordingly, the conviction recorded by the trial Court is liable to be set aside and accordingly set aside.

17. Accordingly, the appeal is allowed. As a sequel thereto, miscellaneous petitions, if any, pending, shall stand closed.

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Sd/-B.S.CHIRANJEEVI
JOINT REGISTRAR
SECTION OFFICER

To,

1. The II Additional District and Sessions Judge (FTC) Mancherial , Karimnagar District. (with records, if any)
2. The II Additional Judicial First Class Magistrate , Mancherial, Karimnagar District

3. The Station House Officer, Mancherla Police Station, Karimnagar District.
4. The Superintendent, District Jail, Adilabad.
5. The Superintendent, Central Prison, Warangal.
6. **2 CC to Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)**
7. One CC to SRI. S SURENDER REDDY Advocate [OPUC]
8. Two CD Copies
9. One Spare Copy



HIGH COURT

DATED:29/04/2022



JUDGMENT

CRL.A.No.344 of 2020

ALLOWING THE CRL APPEAL

⑪ VW
10/5/22