

G. Laxmaiah Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Nov-13-2001

Reported in : 2002(1)ALD(Cri)119; I(2002)DMC534

Judge : V. Eswaraiah, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 306 and 498A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 482

Appeal No. : Criminal Petition No. 5275 of 2001

Appellant : G. Laxmaiah

Respondent : State of A.P.

Advocate for Def. : P.P.

Advocate for Pet/Ap. : Venkata Narayana Sarma Paturi, Adv.

Judgement :

E.V. Eswaraiah, J.

1. Heard the learned Counsel for the petitioner as well as the learned Public Prosecutor appearing for the State.

2. This criminal petition is filed under Section 482, Cr.P.C. to quash the proceedings in S.C. No. 166 of 2000 on the file of the Additional Metropolitan

Sessions Judge for the trial of Communal Offence Cases, Hyderabad-cum-VII Additional Metropolitan Sessions Judge, Metropolitan Criminal Courts, Hyderabad.

3. The charge sheet was filed against the petitioner for the offences under Sections 306 and 498-A, I.P.C. According to the averments made in the charge-sheet, the deceased Vijaya Lakshmi, wife of the petitioner herein was admitted in Osmania General Hospital with burn injuries sustained at their residence; and the statement of the said Vijayalakshmi was recorded, in which, she stated that she married the petitioner herein and got 3 daughters and one son; and on 22.5.2000, while she was preparing omelet on a kerosene stove, her saree border got into contact with the burning stove, and during that time, she was feeding breast milk to her daughter; and as soon as her saree caught fire, the flames raised and surrounded all over her body; and immediately, she threw her infant on the floor and raised hue and cry; and on hearing her hue and cry, her husband, who was outside the house, rushed to her and extinguished the flames by pouring water and shifted her to the Osmania General Hospital for treatment and no one is suspected in the incident. With regard to that incident, the crime was registered; and during the course of investigation, her dying declaration was recorded by the XII Metropolitan Magistrate, Hyderabad, wherein she stated that she caught fire accidentally, while cooking food on kerosene stove and feeding breast milk to her baby; and immediately her husband put off the fire and admitted her in the Osmania General Hospital.

4. In the charge-sheet, absolutely there is no averment against the petitioner to charge him for the offence under Section 306, I.P.C. Only during the, course of investigation it is stated that some evidence has been collected to the effect that the deceased was subjected to harassment and cruelty by the petitioner herein; and he did not provide proper food and clothes to the deceased and her children because he used to spend all his earnings for consumption of toddy and liquor. Thus, there is some evidence with regard to the offence under Section 498-A, I.P.C. But, as far as the offence under Section 306, I.P.C. is concerned, even accepting the allegations on its entirety as stated in the charge-sheet, the offence under Section 306, I.P.C. cannot be attracted, as according to the dying declaration and the evidence available on record, there is nothing to show that the

husband has abetted the deceased for committing suicide. This is not a case of suicide as per the dying declaration of the deceased itself, but the fire was accidentally caught to her saree; and in fact, the husband made an attempt to put off the fire and himself admitted the deceased in the Osmania General Hospital. About the abetment by the husband for catching fire, neither the deceased stated in her dying declaration nor any other witnesses stated during the course of investigation. It is not the case of the deceased or any other witnesses that it is a case of suicide; but it is stated that it is only an accidental death. Merely because it is an accidental death, the harassment and cruelty on the deceased by the petitioner cannot be ruled out, which attracts the offence under Section 498-A, I.P.C.

5. Previously, the petitioner filed discharge application in CrI. M.P. 106 of 2001 before the Trial Court, but it was dismissed on 25.7.2001, against which, the petitioner filed CrI. R.P. No. 929 of 2001; and my learned Brother Mr. Justice T.Ch. Surya Rao, while dismissing the criminal revision petition by order dated 9.11.2001, observed that although there has been no material whatsoever to sustain prima facie the charge under Section 306, I.P.C. it may not be legitimate to state that there is no semblance of evidence or prima facie case to sustain the charge under Section 498-A, I.P.C. and therefore, the request of the petitioner for discharge could not have been considered by the Trial Court.

6. Even assuming the entire averments in the charge-sheet as true, as there is no material whatsoever to sustain the charge under Section 306, I.P.C. the offence under Section 306, I.P.C. will not attract; and, therefore, the prosecution of the petitioner for the offence under Section 306, I.P.C. is nothing but abuse of process of law; and accordingly, the proceedings in C.C. No. 166 of 2000 are quashed insofar as the offence under Section 306, I.P.C. is concerned.

7. Insofar as the charge under Section 498-A, I.P.C. is concerned, the concerned Magistrate may proceed with the trial of the case uninfluenced by any of the observations made in this criminal petition.

8. The criminal petition is accordingly allowed in part.

