

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

Criminal Appeal No.447 OF 2009

Between:

Cherukupally Janaiah@ Rudraiah

... Appellant

And

The State of Andhra Pradesh,
rep by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad

... Respondent

DATE OF JUDGMENT PRONOUNCED: 02.08.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers 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 SRI JUSTICE K.SURENDER

+ CRL.A. No. 447 of 2009

% Dated 02.08.2022

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! **Counsel for the Appellant:** T. Prasanna Kumar

^ **Counsel for the Respondent:** Public Prosecutor

> **HEAD NOTE:**

? **Cases referred**

¹ (2008) 1 ALD (CRL) 941 SC

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No.447 OF 2009****JUDGMENT:**

1. This Criminal Appeal is filed by the appellant/A1 aggrieved by the conviction recorded by the II Additional Sessions Judge, Nalgonda at Suryapet, in S.C.No.618 of 2007, dated 17.02.2009, for the offence punishable under Sections 307 of Indian Penal Code and sentenced to undergo Rigorous Imprisonment for a period of seven years, further under Section 306 of IPC appellant was sentenced to undergo Rigorous Imprisonment for three years and to pay fine of Rs.500/-.

2. The case of the prosecution is that the appellant is the husband of the deceased and were married six years prior to the incident. The deceased gave birth to a son and daughter. At the time of marriage Rs.10,000/- was given towards dowry and the appellant and his parents (A2 and A3 who were acquitted), were harassing the deceased for additional dowry. For the said reason, a 'panchayat' was held in the presence of village elders and the accused were admonished. However, the harassment continued, for which reason on 07.11.2006 at about 10.30 p.m. in the

night, when the appellant in a drunken state poured Kerosene on her from a lamp, the deceased set fire to herself.

3. On the basis of the complaint filed by PW1 who is the mother of the deceased, police filed charge sheet against this appellant/A1 and his parents for the offence under Section 304-B of IPC. However the learned Sessions Judge having framed charge under Section 304-B of IPC on 18.03.2008, again framed charges under Section 498-A, 307 and 306 of IPC on 12.09.2008.

4. The prosecution examined PWs.1 to 16 and also marked Exs.P1 to P12. The learned Sessions Judge after adjudication found that A2 and A3 who are parents are not guilty of any of the offences, however found the appellant/A1 guilty as stated above.

5. Learned Counsel for the appellant submits that apart from the Dying Declaration of the deceased, there is no evidence on record to substantiate any harassment or subsequent attempt to murder the deceased or abetting her to commit suicide. The mother PW1, brother PW2 of the deceased, village elders PW3,

PW4 and PW5 turned hostile to the prosecution case. The witnesses for inquest PW6 and PW7, the witnesses for the scene of offence and seizure panchanama PWs.8 and 9 were also declared hostile to the prosecution case.

6. PW10-M.R.O., Suryapet who conducted inquest stated that Ex.P6 inquest proceedings were drafted. The Doctor-PW11 confirmed that the death was on account of burning.

7. The only evidence on the basis of which the learned Sessions Judge convicted the appellant is the Dying Declaration which was recorded by the Magistrate PW12.

8. The Dying Declaration as stated by the deceased reads as follows;

“Today night i.e. 7.11.2006 at about 10/10.30 P.M my husband came to house in drunken condition, for which I quarreled with him as to why he came by drinking and quarrel took place between us, wordy quarrel raised and he slapped me and on my back. After that he scolded me to die, by saying “he has no death” and poured kerosene on me. I kept that kerosene in lamp for the purpose litting lamp if power supply fails and poured that kerosene on me and when tried to lit fire, I said I set fire myself by saying why

do you. As he several times abused to die, for saying no one question him if I die, I set fire myself. My husband is only responsible for my death, there is no interference of anybody.”

9. The learned Magistrate PW12 has taken the consent of the duty doctor before recording the Dying Declaration. The doctor endorsed that the patient was conscious and fit for Dying Declaration. The statement made before the Magistrate by the deceased discloses that on the date of incident, the appellant/A1 went home in a drunken condition and there was a quarrel between them. The appellant scolded and asked her to die and poured Kerosene on her from the Kerosene lamp which is used during power failure. When the appellant said that he would light fire, she said that she would burn herself and accordingly burnt herself. In those circumstances Sessions Judge found that the husband was responsible for attempt to murder and also abetting suicide. As seen from the deceased statement there was a wordy duel between the deceased and the appellant/A1. In the fit of anger the appellant allegedly asked her to die and in the said process poured Kerosene from the lamp. The learned

Sessions Judge found that pouring Kerosene would amount to attempt to murder under Section 307 of Indian Penal Code.

10. Section 307 of Indian Penal Code reads as follows;

307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to 1 [imprisonment for life], or to such punishment as is hereinbefore mentioned.

11. Merely pouring Kerosene on a person would not amount to the offence of attempt to murder. To attract an offence under section 307 IPC, the act done by a person should be of such a nature that the said person should have knowledge that such act would cause or likely to cause death. Pouring Kerosene from a lamp will not amount to such act done with an intention or knowledge that it would cause death especially when the husband is drunk and in heated exchange of words, pours kerosene from a lamp.

12. The narration given by the deceased would go to show that there was heated exchange of the words between the spouses and during the said altercation when the appellant poured kerosene from the lamp she lit herself. For the said reason of the deceased lighting herself, the learned Sessions Judge found that the appellant is guilty for the offence under Section 306 of Indian Penal Code.

13. Section 306 of Indian Penal Code reads as follows;

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.

14. To satisfy the ingredients of Section 306 of Indian Penal Code it has to be shown that a person has abetted the other to commit suicide.

15. Abetment is defined under Section 107 of Indian Penal Code which reads as follows:

107. Abetment of a thing.—A person abets the doing of a thing, who— First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal

omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

16. The Hon'ble Supreme Court in **Sohan Raj Sharma v. State Of Haryana**¹ , held as follows:

“11. In cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife with cruelty is not enough.”

17. The offence under Section 306 of Indian Penal Code is abetting a person to commit suicide. As seen from the altercation that took place between the spouses, it cannot be said that the appellant had abetted the deceased to commit suicide having poured Kerosene on her in a drunken condition. The deceased during the altercation enraged by the act of pouring Kerosene from a lamp on the deceased, lit herself. The lamps used in

¹ 2008(1) ALD(CRL)941(SC)

normal household holds small quantity and it cannot be said that pouring kerosene from the kerosene lamp would amount to offence of trying to commit murder of a person in the scenario of a wordy duel between husband and wife.

18. In the present facts and circumstances of the case, the incident was only result of heated exchange of words between spouses which unfortunately lead to the death. As seen from the narration there were constant fights amongst the spouses. However, the appellant/A1 coming home in a drunken condition and fighting with his spouse on a regular basis would definitely fall within the definition of cruelty under Section 498-A of Indian Penal Code. For the said harassment, the appellant is convicted for the offence under section 498A of IPC.

19. As discussed above, the ingredients of Section 307 & 306 of IPC are not made out. The conviction recorded by the II Additional Sessions Judge, Nalgonda at Suryapet, in S.C.No.618 of 2007, dated 17.02.2009, against the appellant/A1 for the offence punishable under Sections 307 and 306 of Indian Penal Code is set aside.

20. The offence is of the year 2006 and 16 years have elapsed since the date of incident. Further it is stated that the petitioner has to look after his old parents who are dependent on him and also his two children.

21. Under the said circumstances, the appellant is sentenced to the period already undergone.

22. Accordingly, the Criminal Appeal is partly allowed.

K.SURENDER, J

Date: 02.08.2022

Note: LR copy to be marked.

B/o.tk

THE HON'BLE SRI JUSTICE K.SURENDER

Cr1.A.No.447 of 2009

Dated:02.08.2022

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