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Crl.A.No.672 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **29.02.2024**

CORAM :

THE HON'BLE MRS.JUSTICE R.KALAIMATHI

Crl.A.No.672 of 2017

P.Selvam

... Appellant / Accused

Versus

State rep. by
Inspector of Police,
Thavamangalam,
(Crime No.5 of 2013)

... Respondent / Complainant

Prayer : Criminal Appeal filed u/s.374 of the Code of Criminal Procedure, praying to set aside the judgment of conviction passed in S.C.No.206 of 2014 dated 12.10.2017 by Mahila Court, Salem.

For Appellant : Mr.R.Rajarathinam
For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)
JUDGMENT

This Criminal Appeal has been preferred against the conviction and sentence passed under Section 498A and 306 of IPC.

2. The case of the prosecution is stated in brief:

(i) The accused had love affair with deceased Sumitha and got married her : after marriage they were living at Sedapatti Kaatuvalavu Aaroorpatti Village at the residence of parents of the accused.



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(ii) The parents of the deceased after compromise, gave sridhana articles to the deceased and they used to visit the accused house.

(iii) The father of the deceased got a pulser motor cycle for the accused on credit basis. The accused used to consume alcohol.

(iv) As the loan was not repaid, the pulser motor cycle was taken away by the Creditor. Therefore, the accused demanded to his wife to get an amount of Rs.1 lakh from her parents.

(v) On 04.01.2013, at about 8:00 p.m, the accused demanded his wife to remove her Thaali chain in order to repay the motor cycle loan and got a yellow thread. As the deceased Sumitha refused to remove her Thaali chain, the accused uttered " நீ ஒரே பெண் என்று தான் வசதியாக இருக்கலாம் என்று நினைத்து உன்னை திருமணம் செய்தேன். உன் அப்பா என் தேவைக்கு காக கொடுக்கவில்லை. உன்னை திருமணம் செய்து எந்த பிரயோஜனமும் இல்லை நீ செத்து தொலை நான் வேறு திருமணம் செய்து நிம்மதியாக இருக்கிறேன் என்று சொல்லி என் மருமகன் என் மகளை அடித்ததாக என் மகள் என்னிடம் சொன்னாள். "



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(vi) Thereby, accused was charged to have abetted for committing suicide by his wife. On 04.01.2013, Sumitha committed suicide with her saree fixed in the fan hook and due to asphyxia, she died.

(vii) On the complaint made by the *de-facto* complainant / P.W.1, a case was registered under Section 498A and 306 of I.P.C.in crime No.5 of 2013 by the Tharamangalam Police Station.

(viii) The final report under Section 498A, 306 of I.P.C. was taken cognizance by the District Munsif cum Judicial Magistrate, Omalur. On appearance of the accused, the documents to be relied upon by the prosecution and the final report were furnished to the accused under Section 207 of Cr.P.C. and since the case is triable by the Sessions Court, the case records were sent to the Principal District Court, Salem. The said case was taken on file in S.C.No.206 of 2014 and it was made over to the Mahila Court, Salem, since the victim is a women.

(ix) On hearing both sides and upon consideration of the records, the Trial Court framed charges u/s.498A and 306 of I.P.C, when the accused was questioned, he pleaded not guilty.

(x) To substantiate the said charges, on the prosecution side 11 witnesses were examined, 14 documents and 3 material objects were marked. On the defence



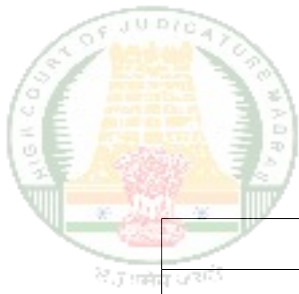
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side, one witness (Irusa Gounder) was examined.

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(xi) P.W.1 Govindan and P.W.2 Seerangammal are the parents of the deceased Sumitha. P.W.3 Suresh is the brother of the deceased Sumitha. P.W.4 Radhakirhsnan is the maternal uncle of deceased Sumitha. P.W.5 Durai is the observation and seizure Mahazar witness. P.W.6 Dr.Gokularamanan is the medical officer who conducted autopsy on the body of the deceased Sumitha. P.W.7 Head Constable Thiru.Balan who identified the body at the time of Postmortem conducted by P.W.6 Dr.Gokularamanan. P.W.8 Mr.Surya Prakash is the Revenue Divisional Officer who conducted inquest (Ex.P.9). P.W.9 Ms.Ilavarasi Sub Inspector of Police who recorded the statement of de-facto complainant and registered the case in Crime No.5 of 2013 u/s.174 of Cr.P.C.(Ex.P10/F.I.R). P.W.10 Thiru.Muthukaruppan is the investigation officer who did the preliminary investigation. P.W.11 Thiru.Purushothamman is the Inspector of Tharamangalam Police Station who further investigated the case and filed a charge sheet u/s.306 of I.P.C.

Details	Particulars
Name of the accused	Selvam (24), S/o.Perumal
Charges against the accused	U/s.498 A of I.P.C and u/s.306 of I.P.C
Plea of the accused	Not guilty
	Accused was found guilty u/s.498 A & 306 of I.P.C. imprisoned sentence of three years rigorous imprisonment with fine of Rs.10,000/- in default and three months simple imprisonment u/s.498 A of I.P.C.
Judgment	Finally held that the accused is found guilty u/s.498 A, 306 of of I.P.C. punishable u/s.235(2) of Cr.P.C. An offence u/s.498 A



Details	Particulars
	of I.P.C. will punish the enemy with rigorous imprisonment for three years. A Fine of Rs.10,000/- and three months simple imprisonment and in default of payment of the fine imprisonment for a term of three months. An offence u/s.306 is punishable with rigorous imprisonment and a fine of Rs.10,000/- will be imposed and in default of payment of the fine, simple imprisonment for a term which may be extended to six months (total fine of Rs.20,000/-). The accused is also ordered to undergo the above punishment concurrently. The time period which was already spend by the accused in jail shall be set off u/s.428 of Cr.P.C.

3. Mr.Rajarathinam, the learned senior counsel appearing for the appellant strenuously argued that dowry demand was said to have been made by the accused on 04.09.2013. In the complaint, there is no whisper about the dowry demand. Prosecution has not filed any proof to show that the accused pledged the jewels of the deceased. It is his further argument that it is the evidence of prosecution side that the deceased talked to her father on 04.01.2013 at about 8:00 p.m. and on the same day at about 10:00 p.m. P.W.1 talked to his daughter. In order to prove the same, the call detail records of the respective persons and cell phone were not obtained / seized and marked by the prosecution. As the call detail records are not marked, it shows that the allegations are not correct. He also drew the attention of this Court by going through the details of inquest report of P.W.8 Revenue Divisional Officer, Ex.P.8 to the effect that no dowry harassment has been made. He also referred to the statements of all the witnesses that nobody has raised allegation against the accused as he



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demanded dowry.

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4. The learned senior counsel, Mr.R.Rajarathinam would further contend that as per the evidence of P.W.6 Dr.Gokularamanan, there is no external injury found on the body of the deceased which shows that nothing happened as alleged by the prosecution witnesses. The evidence of P.W.1 to P.W.3 are not believable as they are interested witnesses and pleaded to set aside the conviction and sentence passed by the Trial Court.

5. Per contra Mr.S.Udaya Kumar, the learned Government Advocate (Crl. Side) appearing for the respondent vehemently contended that as the accused demanded the deceased on 04.01.2013 to give him the Thaali Kodi chain in order to repay the two wheeler loan as she refused to give the same, he shouted at her by uttering “நீ ஒரே பெண் என்று தான் வசதியாக இருக்கலாம் என்று நினைத்து உன்னை திருமணம் செய்தேன். உன் அப்பா என் தேவைக்கு காசு கொடுக்கவில்லை. உன்னை திருமணம் செய்து எந்த பிரியோஜனமும் இல்லை நீ செத்து தொலை நான் வேறு திருமணம் செய்து நிம்மதியாக இருக்கிறேன் என்று சொல்லி என் மருமகன் என் மகளை அடித்ததாக என் மகள் என்னிடம் சொன்னாள்.”. P.W.1 to P.W.3 who are the parents and brother of the deceased, have in detail given the testimony that her husband was under intoxication and asked her father to come on



the next day. Before the father reached the residence of his son-in-law, his daughter died by committing suicide.

6. The learned Government Advocate would further contend that since because the call detail records are not collected and marked for that reason alone the evidence of P.W.1 to P.W.3 cannot be brushed aside.

7. In Ex.P.1 complaint [given by the P.W.1] it has been stated that he has doubt in the death of his daughter and that has to be investigated. No details about the dowry harassment is averred in the complaint.

8. It is the testimony of P.W.1 Govindan, father of the deceased, that his deceased daughter had love affair with the accused and married him. After compromise in the presence of elders, the accused and her deceased daughter were brought to the house and he gave Sridhana articles and jewels to his daughter. He used to go to the accused house on alternate days. As usual he talked to his daughter at about 8.00 p.m, on 04.01.2013, his daughter cried by stating that the two wheeler was taken away by the financier and her husband was demanding her to get money from him. For that, he answered that he would get money within two days. It is his further evidence that, at about 10.00 p.m. his daughter called and told him that her husband was asking her to remove her gold Thaali Chain by giving her the yellow thread and she was beaten up for the same, as she refused to give the gold Thaali



chain. When P.W.1 asked her that he would come to her residence for which she told that as her husband was under intoxication and told her father to come in the morning. On 05.01.2013, at about 5.30 a.m or 6.00 a.m. a phone call was received to the effect that his daughter died.

9. During his cross examination, the suggestions were posed by the accused side to the effect that no dowry harassment was made and his daughter committed suicide because of his teasing were denied by him.

10. It is in evidence through P.W.2 Seerangammal, mother of the deceased would state that after they got married they presented gold jewels and sridhana articles to her daughter. It is her further evidence that her daughter told her that her husband demanded an amount of Rs.1 lakh for the Pongal festival and she told her daughter that she would get the amount from her husband. Her daughter told her father that her husband vehicle was taken away by the financier. It is also her evidence that as the accused demanded her daughter to give the gold Thaali chain and for which her daughter refused to give the same, the accused shouted at her under intoxication by uttering "நீ செத்துப்போ" "நீ செத்துப்போ".

11. P.W.3 Suresh, brother of the deceased corroborated the evidence of P.W.1 and P.W.2. It is his evidence that the accused pledged all the jewels of his sister and demanded an amount of Rs.1 lakh from his sister as his vehicle was taken away by



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the financier. The deceased Sumitha told these details to her mother P.W.2 and she in turn promised to give the money after the Pongal festival. P.W.3 has stated that his deceased sister rang up to him on 04.01.2013 at about 10 p.m. by stating that having consumed alcohol, her husband assaulted her by demanding money and told him to take her to the father's residence by morning. He would further state that at that time the accused was present and he talked to the accused and told him not to beat his sister and he would give the money.

12. It is the evidence of P.W.4, Radhakrishnan that on 05.01.2013, at about 12.00 noon the investigation officer visited the scene of occurrence and prepared observation mahazar.

13. P.W.5 Durai, is the cousin brother of P.W.1 and he has attested in the confession statement of accused.

14. The Medical Officer who conducted postmortem on the body of the deceased is P.W.6 Dr.Govindaramanan. It has come on record through his evidence that he conducted postmortem on the body of the deceased Sumitha on 05.01.2015 at about 15.40 hours as per the request of Revenue Divisional Officer, Mettur. Except the ligature mark around the neck, he did not find any external injury. He has opined as to the cause of death that due to hanging, the deceased appeared to have died of Asphyxia.



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15. P.W.8, Mr.Suryaprakash, Revenue Divisional Officer has conducted the inquest on the body of the deceased Sumitha at the scene of occurrence. It is his evidence that he examined the relatives of the deceased Govindan, Seerangammal, Suresh and other witnesses. They have uniformly opined that there is no dowry harassment.

16. P.W.10, Thiru.Muthukaruppan, Deputy Superintendent of Police, Omalur took up the case for investigation. On receipt of the F.I.R., he proceeded to the scene of occurrence at about 11:00 a.m.. He visited the scene of occurrence in the presence of Radhakrishnan and Settu and prepared observation Mahazar and rough sketch at about 11:45 a.m. He examined the witnesses Govindan, Seerangammal, Suresh, Samikannu and Settu and recorded their statement. For further investigation he sent the case records to the Inspector of Police, Tharamangalam.

17. P.W.11 Thiru.S.Purushothamman, Inspector of Police of Royapettah Police Station took up the case for further investigation and examined witnesses Govindan, Seerangammal, Suresh, Sankar and Radhakrishnan. He altered the charge to Section 306 of I.P.C. The accused was arrested on 07.04.2013 at about 8:00 a.m. and on interrogation he gave voluntary confession which was recorded in the presence of witnesses Durai and Ilangovan. It is his further evidence that based on his confession, he was taken to his residence where he handed over a saree and



Mangal Sutra which were kept in a polythene bag was seized from the accused at 10.30 hours on the same day, in the presence of witnesses Durai and Ilangovan.

Thereafter, he was sent to the Judicial Magistrate along with the case properties for Judicial custody. The said witnesses were examined and their statements were recorded. He examined the Police officers and recorded their statements. Postmortem certificate which was obtained from the Doctor and on examination his statement was recorded by him. He laid final report against the accused u/s.306 of I.P.C.

18. The defence witness Iruasa Gounder D.W.1 would state that one day at about 5.30 a.m, when he came out from his house he saw the accused was knocking at his bedroom door and he could hear the children crying. He went to the accused house and he called Sumitha. When he peeped into the knocked door through torch, he found the body of Sumitha was hanging from the fan hook. The body was lifted down both by him and by the accused and found that Sumitha was found to be not alive.

19. It is the prime contention of the learned Senior counsel for the appellant that as per the evidence of P.W.1, on 04.01.2013 at about 8.00 p.m. the deceased talked to P.W.1 through phone and by 10.00 p.m., he rang up to his daughter and came to know that the accused demanded money for repayment of two wheeler loan : that in order to re-pay the debt, the accused demanded her to remove her gold Thaali chain and when she refused to give him the gold Thaali chain he uttered that " ஸ்ரீ



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ஒரே பெண் என்று தான் வசதியாக இருக்கலாம் என்று நினைத்து உன்னை

திருமணம் செய்தேன். உன் அப்பா என் தேவைக்கு காசு கொடுக்கவில்லை.

உன்னை திருமணம் செய்து எந்த பிரயோஜனமும் இல்லை நீ செத்து தொலை

நான் வேறு திருமணம் செய்து நிம்மதியாக இருக்கிறேன் என்று சொல்லி என்

மருமகன் என் மகளை அடித்ததாக என் மகள் என்னிடம் சொன்னாள். "

20. It is also discernible from the evidence of P.W.1 that his daughter's phone number was collected from him and no call detail records of the deceased Sumitha and himself were collected and marked. No doubt had the call detail records been marked, it would lend some support in strengthening the prosecution case. Since because the said details were not marked by the prosecution, the cogent evidence of father, mother and brother of the deceased cannot be thrown out. I find no force in the arguments of learned Senior counsel for the appellant.

21. As per the prosecution case, P.W.1 had talked to his daughter on 04.01.2013 at about 8.00 pm. And she told that the two wheeler was taken away by the financier and the husband of the deceased (the accused) demanded money for the same. It is also the case of the prosecution that at about 10.00 p.m., the deceased Sumitha rang up to P.W.1 and told him that her husband with the Mangal Sutra in his hands was demanding her to remove the gold Thaali chain and to give it to him and shouted at her as mentioned supra. It is the argument of the learned Senior Counsel



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Mr.Rajarathinam appearing for the appellant that had it been true that the parents and the brother of deceased would have rushed to the residence of the accused.

22. For the said contention, Mr.Udaya Kumar, learned Government Advocate (Crl. Side) replied that when P.W.1, father asked his daughter whether he would come to her residence she told him that as her husband was under intoxication and told him not to come during night and to come on the next day morning. The answer of the deceased is said to be convincing.

23. That apart, P.W.3 brother of the deceased Suresh would state that the jewels gifted to her sister were pledged by the accused. Throughout the evidence of P.W.1 to P.W.3, no allegation of dowry demand was said to have been made till the third week of December 2012. It is the evidence of P.W.2 Seerangammal that during the Pongal festival, his daughter told her that "சுமார் ஒரு வாரம் முன்பு பணம் கேட்டு வந்திருப்பாள்". Except that the allegations put forth against the accused, that he was demanding money as his two wheeler was taken away by the financier and for the same he assaulted her. This evidence is not sufficient to bring home the offence u/s.498A of I.P.C.

24. It is the evidence of the father of the deceased P.W.1 that on 04.01.2013, his daughter rang up to him by 10.00 p.m. and told him that the accused demanded the deceased to remove the gold Thaali chain and give it to him and when she



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refused to do so, she was abused as mentioned supra and thereby the accused has abetted the deceased in committing suicide. As mentioned supra these details have been spoken out by P.W.2 and P.W.3 also and as per the prosecution witnesses, the torturous behaviour of the accused compelled the deceased to commit suicide. Whenever a married women commits suicide within seven years of marriage, the presumption u/s.113 A of the Evidence Act, 1872 does not automatically apply. The laudable object beyond that section is that in a case where the married women committed suicide within seven years of marriage if she is shown to have subjected to cruelty, the Court may presume in given circumstances to the case, such suicide was abetted by such person. The law is settled that invocation of the presumption has to fulfil the proximity test. It is not the case of prosecution that till the third week of December 2012, there was no dowry harassment. Whether based on the statement made by the husband to the effect that "நீ ஒரே பெண் என்று தான் வசதியாக இருக்கலாம் என்று நினைத்து உன்னை திருமணம் செய்தேன். உன் அப்பா என் தேவைக்கு காக கொடுக்கவில்லை. உன்னை திருமணம் செய்து எந்த பிரியோஜனமும் இல்லை நீ செத்து தொலை நான் வேறு திருமணம் செய்து நிம்மதியாக இருக்கிறேன் என்று சொல்லி என் மருமகன் என் மகளை அடித்ததாக என் மகள் என்னிடம் சொன்னாள். " whether that can be considered as inducement having a direct nexus to the suicide. There is no evidence of persistent torture.



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25. It is relevant to refer to the judgment of Hon'ble Supreme Court in **Sanju Alias Sanjay Singh Sengar V. State of Madhya Pradesh** reported in **2002 (Crl.) L.J.2796** it has been observed by the Apex Court that the accused told the other person ' to go and die'. It was held that this would not satisfy the ingredients of inducement. Inducement has to be with *mens rea*. The suicide was committed two days after the quarrel between the accused and the deceased. This also showed that the suicide was not the direct result of the quarrel. The suicide note indicated that her husband was a frustrated man and given to drinking and suffered from great stress and depression.

26. This Court is conscious of the fact that assault on a women offends her dignity. It is discernible from the evidence of P.W.1 to P.W.3 that as the installment payment for the two wheeler was not paid by the accused, the two wheeler was taken away by the financier. In order to repay the loan, he demanded to his wife Sumitha to give him her gold Thaali chain and assaulted her.

27. It is pertinent to note that during the enquiry of the Revenue Divisional Officer, P.W.1 and P.W.2 have stated that there is no dowry demand made by the accused. P.W.1 has stated that the deceased Sumitha rang up to him and told him that the accused demanded to his daughter to remove the gold Thaali chain. Whereas, P.W.3, Suresh has stated that as his sister, deceased Sumitha rang up to



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him as mentioned supra. It is the evidence of P.W.2 Seerangammal that her daughter used to ask her anything and she would in turn convey the matter to her husband.

28. No other evidence of physical or mental torture was alleged. It is the evidence of P.W.3 Suresh, brother of the deceased Sumitha that all the jewels that were gifted to Sumitha were pledged by the accused. It is also inferable from the evidence of P.W.1 father of the deceased that the vehicle which was purchased through financier was taken away by them, obviously because of non-payment of the dues. Adding to that he was under intoxication, assaulted her and demanded her to remove her gold Thaali chain. Whether this one commission is sufficient to bring home the offence u/s.306 of I.P.C. It is not the case of the prosecution that before 31.12.2012, the accused tortured her either for dowry or for any other thing.

29. When that be the case, as she was brought up by P.W.1 in a better way with so much of dreams and expectations got married her fiancé, but contrary to her expectation they had financial crisis and the deceased had lost charm in her life with her husband and she committed suicide. It would be dangerous to conclude that the utterance of accused would amount to cruelty or could come in the mischief of abetment for commission of the suicide. There was no evidence of any other act of cruelty and the abetment by her husband could not be inferred. Therefore, in the interest of justice, the conviction of accused u/s.306 of I.P.C. is not possible. Therefore, based on the aforesaid observation, this Court is of the view that the



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charges u/s.498 A and 306 of I.P.C are not proved beyond reasonable doubt and the accused is ordered to be acquitted u/s.235(1) of I.P.C.

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RAP

Index : yes/no

Speaking order/Non-speaking order

NCC : Yes/No

To

- 1.The Mahila Court, Salem.
- 2.The Inspector of Police, Thavamangalam.
- 3.The Public Prosecutor, Madras High Court.



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R.KALAIMATHI, J.,

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