

**G.Venka Vs. the State of Andhra Pradesh, Rep by Its**

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**Court :** Andhra Pradesh

**Decided On :** Mar-04-2014

**Judge :** S. Ravi Kumar

**Appellant :** G.Venka

**Respondent :** The State of Andhra Pradesh, Rep by Its

**Advocate for Def. :** Sri. Sudhakar Rao Kulkarni Counsel

**Judgement :**

THE HON'BLE SRI JUSTICE S. RAVI KUMAR CRIMINAL REVISION CASE No.1737 of 2006 04-03-2014 G.Venkanna .Petitioner. The State of Andhra Pradesh, Rep by its Public Prosecutor,High Court of A.P., Hyderabad.. Respondent. Counsel for the Petitioner: Sri Sudhakar Rao Kulkarni Counsel for Respondent: Public Prosecutor : : ?. Cases referred:

1. 2001 (1) ALD (CrI.) 227 (SC) THE HON'BLE SRI JUSTICE S. RAVI KUMAR CRIMINAL REVISION CASE No.1737 of 2006 Date:04.03.2014 The Court made the following : THE HON'BLE SRI JUSTICE S. RAVI KUMAR CRIMINAL REVISION CASE No.1737 of 2006

**ORDER**

: This revision is preferred against judgment dated 06-07-2006 in S.C.No.349/2005 on the file of Assistant Sessions Judge, Mahabubnagar whereunder respondents 1 to 3 herein are acquitted of the charge under Section 306 IPC.

2. Brief facts leading to filing of this revision are as follows:- Sub-Inspector of Police, Mahabubnagar filed charge sheet against respondents 1 to 3 herein alleging that marriage between A1 and deceased was held about four years prior to the complaint and both of them were quarrelling frequently and panchyats were also held before their caste elders. On 06-12-2004, there was a quarrel between wife and husband and they went to Thirumalaiah Yadav, a caste elder, who promised to conduct a panchyat on the next day, but husband of A1 poured kerosene and set ablaze himself, who was shifted to Government Hospital, Mahabubnagar and died on 07-12-2004 at 7:45 A.M., while undergoing treatment. Police initially registered crime under Section 174 Cr.P.C and thereafter during investigation, altered the section of law into 306 IPC and their investigation revealed that respondents 1 to 3 herein are liable for punishment for the offence under Section 306 read with 34 IPC. On these allegations, P.Ws.1 to 16 are examined and documents Exs.P1 to P11 are marked on behalf of prosecution and on behalf of accused, Ex.D1 is marked. On an over all consideration of oral and documentary evidence, trial Court found the respondents 1 to 3 herein not guilty for the offence under Section 306 IPC and acquitted them. Aggrieved by the same, P.W.1 i.e., defacto-complainant preferred present revision petition.

3. Heard both sides.

4. Advocate for revision petitioner contended that the trial Court has not considered the dying declaration of the deceased, therefore, it is a fit case to remit back the matter to the trial Court for considering the dying declaration of the deceased. On the other hand, Advocate for respondents 1 to 3 submitted that there is no evidence to support the allegation of abetment to commit the suicide and in the dying declaration also, no specific details of harassment are given nor the nature of harassment and the trial Court considered this aspect also. He further submitted that for a case under Section 306 IPC, the requirement that has to be seen is what act that made the accused to commit suicide, which shall be immediate preceding the suicide. He submitted that as there is no evidence, the trial Court rightly acquitted the respondents 1 to 3 and that there are no grounds even to remand the matter.

5. Now the point that would arise for my consideration is whether the Judgment of the Court below is proper, legal and correct?.

6. Point:- According to prosecution, the deceased is husband of A1 and there were disputes between them and on 06-12-2004 also, there was a quarrel between them and that they went to one Thirumalaiah Yadav i.e., P.W.13 who is a caste elder and that he promised to conduct a panchayat on the next day, but the deceased committed suicide. Here it is a peculiar case where husband committed suicide and the case is registered against wife and in-laws of the deceased. The main contention of the revision petitioner is that trial Court has not considered the dying declaration and therefore, the matter has to be remitted back for reconsideration of the dying declaration. This dying declaration is marked as Ex.P7 and the trial Court in Para No.12 of judgment has referred to this document. According to prosecution, on the date of incident, both deceased and A1 approached their caste elder i.e., P.W.13. He deposed that when A1 and deceased came to him and when he questioned the deceased, he informed him that A1 used to take away money from his pocket and giving the same to her parents and on that, he questioned her about missing money and that she attributed that the deceased might have lost the money in an intoxicated state for that he advised them to go back and come to him on the next day morning so that he will call the parents of the deceased and on that the deceased went away. He deposed that he advised deceased to stay with him for that night but he left the place and at about 12:00 A.M., in the mid night, he received phone call about the incident. This P.W.13 is a relative of deceased. It is clear from the evidence on record that deceased is addicted to alcohol and even on the date of incident also he was in intoxicated condition. As seen from the evidence, P.W.13 requested the deceased to stay back with him to that night, but it appears he left the place. In Ex.P7 as rightly pointed out by Advocate for respondents 1 to 3, no details of harassment are given nor the nature of harassment. To attract an offence under Section 306 IPC, there must be evidence to show that the harassment caused by the accused persons drove the deceased to commit suicide. In *S.S. Chheena vs. Vijaya Kumar Mahajan*, Honble Supreme Court while considering a case under Section 306 IPC observed as follows:- 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 is 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.

7. In that case also, there was a suicide note left by the deceased as there is no positive act on the part of accused to instigate the deceased to commit suicide, Honble Supreme Court quashed the case even before trial. Here from the evidence, it is clear that both deceased and A1 quarrelled on some petty issue and they went to P.W.13 for settlement who informed both of them that he would call parents of the deceased and decide the matter on the next day morning and asked both of them to come back next day. To attract an offence under Section 306 IPC, an active act or direct act, which led the deceased to commit suicide must be established. Here it is not known whether the act of P.W.13 postponing the panchyat to the next day has made the deceased to take the extreme step of committing suicide or the incident prior to the approach P.W.13 made him to take that extreme step of committing suicide. When there are no details in the dying declaration-Ex.P7, when two views are possible, the view beneficial to the accused has to be taken and the benefit of doubt has to be extended to the accused. In this case, the trial Court has rightly extended benefit of doubt to respondents 1 to 3 and after considering Ex.P7 also. On a scrutiny of the material on record, I am of the view that there are absolutely no grounds to interfere with the finding of the trial Court and that there are no grounds even to remand the matter.

8. For these reasons, the revision is dismissed as devoid of merits.

9. As a sequel, miscellaneous petitions if any pending in this Criminal Revision Case shall stand dismissed. \_\_\_\_\_ JUSTICE S. RAVI KUMAR Date:04.03.2014