

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

Criminal Appeal No.123 OF 2021

Between:

Thumma Prasad

... Petitioner/Accused

And

The State of Telangana
through SHO, Sultanabad PS,
rep. by Public Prosecutor

.... Respondent.

DATE OF JUDGMENT PRONOUNCED: 22.04.2022

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.123 of 2021

% Dated 22.04.2022

Thumma Prasad

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..Respondent.

! **Counsel for the Petitioner:** Sri Srinivasa Chary & Akula Anil
Srinivaass

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

> HEAD NOTE:

? Cases referred

¹ 2019(1)ALD (Crl.) 70 (AP)

² 2017(2) ALD (Crl.) 231(SC)

³ 2008(1) ALD (Crl.) 941 (SC)

HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL APPEAL No. 123 OF 2021****JUDGMENT:**

1. This Criminal Appeal is preferred against judgment dated 23.07.2019 in Sessions Case No.110 of 2019 on the file of the Principal Sessions Judge, Karimnagar, acquitting the appellant for the offence under Section 302 IPC, however, convicting the appellant for the offence under Sections 306 and 498-A of IPC.

2. The facts of the case are that the appellant/accused is the husband of the deceased and their marriage took place about 13 years prior to the date of incident. They had two children i.e., one son and one daughter. The appellant was addicted to alcohol and frequently beat the deceased. A complaint was also made to Police, Manakondur Police Station and after counseling, though the appellant undertook to look after the deceased, there was no change in the attitude of the accused. On 16.03.2018, the accused came home drunk and

abused the deceased as she refused to give money. The deceased brought kerosene Can and placed it in front of the appellant. Around 3.00 p.m, when the deceased said that she was ready to die, the appellant poured kerosene on the deceased and set her on fire. On hearing hue and cry of the deceased, neighbours came to the spot, poured water on her and took her to the Government Hospital, Karimnagar. Initially, crime was registered for the offences under Sections 307 and 498-A of IPC. At the hospital, the statement of the deceased was recorded by the Sub Inspector of Police, in which she stated as narrated above. On a requisition made by the police under Ex.P9, P.W.16, Additional Judicial Magistrate of First Class, Karimnagar, recorded Dying Declaration (DD) under Ex.P10, at 7.15 P.M i.e., one hour and forty five minutes prior to the recording of the statement by the Sub Inspector under Ex.P16.

3. Ex.P10, DD was recorded at 7.15 P.M by P.W.16, in which, P.W.16 asked a question i.e., 'what happened?', to which, the deceased stated as follows;

"Every day, there was fight in between me and the appellant for money. He was listening to his friends and asked me to die, for which reason, I poured kerosene on myself. Even then, he asked me to die and did not stop me. For the past four years, we are fighting and my husband is responsible for this accident."(translated by me)

4. As seen from the statement recorded under Ex.P16 by the Sub Inspector of Police, Sultanabad, the deceased stated that she was set on fire by the appellant. However in the DD given to the Magistrate (P.W.16) under Ex.P10, the deceased stated that she lit fire to herself. Though the charge sheet was filed for the offences under Sections 302, and 498-A of IPC, the trial Court acquitted the appellant for the offence under Section 302 of IPC and convicted the accused Under Section 306 and 498-A of IPC.

5. Heard Sri S.Srinivasa Chary and Sri Akula Anil Srinivaass, learned counsel appearing for Sri P.Chandra

Reddy, learned counsel for the appellant and Sri Sudarshan, learned Assistant Public Prosecutor appearing for the respondent-State.

6. Learned counsel for the appellant submits that the trial Court committed an error in convicting the appellant under Section 306 of IPC on the basis of two contradictory DDs and further there are no allegations of any harassment except making bald allegations of quarrelling regarding money issues frequently. For the said reason, the conviction cannot be sustained.

7. On the other hand, learned Assistant Public Prosecutor argued that the judgment of the trial Court is well reasoned and no error is committed by the trial Judge while convicting the appellant under Section 306 of IPC, though no charge was framed. In support of his contention, he relied upon the judgment of Division Bench of this Court in the case of **Bandala Saya Goud v. The State of Andhra Pradesh**¹, in which

¹ 2019(1)ALD (CrI.) 70 (AP)

this Court, on the facts of the said case, found that the charge under Section 302 of IPC cannot be sustained and convicted the appellant therein under Section 306 of IPC keeping in view the judgment of the Hon'ble Supreme Court in the case of **Dalbir Singh v. State of U.P [(2004)5 SCC 334]**.

8. There is no dispute regarding the legal position and power to convict the accused under Section 306 of IPC, though charge was framed under Section 302 IPC. However, the said finding has to be based upon the facts and circumstances of each case.

9. Admittedly, there are two different versions, one given to the Police under Ex.P16, which is recorded by the Sub Inspector of Police, Sultanabad at 9.00 P.M and DD Ex.P10, recorded by the P.W.16 at 7.15 P.M. The fact remains that the deceased died an unnatural death and it is on record that the appellant on seeing the deceased engulfed in flames, poured water on her and took her to the hospital. The State has not preferred any appeal against the acquittal of the appellant

under Section 302 IPC and admits from the facts and circumstances that it is a case of suicide.

10. On careful scrutiny of the DD under Ex.P10, on which the trial Court relied upon for convicting the accused under Section 306 of IPC, when the deceased poured kerosene on herself, the appellant ignored the same and asked her to set fire to herself. However, when the deceased set fire to herself, the husband/accused poured water on her and moved her to the hospital. The factum of constant fight between the deceased and the appellant was stated in Exs.P10, P16 and also by the witnesses P.W.1, the father of the deceased, P.w.2, the mother of the deceased and P.W.3, the brother of the deceased. Though the three witnesses stated that the deceased informed them in the hospital that the appellant poured kerosene on her and lit fire, the said statement was disbelieved by the trial Court. However, the allegation of the constant fights regarding money, beating by the appellant was stated by

the witnesses, corroborating the DD under Exs.P10 and P16, statement of deceased.

11. In the facts and circumstances, when the deceased poured kerosene on herself, the appellant's failure to stop her, will not amount to an offence under Section 306 of IPC. However, the act may amount to abetting of offence under Section 309 of IPC. As discussed above, it was the appellant, who on seeing the deceased engulfed in flames, poured water on her and took her to the hospital.

12. In the back ground of the constant fight, the threat given by the deceased, in all probability, was not taken seriously by the appellant and for the said reason, it cannot be said that the appellant had abetted the suicide punishable under Section 306 of IPC. 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.

13. At the cost of repetition, it was the appellant who extinguished the fire and took the deceased to hospital. The Hon'ble Supreme Court in the judgment reported in a case of **Pawan Kumar v. State of H.P.**², held as follows:

“37. In *Praveen Pradhan v. State of Uttaranchal & 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 suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be

² 2017(2) ALD (CrI.) 231(SC)

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.

x x x x x

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**³, 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 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

³ 2008(1) ALD (CrI.) 941 (SC)

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.”

15. In view of the law laid down in the aforesaid decisions and in the peculiar facts of the present case, as discussed in the preceding paras, I find that the conviction recorded by the trial Court against accused under Section 306 of IPC cannot be sustained and accordingly set aside.

16. The factum of there being constant fights between the appellant and the deceased for money and that the appellant beat her, cannot be disbelieved, in view of the background of the statements made by P.Ws.1 to 3 and also the statement made by the deceased under Exs.P10 and P16. For the said reason, the conviction recorded by the trial Court under Section 498-A of IPC is maintained. However, since the accused is in jail from the date of judgment 13.03.2020, i.e., for more than two years, the sentence of imprisonment of 3 years imposed by the trial Court under Section 498-A of IPC is

reduced to the period already undergone by the appellant.

Consequently, the appellant shall be set at liberty forthwith.

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

Date : 22.04.2022

kvs

K.SURENDER,J

HONOURABLE SRI JUSTICE K.SURENDER

Criminal Appeal No. 123 OF 2021

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