

BAIL SLIP: The Petitioner/ Accused was directed to be released on bail by the order of the High Court dated 16-12-2011 in CrI.A.M.P.No.2116 of 2011 in CrI.A.No.1393 of 2011.

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

**MONDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No: 1393 of 2011

Criminal Appeal Under Section 374(2) of Cr.P.C against the Judgment Dated 08-11-2011 in S.C.No.576 of 2007 on the file of the Court of the IV Additional Sessions Judge, Ranga Reddy District.

Between:

Mohammad Yaqoob, S/o Mohd Yusuf, Age: 24 years, Occ: Auto Driver R/o H.No.1, Bahadurpally Village.

...Appellant

AND

The State of A.P. through PS, Dundigal, Rep. by Public Prosecutor of High court, Andhra Pradesh.

...Respondent

Counsel for the Appellant: Mr. L. HARISH

Counsel for the Respondent: ASSISTANT PUBLIC PROSECUTOR

The Court delivered the following: JUDGMENT

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.1393 OF 2011

JUDGMENT:

1. This appeal is filed by the appellant/accused, questioning the conviction and sentence recorded by the IV Additional Sessions Judge, Ranga Reddy District, in S.C.No.576 of 2007, dated 08.11.2011, for the offence under Section 498-A of the Indian Penal Code, and sentenced him to undergo one year Rigorous Imprisonment for a period of three years and to pay a fine of Rs.1,000/-, while acquitting the accused for the offence under Section 304-B of the Indian Penal Code.

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

3. The case of the prosecution is that the deceased was married to the appellant/accused herein. At the time of marriage dowry was given. They lived happily for two years and thereafter the accused started beating her constantly by coming home drunk. Panchayat was also held and money was given to the accused. On the date of the incident, the accused went home drunk and beat his wife. Unable to bear the beating, she took Kerosene and poured on to herself. Then the accused handed over match box

stating that if she dies, he would marry someone else. She lit fire to herself. Immediately, the accused covered her with a blanket and put off the flames and has taken her to the Hospital. There, the Sub-Inspector of Police recorded her statement which is registered as FIR. A requisition was given to the Magistrate for the purpose of recording Dying Declaration. The Dying Declaration was recorded which is Ex.P4.

4. The learned Sessions Judge framed charge under Section 304-B of the Indian Penal Code. However, the learned Sessions Judge having examined PWs.1 to 13 and marking Exs.P1 to P8 on behalf of prosecution found that the evidence of harassment was consistent, however, the allegation of demand of dowry consequently resulting in her death was not believed. Accordingly, learned Sessions Judge acquitted the accused for the offence under Section 304-B of the Indian Penal Code and sentenced him to three years imprisonment under Section 498-A of the Indian Penal Code.

5. Learned Counsel for the appellant would submit that the trial Court having disbelieved the version of the prosecution regarding the offence being made out under Section 304-B of the Indian Penal Code, erred in convicting the appellant under Section

498-A of the Indian Penal Code. The definition of cruelty under Section 498-A of the Indian Penal Code is ill-treatment or any such wilful conduct which is of such nature likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. The Court itself has not believed that the injuries were consequence of any harassment and accordingly held that no case under Section 304-B of the Indian Penal Code was made out.

6. To prove the cruelty the conduct should be of such a nature which is wilful or wanton. The difference between the spouses in the normal day-to-day life would not fall within the definition of cruelty.

7. He relied on the judgment of Honourable Supreme Court in ***Swamy Prahaladdas v. State of M.P and another***¹ wherein the Honourable Supreme Court was dealing with a situation where the accused asked the deceased to go and die. In such circumstances, the Honourable Supreme Court held that the words used in a casual manner asking the deceased to go and die would not attract the ingredients of Section 306 of the Indian Penal Code.

¹ 1995 Supp (3) Supreme Court Cases 438

8. Counsel also relied on the Judgment of this Court in **C.Veerudu v. State of A.P.**² wherein this Court while dealing with the case under Section 306 and 498 A of the Indian Penal Code, held that *mens rea* was an essential requisite for constituting cruelty as defined under Section 498-A of the Indian Penal Code.

9. The learned Assistant Public Prosecutor would submit that the parents of the deceased who were examined, has specifically stated that the accused was harassing her continuously for money. In fact money was already given and Panchayat was held. In both the Dying Declarations-Exs.P4 and P5 recorded by the Magistrate-PW10 and Sub-Inspector of Police-PW12, the deceased has specifically mentioned that the accused was harassing her constantly.

10. The crux of the allegations against the accused is that he was coming home drunk and beat her which was his regular feature. On the date of the incident also the accused went to the house in a drunken condition and when the deceased threatened that she is going to commit suicide, the accused did not stop her and in fact gave her a match box. The allegation of causing dowry death was not believed by the trial Court. However, the conduct of

² 1988 2 ALT 171

the accused in beating the deceased on a regular basis in a drunken condition, the trial Court found that it amounted to cruelty and accordingly convicted him.

11. The meaning of cruelty is provided as explanation to Section 498-A of the Indian Penal Code. Any wilful conduct which is of such a nature as is likely to drive the woman to suicide or to cause grave injury or danger to life, limb or health whether mental or physical of a woman amounts to cruelty. The meaning of cruelty requires that there should be an element of *mens rea* in harassing a woman. The contingencies in the explanation are that any conduct which is wilful in nature should have the effect of;

- a) driving the woman to commit suicide
- b) to cause grave injury or danger to life, limb
- c) to the health which would be mental or physical of the woman.

The husband constantly coming home drunk and beating the wife which is not a solitary instance and goes on over a period of time would definitely have an impact on both the mental and physical condition of the woman. In such a situation it cannot be said that the conduct of the accused will not fall within the explanation of cruelty.

12. I do not find any reason to set aside the finding of the learned Sessions Judge in convicting the accused for the offence under Section 498-A of the Indian Penal Code. However, keeping in view that the present facts and the only allegation in the complaint that under influence of alcohol he used to beat the wife, this Court deems it appropriate to reduce the sentence of imprisonment under Section 498-A of the Indian Penal Code to six months.

13. Accordingly, Criminal Appeal is partly allowed reducing the sentence of imprisonment to six months. The trial Court is directed to cause the appearance of the appellant/Accused and send him to prison to serve out the remaining period of imprisonment.

As a sequel, miscellaneous applications, if any, pending shall stand closed.

Sd/- C.V. MALLIKARJUNA VARMA
JOINT REGISTRAR

//TRUE COPY//


SECTION OFFICER

To,

1. The IV Additional Sessions Judge, Ranga Reddy District.(with records, if any)
2. The Station House Officer, Dundigal Police Station, Hyderabad.
3. The Superintendent, Central Prison, at Cherlapally, Ranga Reddy District.
4. Two CCs to the Public Prosecutor, High Court for the State of Telangana at Hyderabad. (OUT)
5. One CC to Mr. L. HARISH, Advocate [OPUC]
6. Two CD Copies



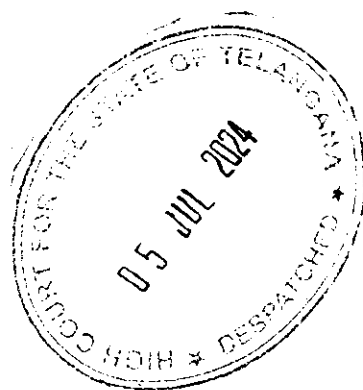
kam/gh

HIGH COURT

DATED:01/04/2024

JUDGMENT

CRLA.No.1393 of 2011



**PARTLY ALLOWING
CRIMINAL APPEAL**

⑦
20/06/24
brs