



CRL.A(MD).No. 311 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	21.11.2023
Pronounced On	:	27.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No. 311 of 2022

and

CrI.M.P.(MD).No.9440 of 2023

1. Perumal

2. Lingappan

... Appellants/Accused No.1 & 2

Vs.

State, rep. by

The Inspector of Police,

M.Chattrapatti (Oomachikulam) Police Station,

Madurai District.

Crime No.360/2011

... Respondent/Complainant

Prayer : This Criminal Appeal has been filed under Section 374(2) of Cr.P.C., to call for the records and set aside the conviction and sentence passed against them by the Learned Sessions Judge, Mahalir Neethimandram, Madurai District, dated 28.02.2022 in S.C.No.80/15 by allowing the present criminal appeal.

For Appellants : Mr.M.Subash Babu,
Senior Counsel
for M/s.Subash Law Office

For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor



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JUDGMENT

The appellants/Accused Nos.1 and 2 in S.C.No.80 of 2015, dated 28.02.2022, on the file of the Learned Sessions Judge, Mahalir Neethimandram, Madurai District, have filed this appeal challenging the conviction and sentence imposed against them for the offences under Section 306 of IPC to undergo seven years Rigorous Imprisonment each and to pay a fine of Rs.25,000/- each in default to undergo one year simple imprisonment each.

2.The brief facts of the case:

The second appellant/A2 married the deceased in the year 2002. During the marriage, two children were born. After the marriage, A1, namely the first appellant herein being the father-in-law of the deceased started to give sexual torture to the deceased. Therefore, the victim immediately informed her husband/A2, A2 has not taken the same seriously and A1 continuously gave sexual torture to the deceased. The deceased also informed to her mother-in-law and the sister-in-law, who were arraigned as Accused No.3 and 4 in S.C.No.80 of 2015. During the pendency of S.C.No.80 of 2015, A3/mother-in-law of the deceased died.



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They also did not mind the grievance of the deceased. But, they advised her to adjust with the A1 and also all the accused abused the deceased as she blamed A1 and instigated her to commit suicide. The above sequence of the events was informed by the deceased to her mother/P.W.1 and her relative/P.W.6. Even after that, A1 continued to give sexual torture to the deceased. Unable to bear the sexual torture meted out to her by A1 and A2's failure to help her from the said sexual torture, the deceased became heart broken and committed suicide by pouring kerosine on her and setting herself ablaze on 02.05.2001, at 12.00 noon at the house of the accused at Velichanatham Village. At that time, one of her daughter aged about 7 years attempted to rescue her mother, but, the young girl also sustained burn injuries. As a result, both of them died. Hence, P.W.1/sister of the deceased lodged a complaint marked as Ex.P.1 to the respondent Police at 15.30 hours, which was received by P.W.12/the Sub Inspector of Police, M.Chatrapatti Police Station. On the basis of the complaint given by P.W.1, FIR in Crime No.360 of 2011 was registered for the offence under Section 174 of Cr.P.C., and the same was marked as Ex.P.6. After registration of the case under Ex.P.6, he forwarded the same to P.W.13/the investigating officer and also to the learned Judicial Magistrate. P.W.13, after the receipt of the express FIR at 11.00 p.m, on 02.05.2011, went to the mortuary, at



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Government Rajaji Hospital, Madurai, on 03.05.2011 at 06.00 a.m and conducted inquest in the presence of Panchayatars and prepared the inquest report marked as Ex.P.7. On the same day, at 08.00 a.m, P.W.13 conducted another inquest for the deceased young girl and the said inquest report has been marked as Ex.P.8. After that, he sent two dead bodies for post-mortem.

2.1.P.W.13 examined the witnesses and recorded the statements in parallel. Thereafter, he altered the Section 174 of Cr.P.C., into Section 306 of IPC. The alteration report was marked as Ex.P.9. P.W.13 requested the Executive Magistrate to send the FIR to the jurisdictional Judicial Magistrate No.2, Madurai. In continuation of the investigation, P.W.13 inspected the place of occurrence in the presence of one Murugan (died later) and Alagar/P.W.7 and prepared observation mahazar and rough sketch marked as Ex.P.10 and Ex.P.11. On 03.05.2011, at 12.00 noon, P.W.13 recovered green colour plastic Kerosene Can under Ex.P.12 and the Kerosene can is marked as P.M.O.1. P.W.13 examined the remaining witnesses and recorded the statements and sent plastic Can under Form-95 marked as Ex.P.13. In the mean time, all the accused had absconded. On 04.05.2011, P.W.13 arrested the appellants at Thondamanpatti Villaku bus



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stop at 06.00 a.m and produced them for remand. P.W.13 examined Dr.Muhamed Yusaf and recorded his statement and also examined Police constables/P.W.8 and P.W.9. Thereafter, P.W.13 was transferred to some other police Station. Hence, P.W.14 continued the further investigation and he also examined all the witnesses and examined the Docotors/P.Ws.10 and 11 and received post-mortem certificate and final opinion for both dead bodies, which are marked as Ex.P.2 to Ex.P.5. Thereafter, he collected all the materials and filed the final report before the learned Judicial Magistrate No.2, Madurai, and the the learned Judicial Magistrate took the same on file in P.R.C.No.56 of 2014. The learned trial Judge issued summons to the accused and after their appearance, served the copies under Section 207 Cr.P.C. Thereafter, the case was committed to the learned Sessions Judge, Mahalir Neethimandram, Madurai District. The same was taken on file and numbered as S.C.No.80 of 2015. Thereafter, he framed necessary charges and questioned the accused. The accused pleaded not guilty and they stood for trial.

3.To prove the case, the prosecution examined P.W.1 to P.W.14 and exhibited 13 documents as Ex.P.1 to Ex.P.13 and produced 1 material object as M.O.1. The learned trial Judge thereafter questioned the accused



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under Section 313 Cr.P.C., proceedings by putting the incriminating evidence available from the evidence of prosecution witness and documents against them and they denied the same as false and thereafter, the case was posted for examination of the witnesses on the side of the accused. On the side of the accused, they neither examined any witnesses nor produced any documents.

4.The learned trial Judge, on considering the oral and documentary evidence, convicted and sentenced the appellants for the offence as stated supra. Aggrieved over the same, the appellants have preferred these appeals.

5.Mr.M.Subash Babu, learned Senior Counsel appearing on behalf of the appellants submitted that absolutely there is no evidence adduced on the side of the prosecution to prove the ingredients under Section 306 of IPC. The learned Senior Counsel elaborated the arguments that there was no proximate instigation on the side of the appellants. Hence, the learned Senior Counsel placed reliance on the judgment of the Honourable Supreme Court in the case of *Mariano Anto Bruno and Another Vs. The Inspector of Police*, reported in *2022 8 Supreme 347 and* argued that as



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per the law laid down by the Honourable Supreme Court, in the case on hand, not only any positive action in close proximity to the time of suicide is absent but also there was no evidence for any continuous physical or mental torture meted out to the deceased by the appellants. In the said circumstances, merely on allegation of sexual harassment without their being any positive action in close proximity to the time of the occurrence on the part of the accused which led or compelled the person to commit suicide, the conviction in terms of Section 306 of IPC is not sustainable. Hence, the learned senior counsel seeks for acquittal of the appellants.

6.The learned Additional Public Prosecutor appearing on behalf of the respondent submitted that the occurrence took place in the matrimonial home. The evidence of P.W.1 is clear that the deceased was subjected to sexual harassment by A1. The same was also duly informed to A2/husband of the deceased. A2, without taking any steps to admonish A1 namely his father, did not bother about the sexual torture continuously given by A1 to the deceased. Therefore, taking advantage of the said omission on the part of the husband/A2, A1 continuously made sexual torture to the deceased. The same was duly informed by the deceased to P.W.1 and P.W.6. Even 10 days prior to the death, she left A2 in a huff and stayed in the house of P.W.



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6 for four days. Thereafter, P.Ws.1 and 6 advised A2 to come to the aid of his wife. But, there was no efforts on the part of A2. Hence, without any other option, the deceased committed suicide by self immolation. Unfortunately, her daughter/the younger girl aged about 7 years, in order to save her mother also sustained burn injury and died. The entire episode of the above incidents is due to the sexual torture given by A1 and the failure of A2 to take necessary action to control A1, who was the main cause for the entire episode. The same was properly proved through the evidence of P.Ws.1 and 6. Hence, the learned trial judge considered all the aspects and correctly convicted the appellants. The learned trial judge also considered all the circumstances by placing reliance of the Supreme Court judgment reported in **2010 3 SCC (Cri.) 258**. Hence, there are no infirmities in the judgments of the Court below. Hence, the judgment of the conviction and sentence passed against the appellants by the Court below has to be confirmed.

7.This Court considered the rival submission and also perused the records and the impugned judgment and the precedents relied upon by the appellants.



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8. Now the question in this case is whether the conviction and sentence passed against the appellants by the Court below under Section 306 of IPC is in accordance with law?

9. The deceased is Petchiammal. P.W.1 is her sister and P.Ws.2 and 6 are her uncles. The deceased married A2 herein in the year 2002. P.W.1 deposed as follows :

“அதன் பிறகு என் தங்கையின் மாமனார் அவருடைய சந்தோசத்திற்காக என் தங்கையை அவருடன் தப்பான உறவு கொள்ள அழைத்தார். அதை என் தங்கை அடிக்கடி எங்களிடம் சொல்லி அழுதார். நாங்கள் போய் கண்டிப்போம் அதற்கு என் தங்கையின் மாமியார் ஊரில் நடக்காததா என்று கேட்பார். நானும் என் கணவரைவிட்டு பிரிந்து சம்பவ சமயத்தில் என் அப்பாவுடன் இருந்தேன். அதனால் என் தங்கைக்கு அவ்வப்போது திரும்பி வரும்போதெல்லாம் அவளுக்கு அறிவுரை கூறுவேன். சுமார் ஐந்து, ஆறு முறை மேற்கண்ட காரணத்தினால் என் தங்கை வீட்டிற்கு வந்துள்ளது. நாங்கள் எதிரிகளை கண்டித்து அவளை அவர் வீட்டில் விட்டுவிட்டு வருவோம். 2வது எதிரி அவ்வப்போது மது அருந்திவிட்டு தங்கையை டார்ச்சர் செய்தார். நாங்கள் 2வது எதிரியிடம் 1வது எதிரியின் செய்கையை குறித்து முறையிட்ட போது அவர் என் தங்கையை இதில் என்ன இருக்கு என் அப்பாவிடம் அட்ஜெஸ்ட் செய்து கொள் என்று சொல்லி டார்ச்சர் செய்தார்”.



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“போலீசார் விசாரணையில் என் தங்கைக்கு திருமணம் நடந்து இரண்டு வருடம் கழித்து 1வது எதிரி என் தங்கையை தவறான உறவுக்கு அழைத்தார் என்று சொல்லியுள்ளேனா என்றால் சொல்லியுள்ளேன். போலீசார் விசாரணையில் என் தங்கையை 2005 முதல் தான் இறக்கும் வரை எத்தனை முறை 1வது எதிரி அவரை அழைத்தார் என்றால் என் தங்கையை திருமணம் செய்து கொடுத்த 2 வருடத்திலிருந்து இதே பிரச்சினை தான்”.

10.The evidence of P.W.2 and P.W.6 also corroborated the said version. The above evidence of P.Ws.1, 2 and 6 are cogent and trustworthy. They specifically deposed and also withstood the cross examination of the accused and deposed that A1/father-in-law had been continuously giving sexual torture to the deceased and all along he forced her to have sexual intercourse. The same was informed by the deceased to the other accused. They have not heeded and hence, she informed P.Ws.1, 2 and 6. She left the matrimonial home 10 days prior to the occurrence on account of the sexual torture given by A1. Thereafter, A2 came and took the deceased to the matrimonial home. In spite of the request made by the deceased, A2 has not taken any steps to condemn the act of A1, on other hand, he asked her to adjust with A1. A2 is unemployed and he asked her to live in the



matrimonial home just to accommodate A1. The deceased without any other option, committed suicide. The Honourable Supreme Court, in the case of ***State of Madhya Pradesh Vs. Guman and others*** reported in ***(2010) 3 SCC (Cri.) 258***, has held that totality of the circumstance have to be considered in determining the instigation to commit suicide and the same is as follows:-

16.The totality of the evidence suggests that such a serious provocation would be enough for an ordinary woman in the Indian set-up to do what the deceased is stated to have done.

*17.It is only today this Court has been pleased to deliver a judgment in **Gurpreet Singh Vs. State of Haryana** more or less on an identical situation and recorded therein that in spite of the legislative acceptance of the social situation this lust for money of one Section of people has led the crave (sic) of bride-burning on an ascending scale rather than a descending one. This Matter also is no exception.*

11.The continuous of the sexual torture of the father-in-law of the deceased is a material circumstance to prove the abetment to commit suicide. Further, the accused never gave explanation during questioning



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under Section 313 Cr.P.C. She committed suicide in the matrimonial home.

Except the above cause, no other cause was pleaded by the accused. P.Ws.

1, 2 and 6 are the competent persons to speak about the incidents that took place between the deceased and A1 and A2. The deceased made a complaint before the occurrence. Even 10 days prior to the occurrence, she specifically told about the sexual torture and the indifferent act of A2 not taking any steps. Section 8 of the Evidence Act reads as follows:

illustration (j) of Sec.8 of Indian Evidence Act

1872 is stated as follows:

(j) The question is, whether A was ravished.

The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made, are relevant.

12.From the above, it is clear that the statement made by the deceased relating to the sexual torture is admissible under Section 8 of the Evidence Act and the same is fortified by the judgment of this Court in the case of **Balasubramanian Vs. State** reported in **2014 2 L.W. (Crl.) 253**, in the following terms:



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“To sum up, statements which are complaining in nature made by married woman to her parents or relatives cannot be stated as hearsay but they are relevant under Section 8 of the Evidence Act.”

12.1.It is specific case of P.Ws.1, 2 and 6, that there was continuous sexual torture and the same was informed by the deceased. Hence, in all aspects, the prosecution clearly proved the case beyond reasonable doubt.

13.Hence, as per Section 109 of IPC, both the appellants are liable to be convicted under Section 306 of IPC. At the instigation of A1 and because of the illegal omission on the part of the A2, she is said to have committed suicide. When a woman starts living in a matrimonial home, the moral duty of the father-in-law and mother-in-law is to treat her as a daughter. The deceased had no father. In the said circumstances, A1 is expected to act as an affectionate father but, A1 was sexually perverted and hence, he caused continuous torture to the deceased. The deceased tolerated all the torture but, she was pushed to no tolerance level and committed suicide to save her chastity. Hence, the learned trial judge correctly convicted the appellants under Section 306 of IPC.



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14.If A2/husband had taken appropriate steps, the deceased would not have committed suicide and would have lived peacefully without any kind of torture from the father-in-law. But, A2 has not taken any steps and he is the duty bound to protect the deceased from the savage act of A1. His Act amounts to intentional and illegal omission. The learned trial Judge correctly held that both are liable to be convicted under Section 306 of IPC.

15.In this aspect, the learned Senior Counsel relied the judgment of the Honourable Supreme Court reported in **2022 8 Supreme 347**. The said judgment is not applicable to the facts of present case. In this case, there is continuous sex torture by A1 to the deceased. The same was clearly deposed by P.Ws.1, 2 and 6. Finally, 10 days prior to the occurrence, there was an incident of sexual torture by A1 to the deceased. Hence, she left the matrimonial home and lived in P.W.6's house. At that time, A2 came and took the deceased to the matrimonial home. Even, thereafter, the sexual torture continued. Hence, the deceased had no other option but to commit suicide. Therefore, the learned Senior Counsel's submission that there is no proximity cannot acceptable in this case. The same is to be considered on factual basis and the totality of the circumstance are to be



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considered to convict the appellant under Section 306 of IPC as held by the Hon'ble Supreme Court. The learned trial judge considered the same. This court finds no merit in the submission of the learned Senior Counsel and there is no need to interfere in the conviction and sentence.

16. Accordingly, this Criminal Appeal is dismissed and the conviction and Sentence passed against the appellants in S.C.No.80 of 2015, dated 28.02.2022, by the Learned Sessions Judge, Mahalir Neethimandram, Madurai District, is confirmed. The bail bond granted shall be cancelled and the trial Court is directed to secure the accused and confine him in prison to undergo remaining period of imprisonment. Consequently, the connected criminal miscellaneous petition is closed.

27.02.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1. The Learned Sessions Judge,
Mahalir Neethimandram,
Madurai District.
2. The Inspector of Police,
M.Chattrapatti (Oomachikulam) Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court, Madurai.
5. The Superintendent,
Central Prison,
Madurai.
6. The Judicial Magistrate No.2, Maduria.



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K.K.RAMAKRISHNAN,J.

vsg/sbn

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