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**(2001) 07 AP CK 0025**

**Andhra Pradesh High Court**

**Case No:** Criminal Appeal No. 1123 of 1992

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| Pachipala Laxmaiah | APPELLANT |
| Vs | |
| State of Andhra Pradesh | RESPONDENT |

**Date of Decision:** July 9, 2001

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 107, 306, 498

**Citation:** (2001) 2 ALD(Cri) 348 : (2001) 2 ALT(Cri) 198 : (2001) CriLJ 4063

**Hon'ble Judges:** V. Eswaraiah, J

**Bench:** Single Bench

**Advocate:** C. Praveen Kumar, for the Appellant; Public Prosecutor, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

V. Eswaraiah, J.

1.This criminal appeal is filed against the judgment dated 6-11-1992 in Sessions Case No. 84 of 1992 on the file of the Assistant Sessions Judge, Mirayalaguda, Nalgonda District in convicting the appellant u/s 306, IPC and sentencing him to undergo simple imprisonment for a period of ten years and also to pay a fine of Rs. 5.000/- and in default to suffer simple imprisonment for a period of six months.

2. The case of the prosecution is that the accused and his wife by name Venkata Ramana are the residents of Huzurnagar and eversince the date of their marriage, the accused used to ill-treat her, their marriage has been taken place about 11 years back and the accused used to take liquor and beat her and the accused also used to borrow amounts from others and failed to repay the same and the creditors used to come and demand for return of money and when the deceased Venkata Ramana asked the accused to mend his behaviour, he used to beat her and ill-treated her; Venkata-Ramana has no parents; she was unable to bear the harassment from the accused and committed

suicide by pouring kerosene on herself and set herself ablaze on 6-2-1992 at 8.30 p.m. The said Venkata Ramana was taken to the Government Hospital, Huzurnagar and there the Head-Constable recorded the statement of the said Venkata Ramana and registered a case in Cr. No. 1392 u/s 498-A, IPC and took up investigation. The Judicial First Class Magistrate, Huzurnagar on a requisition from the police, recorded the dying declaration of the said Venkata Ramana in the Hospital on the same day. Thereafter, the said Venkata Ramana was referred to the District Head Quarters Hospital. Khammam for expert treatment. On the next day, i.e. on 7-2-1992, at 11.25 a.m., she succumbed to injuries. On receipt of the death intimation, the Head Constable altered the section of law in one of 306, IPC. The Head Constable recorded the statements of the said Venkata Ramana and also the statements of P. Anjamma (P.W. 4), G. Parvathamma ((P.W. 1) and P. Venkataiah (P0.W. 3); and thereafter, he proceeded to Kharnmam, held inquest over the dead body of the deceased in the presence of the mediators and sent the dead body for postmortem examination. The Medical Officer certified that the deceased would appear to have died "due to shock and due to extensive burns". On 20-2-1992, the Head Constable arrested the accused and sent him for remand. The investigation reveals that the accused and the deceased have no issues; and that the accused addicted to lavish spending, and for that purpose, he used to borrow amounts from other; and that he also used to pick up quarrels with the deceased and beat her. As a result of that the deceased committed suicide.

3. The prosecution examined P.Ws. 1 to 7 and marked Exs. P-1 to P-7. Except P.W. 4 no other witnesses have supported the case of the prosecution. The learned Sessions Judge convicted the appellant mainly based on the dying declarations recorded by the Head Constable as well as the Judicial I Class Magistrate, which are marked as Exs.P-5 and P-7.

4. It is not ,in dispute that the death of the deceased is homicidal and it is also not in dispute that the death is caused due to burning.

5. The question that arises for consideration in this criminal appeal is whether the appellant is liable to be punished u/s 306, IPC; and whether the contents of the dying declaration constitute an offence u/s 306, IPC; if not, whether the said act of the appellant constitutes an offence u/s 498-A?

6. P.W. 1 did not support the case of the prosecution.

7. P.W. 2, who is the neighbour of the deceased and the accused, stated that she has witnessed the incident. On the date of the offence, the accused and his wife were disputing among themselves. She did not know the cause of the dispute. She came to know that the deceased poured kerosene on herself and set fire to herself.

8. P.W. 3, the brother of the accused, turned hostile.

9. P.W. 4 is the only witness, who supported the case of the prosecution. She stated that the deceased is her sister and the accused is the husband of her deceased sister; and her sister Venkata Ramana died due to the unbearable harassment from her husband. The accused is addicted to all sorts of vices. There are only two houses between her house and the house of her deceased sister. So she new the disputes between them. The accused used to drink and beat her sister always. He used to insist her to do prostitution. On the date of incident, she went to the hospital and asked her sister. The deceased told her that the accused was ill-treating and harassing her and she was unable to bear them. She also told her that since her husband and the accused are sons of one father, nobody would save them, and so, it is better to die. In the cross-examination by the defence counsel, she stated that the accused was working under her husband before the marriage; and even after 11 years of the marriage,they did not have their own children, and therefore, her sister was bringing up a child belong to other sister (D.W. 2). She denied the suggestion that because her child was not adopted, she disputed with the accused and his wife.

10. P.W. 5 is the inquest panch. P.W. 6 is the Magistrate, who recorded the dying declaration (Ex. P-5).

11. A reading of Ex. P-5 shows that the Magistrate has put certain questions to the deceased asking her name.fresidence, the name of her husband and the purpose of recording the dying declaration; and after recording her answers to those questions, he recorded her dying declaration as follows :

My husband beats me unnecessarily. He incurs debts in the village and drinks. When I asked him why he drank, he used to beat me. Today when Pitchakuntla people, to whom he was indebted, came and asked he went into the shed and lay there. When I asked him why he should incur debts and hide himself he beat me severely. When I was going into the house he pulled me back for the purpose of beating. I went into the house, poured kerosene on myself and struck a match stick. Nobody should get a husband like mine. My husband"s elder brother Venkatayya came and saw. Afterwards I did not sleep. I was speaking, but I did not know who extinguished (the fire). Severe action should be taken against my husband.

The Magistrate also got the endorsement of the Doctor stating, "She is fit mentally to give dying declaration".

12. Prior to that P.W. 7, the Head Constable, also recorded a statement of the deceased (Ex.P-7), which reads as follows :

I used to stay at the house itself, Marriage took place with Lakshmayya 11 yrs. Ago. Today i.e. on 6-2-92 at 8 p.m. my husband beat me. He always used to beat me. He used to drink and incur debts. If I asked him why he did so he used to beat me. Creditors used to come and abuse me. After taking money my husband used to abscond. Since the time

of the marriage my husband was giving these very troubles. I have no parents. Therefore being unable to bear the troubles given by my husband, I poured kerosene on myself and set fire to myself today i.e. on 6-2-92 at 20 hours 30 minutes.

13. The learned Sessions Judge, mainly relying on Ex.P-5 dying declaration recorded by the Judicial I Class Magistrate corroborated by Ex.P-7 statement which is also another dying declaration made by the deceased and recorded by the Head Constable held that the guilt of the appellant is proved beyond all reasonable doubt u/s 306, IPC and convicted the appellant under the said section, without going into the discussion of the offence relating to the other charge u/s 498-A, IPC.

14. Whoever abets the commission of suicide shall be punishable u/s 306, IPC. "Abetment" is defined and described u/s 107, IPC, which reads as follows :

A person abets the doing of a thing, who-

Firstly-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.

In the instant case, "the doing of that thing" is "committing suicide". For the commission of suicide by the deceased, the accused has not instigated the deceased to commit suicide at the time of committing the suicide. The accused also has not intentionally aided by doing an act for committing suicide. Section 107, IPC contemplates a direct or indirect doing of a thing for the commission of suicide. A reading of both the dying declarations and the statement of P.W. 4 does not disclose the ingredients of doing any thing by the appellant for the commission of suicide. Therefore, it cannot be said that the accused abetted the deceased for commission of suicide. Thus, the charge u/s 306, IPC under which the appellant is found guilty, cannot be held as legal and accordingly, the appellant is liable to be acquitted for the charge u/s 306, IPC. In support of this view, the learned counsel for the appellant also cited a decision of the Supreme Court in Mahendra Singh and Another, Gayatribai Vs. State of M.P., and also a decision of this Court in Bommidi Rajamallu Vs. State of Andhra Pradesh, The evidence available on record, i.e. the evidence of P.W. 4 and both the dying declarations supported by the oral evidence of the Head Constable and the Judicial I Class Magistrate, does not satisfy the ingredients of abetment that attract the guilt of the appellant u/s 306, IPC. The conviction of the appellant u/s 306, IPC, merely on the allegation of harassment of the deceased, is not sustainable, and the appellant deserves to be acquitted of the charge. Though the learned Assistant Sessions Judge has not dealt with the charge u/s 498-A, IPC, admittedly the deceased stated consistently in both the dying declarations that the accused used to harass her and beat her regularly, and it is a crueal act on the part of the

husband. u/s 498-A, IPC, the husband or a relative of the husband of a woman subjecting her to cruelty, shall be punished with imprisonment for a term, which may extend to 3 years and shall also liable to fine. As per Explanation to Section 498-A, IPC any wilful conduct which is of such nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman is "cruelty". As far as the cruelty of the husband is concerned, it is beyond all reasonable doubt that the deceased was subjected to cruetly by her husband (accused) time and again; and even on the date of death also, her husband beat her. The act of the appellant for drinking continuously and beating her, clearly caused grave injury to the deceased physically and mentally, and therefore, she was subjected to cruelty by the husband. The learned counsel for the appellant relying on a decision in Paparambaka Rosamma and Others Vs. State of Andhra Pradesh, stated that the dying declaration recorded by the Magistrate does not specify any certificate given by the Doctor before starting of the recording; and the Magistrate after putting some questions, made an endorsement that the victim was in a fit condition; there is no endorsement of the Doctor that the patient was conscious. The aforesaid case has no application to the facts of this case, as in the instant case, the Doctor endorsed at the end of the dying declaration that she is fit mentally to give the dying declaration. The Magistrate also put certain questions, and only after satisfying himself that she is conscious and mentally fit, he recorded the dying declaration. Earlier to the said dying declaration recorded by the Magistrate pursuant to the requisition made by the police, the police recorded the statement, which is marked as Ex.P-7. The statement of the deceased in both the declarations is consistent with regard to the harassment and the cruelty by the husband,and therefore, the evidence on record clearly proves beyond all reasonable doubts that the appellant has committed an offence punishable u/s 498-A, IPC. In view of the said finding. I hold that the prosecution has proved that the appellant has committed an offence punishable u/s 498-A, IPC beyond all reasonable doubt; and accordingly. I hold that the appellant is found guilty for the offence punishable u/s 498-A, IPC.

15. Accordingly, the conviction and sentence imposed on the appellant u/s 306, IPC is set aside; and he is convicted u/s 498-A, IPC and sentenced to undergo R.I. for two years and. also to pay a fine of Rs. 5.000/- and in default to suffer S.I. for six months. The remand period shall be given set off against the sentence of imprisonment. The fine amount of Rs. 5.000/- imposed u/s 306, IPC, if already paid shall be adjusted towards the fine now imposed u/s 498 IPC. The appeal is accordingly allowed in part modifying the judgment of the trial Court.