

HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No. 367 OF 2020

JUDGMENT:

This Criminal Appeal is preferred against judgment in S.C.No.302 of 2016 on the file of the Additional Assistant Sessions Judge at Kothagudem, wherein the accused was sentenced to undergo simple imprisonment for a period of ten years and to pay fine of Rs.500/- for the offence under Section 306 IPC. In default of payment of fine, the accused is sentenced to undergo simple imprisonment for three months. The accused is also sentenced to undergo simple imprisonment for a period of three years for the offence under Section 498-A of IPC and to pay fine of Rs.500/-. In default of payment of fine, the accused shall undergo simple imprisonment for a period three months.

2. Briefly the case of the prosecution is that the deceased, who is the wife of the appellant, was married to the appellant eight years prior to the incident. They had two children, one male and one female child. The appellant was addicted to alcohol and subjected the deceased to both physical and mental cruelty. On 16.01.2016, P.Ws.2 and 3

went to Regulagudem village and convinced the appellant not to harass the deceased. After P.Ws.2 and 3 came back, the appellant again picked up quarrel with the deceased and beat her. There was constant physical and mental harassment in her married life and ultimately vexed with the continuous harassment of the appellant, the deceased set herself on fire on 17.01.2016. Accordingly, the complaint was lodged and registered as First Information Report in Cr.No.22 of 2016 under Section 498-A of IPC (woman burning) on the file of Police Station, Paloncha, Khammam District. While undergoing treatment, the deceased died on 24.01.2016 and after investigation, charge sheet was filed against the appellant under Sections 498-A and 306 of IPC.

3. On the basis of the evidence adduced by the prosecution, wherein the prosecution examined P.Ws.1 to 14 and also marked Exs.P1 to P20, the trial court convicted the appellant as mentioned supra.

4. Heard Sri S.Madan Mohan Rao, learned counsel for the appellant and Sri Sudershan, learned Assistant Public Prosecutor, appearing for the respondent-State.

5. Learned counsel for the appellant submits that the trial court committed error in recording the conviction of the appellant on the sole basis of the Dying Declaration of the deceased made to the Magistrate-P.W.11. The Dying Declaration recorded by P.W.11 was marked as Ex.P12. He further argued that as seen from Ex.P12 Dying Declaration, the Magistrate had in fact put leading questions, which is not permissible and on account of such leading questions, the deceased implicated the appellant herein. In support of his contentions, he relied on the judgment reported in the case of **S.S.Chheena v. Vijay Kumar Mahajan**¹ and drew the attention of this Court to paragraphs 24 and 25, which reads as follows:

24. This Court in Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) (2009) 16 SCC 605 had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such

¹ (2010) 12 Supreme Court Cases 190

cases. Each case has to be decided on the basis of its own facts and circumstances.

25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under [Section 306](#) IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.

6. Learned counsel further relied on the judgment of the Hon'ble Division Bench of this Court in Criminal Appeal No.701 of 2011 (**Guguloth Bhaskar v. State of Telangana**) **and Jayamma v. State of Karnataka**² and argued that though the Dying Declaration can be made sole basis for a conviction, however, in the absence of any corroboration to the allegations made in the Dying Declaration by the deceased and in view of the witnesses turning hostile to the prosecution case, it is not safe to solely rely upon the Dying Declaration of the deceased and accordingly, for want of corroboration, the appellant has to be acquitted.

² 2021(7) SCALE

7. On the other hand, learned Public Prosecutor submits that all the precautions for recording the Dying Declaration were taken by the Magistrate-P.W.11. Further, the Doctor, who treated the deceased, endorsed that the deceased was in a fit state of mind, as such, the trial Court committed no error in relying upon the Ex.P12 Dying Declaration and recording conviction. He submits that it is the accused/appellant, who influenced the witnesses P.Ws.1 to 10, who turned hostile, as such, the Dying Declaration can form basis for conviction and it cannot be said that the case of the prosecution is not proved.

8. The charge against the accused is that he was continuously harassing the deceased both physically and mentally and unable to bear the harassment and humiliation, the deceased committed suicide by pouring kerosene over her body and set herself on fire.

9. As the entire evidence is based upon the Dying Declaration-Ex.P12, a careful scrutiny of Ex.P12 would reveal that the Magistrate-P.W.11 had taken all the precautions before recording the statement of the deceased. To convince herself regarding the condition, P.W.11 had put

in certain preliminary questions to the deceased and having been convinced about her mental condition, P.W.11 went on to record the statement of the deceased. The argument of the learned counsel for the appellant is that leading questions were put, does not hold water. As seen from the questions, there are no leading questions put by the Magistrate-P.W.11.

10. The questions that were put, which according to the learned counsel for the appellant were leading questions are as follows:

1) Question: How did you receive injuries?

Answer: poured kerosene on myself.

2) Question: Why did you pour kerosene?

Answer: My husband comes home drunk and quarrels and beats me.

3) Question: Did you pour kerosene on yourself when your husband was beating?

Answer: He provokes me. When he talk and if I say something, then he used to beat me.

4) Question: Why was he harassing you?

Answer: There is no reason. If something happens outside, he holds me responsible.

5) Question: Are there any other reasons?

Answer: We both are labourers. The money saved for children was taken away by him.

6) Question: Are there any other reasons?

Answer: I am unable to bear the situation.

7) Question: What is the reason for today's fight?

Answer: He beat me on festival day. When I called my brother, he came and beat my husband asking him why he was harassing me.

8) Question: What happened thereafter?

Answer: Yesterday evening, he took money, came home drunk and beat me. In the morning, when I woke up, I was very weak, but he kicked me and went away.

9) Question: What happened thereafter?

Answer: He came in the afternoon. Though I was weak, I prepared Tea and gave him and again fight started. He asked for cell phone and questioned why I complained to my brother. I poured kerosene on myself. But he did not react. After pouring kerosene, I handed over the cell phone to him. Though I set fire to myself, he watched without any reaction.

10) Question: Did your husband try to save you?

Answer: He did not come. He was watching. No one was present in the house. Children were playing outside.

11) Question: Anything else to say?

Answer: Our marriage is love marriage. Yesterday he came drunk and harassed me for which I did this to myself.

12) Question: Who is responsible for the present situation?

Answer: My husband. He said that no one can do anything and not even police. He harassed me and result is the present situation.

13) Question: Do you want to say anything else?

Answer: Do not leave my husband. Please do not leave my husband.

11. The trial Court, on the basis of the Dying Declaration-Ex.P12 held that the conduct of the appellant not coming forward to rescue the deceased when she poured kerosene and set on fire to herself was enough to infer that the accused instigated the deceased to take extreme step and if the appellant had prevented the deceased from setting herself on fire, then there would have been no abetment.

12. In the background of the evidence narrated in the Dying Declaration, it cannot be said that the failure of the appellant to stop the deceased from committing suicide would amount to abetment as contemplated under Section 306 of IPC, but may amount to an offence under Section 309 of IPC. Section 309 of IPC reads as follows:

“309. Attempt to commit suicide. —Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term

which may extend to one year 1[or with fine, or with both].”

Section 309 of IPC makes an attempt to commit suicide punishable with simple imprisonment for a term which may extend to one year or with fine or with both. The deceased stated that after pouring kerosene, there was conversation between herself and the appellant, pursuant to which, she handed over the cell phone to the husband/appellant. Thereafter, the appellant was checking his phone and though the deceased set fire to herself, appellant did not try to rescue her. In the present facts and circumstances, it cannot be said that failure on the part of the appellant either to stop the deceased from pouring kerosene on herself or not trying to rescue after she lit herself on fire, would amount to an offence under Section 306 IPC. All witnesses turned hostile and none of the witnesses said that they have taken deceased to the hospital. It is in the Dying Declaration that the mother-in-law of the deceased brought her to the hospital.

13. The appellant not paying heed to the act of the deceased attempting to commit suicide may amount to

abetting offence under Section 309 of IPC and not under Section 306 IPC. The Hon'ble Supreme Court in the judgment reported in a case of **Pawan Kumar v. State of H.P**³, held as follows:

“37. In *Praveen Pradhan v. State of Uttarakhand & another*[21], it has been ruled:-

“18. In fact, from the above discussion it is apparent that instigation has to be gathered from the circumstances of a particular case. No straitjacket formula can be laid down to find out as to whether in a particular case there has been instigation which forced the person to commit suicide. In a particular case, there may not be direct evidence in regard to instigation which may have direct nexus to suicide. Therefore, in such a case, an inference has to be drawn from the circumstances and it is to be determined whether circumstances had been such which in fact had created the situation that a person felt totally frustrated and committed suicide. ...” [emphasis is ours]

40. At this juncture, we think it appropriate to reproduce two paragraphs from *Chitresh Kumar Chopra* (supra). They are:-

“16. Speaking for the three-Judge Bench in *Ramesh Kumar* case (supra), R.C. Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of “instigation”, though it is not necessary that actual words must be used to that effect or what constitutes “instigation” must necessarily and specifically be

³ 2017(2) ALD (CrI.) 231(SC)

suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an “instigation” may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

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19. As observed in Ramesh Kumar (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an “instigation” may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.” This Court again observed:-

“20. ... The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each

event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self."

14. The Hon'ble Supreme Court in the judgment reported in the case of **Sohan Raj Sharma v. State of Haryana**⁴, held as follows:

"8. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing it required before a person can be said to be abetting the commission of offence under [Section 306](#) of IPC.

10. [Section 107](#) IPC defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring

⁴ 2008(1) ALD (CrI.) 941 (SC)

about by persuasion to do any thing. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. [Section 109](#) provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence. 'Abetted' in [Section 109](#) means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence."

None of the witnesses, who are the father-P.W.1, - brother-P.W.2, sisters-P.Ws.3 and 4 supported the prosecution's case. Further, the independent witnesses P.Ws.5, 6 and 7 even refused to acknowledge that they know either the deceased or the P.Ws.1 to 4. P.Ws.8 and 10 are the inquest panch witnesses, turned hostile and denied being the witnesses to the subject inquest proceedings of the deceased.

15. The factum of there being disputes between the appellant and the deceased in their marital life, cannot be disputed. The deceased, who is the wife of the accused & mother of two children, will not make false allegations against her husband. Though, no specific instances are stated by the deceased in her Dying Declaration, however, it can safely be inferred that there were constant fights in

between the deceased and the appellant and the appellant was in the habit of coming home drunk and quarreling with the deceased. As seen from the conduct of the appellant on the day when the deceased committed suicide, ignoring the deceased pouring kerosene on herself and the deceased thereafter handing over the cell phone and subsequently setting fire to herself, it can be reasonably inferred that such fights were common and at regular intervals. As already discussed supra, the prosecution failed to prove the offence under Section 306 of IPC, accordingly, the appellant is acquitted under Section 306 of IPC. However, the Dying Declaration-Ex.P12 can be relied upon to infer that the appellant was beating the deceased, which amounts to cruelty as defined under Section 498-A of IPC. The said willful conduct of the appellant in causing injuries on regular basis would amount to causing physical injuries, for which reason, the appellant is convicted under Section 498-A of IPC.

16. Accused was convicted on 11.03.2020 and he was granted bail by this Court on 16.11.2021, as such, the appellant was in jail for more than 20 months. As seen

from the record, the appellant and the deceased are having two children, i.e., son and daughter. They are also dependent on the appellant and no one else to look after the children. For the aforementioned reasons, the imprisonment undergone by the appellant for a period of 20 months would suffice under Section 498-A of IPC.

Accordingly, the appeal is partly allowed, reducing the sentence to the period already undergone by the accused. Sentence of imprisonment under Section 306 IPC is set aside. The bail bonds of the accused stand cancelled.

K.SURENDER,J

Date : 13 .04.2022
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