

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2016

CORAM

THE HON'BLE DR.JUSTICE P.DEVADASS

Crl.A.No.610 of 2014

Rajasekar

... Appellant/Accused

Versus

State represented by  
The Inspector of Police,  
P.6 Kodungaiyur Police Station,  
Chennai.  
(Crime No.331 of 2011)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C to set aside the conviction and sentence imposed on the appellant/accused by a judgment dated 29.10.2014 in Sessions Case No.459 of 2013 passed by the learned Additional Sessions Judge, Mahila Court, Chennai.

For Appellant : Mr.S.N.Arunkumar

For Respondent : Mr.P.Govindarajan  
Additional Public Prosecutor

JUDGMENT

The sole accused in the Sessions Case in S.C.No.489 of 2011 on the file of the learned Additional Sessions Judge, Mahila Court, Chennai is the appellant.

2. After trial, the learned Additional Sessions Judge convicted and sentenced the appellant as under

| S.No. | Conviction | Sentence                                                                                                          |
|-------|------------|-------------------------------------------------------------------------------------------------------------------|
| 1.    | 498 (A)    | 3 years R.I. fine Rs.5000/- i/d 3 months S.I.                                                                     |
| 2.    | 306 IPC    | 10 years R.I. and fine Rs.10,000/- i/d 6 months S.I.<br><br>Both the sentences were directed to run concurrently. |

3. The case of the prosecution briefly runs as under :

(i) The deceased is the daughter of P.W.1. On 26.2.2007, the deceased married the accused, a close relative of her. The couples were blessed with a male child. He is a coolie. Quarrel used to arise between the spouses as he did not give his salary properly to his wife. Quarrel also used to arise between them since the accused had not redeemed her jewel which he had pledged for his sister's marriage. P.W.1 used to give some small amounts to her daughter.

(ii) On 18.3.2011 evening, P.W.1 visited her daughter's house. The accused came after his work. As usual quarrel arose between them. P.W.1 pacified them and left.

(iii) On 19.3.2011, at about 6 a.m., P.W.4 told P.W.1 that her daughter attempted suicide.

(iv) At the Government Stanley Hospital, Chennai, P.W.8 pronounced that the deceased is already dead (Ex.P.3 Accident Register Copy).

(v) On 19.3.2011, at about 8 a.m. at P.6 Kodungaiyur Police Station, Chennai P.W.1 gave Ex.P.9 complaint to P.W.5 S.I. of Police. He registered a case of suspicious death under section 174 Cr.P.C.(Ex.P.10 F.I.R.). He recorded her statement.

(vi) P.W.13 Assistant Commissioner of Police took up his investigation. He gave requisition to P.W.11 P.A. General to Collector, Chennai to conduct the inquest.

(vii) In the meanwhile, P.W.13 visited the scene place. In the presence of P.Ws.7 and 10, he prepared Ex.P.11 Observation Mahazar. Drew Ex.P.12 Rough Sketch of the scene place. P.W.13 recovered M.O.1 saree from the scene place in the presence of said witnesses under Ex.P.13 Mahazar. He examined further witnesses and recorded their statement.

(viii) At the Mortuary, in the Government Stanley Hospital, Chennai, P.W.9 conducted postmortem on the dead body of the deceased. He certified that she had committed suicide (Ex.P.4 Postmortem Certificate).

(ix) P.W.11 opined that the deceased had committed suicide due to quarrel between the spouses. (See Ex.P.7 and P8).

(x) P.W.13 altered the section of law to Section 498A and 306 IPC (Ex.P.14 Alteration Report). On 23.3.2011, P.W.13 had arrested the accused near Easwaran Koil in Kodungaiyur. He sent the accused to Court for judicial custody. Concluding his investigation, P.W.13 filed the Final Report in this case before the Court.

4. The Committal Court supplied copies of documents to the accused under section 207 Cr.P.C. Since the offence is exclusively triable by a Court of Sessions, under section 209 Cr.P.C. the Court has committed the case to the Court of Sessions, Chennai. The case was made over to the Additional Sessions Judge, Mahila Court, Chennai.

5. The learned Additional Sessions Judge upon hearing both sides and on consideration of the case records framed charges under sections 498A and 306 IPC as against the accused. The accused pleaded not guilty to the charges.

6. Prosecution examined P.Ws.1 to P.W.13, marked Ex.P.1 to P.14 and exhibited M.O.1.

7. When the accused was examined on the incriminating aspects in the prosecution evidence, the accused denied the offences. The accused did not let in any defence evidence.

8. Considering the arguments placed by both sides and the evidence adduced, the Trial Court convicted and sentenced the accused as already stated.

9. The learned counsel for the appellant would contend that there is no legal evidence to convict the accused under section 498-A IPC. There is no evidence that the accused had abetted commission of suicide by his wife. P.Ws.1 to 3 are closely related to the deceased. They are highly interested witnesses. At every stage of the case, they have improved their evidence.

10. The learned counsel for the petitioner further contended that even taking the allegations in the F.I.R. as well as in the evidence projected by the prosecutor as such, namely, the accused is a drunkard, he did not give his entire salary to his wife to run the family and he has not redeemed his wife's jewels and the usual family quarrel between them will not amount to abetment under Section 306 IPC. The prosecution has failed to establish the charges levelled against the accused beyond all reasonable doubts.

11. In support of his submissions, the learned counsel for the appellant cited *Mani Vs Inspector of Police, J-3 Guindy Police Station, Chennai* (2014 (3) MLJ (Cr1) 18) and *Ravikumar Vs. Inspector of Police, Pennadam Police Station, Cuddalore District* (2015 (3) MWN (Cr1.46)).

12. On the other hand, the learned Additional Public Prosecutor would submit that the accused had both physically and mentally harassed his wife. P.W.1 had stated that the accused had beaten her daughter in her presence. The accused had continuously tortured his wife. It was unbearable. In the circumstances, the victim had no other go except to commit suicide. Thus she has committed suicide. Thus, the Trial Court has rightly convicted and sentenced him.

13. I have anxiously considered the rival submissions, perused the Trial Court's Judgment and the entire materials on record and the decisions cited.

14. Now, the question is whether the prosecution has established the charges under section 498-A and 306 IPC as against the accused beyond all reasonable doubts.

15. Deceased and the accused are close relatives. The deceased is the daughter of P.W.1. P.W.2, is the brother of the deceased. P.W.3 is the paternal uncle of the deceased. They were residing in Kodungaiyur, Chennai in nearby houses. The accused is a coolie. On 26.2.2007, he married the deceased. The couples were blessed with a male child.

16. On 19.3.2011, early morning the deceased was found hanging in her matrimonial home. At the Hospital, it was declared that she had died already.

17. The gravamen of the charge against the accused is that he had ill-treated his wife and unable to put up with this she had committed suicide. The accused is alleged to have abetted the commission of suicide by his wife.

18. Section 498-A IPC runs as under :

"498-A. Husband or relative of husband of a woman subjecting her to cruelty - whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation - For the purposes of this Section, 'cruelty' means -

(a) any willful conduct which is of such a 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; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

19. It will be clear from the language of Section 498-A, IPC, that if an husband or his relatives subjects his wife to cruelty, he shall be punished with imprisonment upto 3 years and also liable for fine. The Explanation to Section 498-A IPC defines 'cruelty'. It means any of the acts mentioned in Clause (a) or Clause (b). (See Ravikumar Vs. State (2015 MWN 484).

20. In Manju Ram Kalita V. State of Assam, 2009 (13) SCC 330, in Paragraph Nos.14, 15 & 18, the Hon'ble Supreme Court observed as follows :

"The elements of cruelty so far as Clause (a) is concerned, have been classified as follows :

(i) any "willful" conduct which is of such a nature as is likely to drive the woman to commit suicide; or

(ii) any "willful" act which is likely to cause danger to life, limb or health, whether physical or mental of the woman.

21. In Raj Rani v. State (Delhi Administration), 2000 (1) SCC 662 : 2001 SCC (Cri) 1518 : AIR 2000 SC 2559, the Court held that while considering the case of cruelty in the context of the provisions of Section 498-A, IPC, the Court must examine that the allegations/accusations must be of a very grave nature and should be proved beyond reasonable doubt.

22. 'Cruelty' is a condemnable act. For the purpose of section 498-A IPC, cruelty relates to physical cruelty and mental cruelty. It will be an unbearable conduct affecting a woman or a person interested in her physically and mentally. But all vague acts or ordinary disputes between the spouses in their routine life cannot be passed as cruelty.

23. In Manju Ram Kalita (supra), in paragraph 17, the Hon'ble Supreme Court observed as follows :

"17. In Mohd. Hashan v. State of A.P., 2002 (7) SCC 414 : 2002 SC SCC (Cri) 1765, this Court while dealing with the similar issue held that mental or physical torture should be continuously practised by the Accused on the wife. The Court further observed as under : (SCC p. 418, Para 6):

"6. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact. The impact of Complaint, accusations or taunts on a person amounting to cruelty depends on various factors like the sensitivity of the individual victim concerned, the social background, the environment, education etc. Further, mental cruelty varies from persons to person depending on the intensity of sensitivity and the degree of courage or endurance to withstand such mental cruelty. In other words, each case has to be decided on its own facts to decide whether the mental cruelty was established or not."

24. Section 306 IPC runs as under :

"306. Abetment of suicide : If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

25. The twin requirements for an offence under section 306 IPC are (1) Suicide and (2) Abetment to commit suicide.

26. In section 306 IPC, the word 'abetment' has not been defined or explained. In Concise Oxford English Dictionary (XI Edition 2004), 'Abetment' (Abet, Abets, Abetting, Abetted, Abettor) has been explained as 'encourage or assist (someone) to do something wrong in particular to do crime'.

27. In Indian Penal Code, in Chapter V (Abetment), in Section 107 'abetment of a thing' has been explained. Though the word 'abetment' has not been defined in section 306 IPC to understand its meaning, we can refer to section 107 IPC.

28. Section 107 IPC runs as under :

"107 abetment of a thing A person abets the doing of a thing, who-

First : 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.

Explanation 1 : A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done is said to instigate the doing of that thing.

Explanation : Whoever either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to be aid the doing of that thing."

29. In Rattanlal and Dhirajlal's 'commentaries on the Indian Penal Code' (32<sup>nd</sup> Edition) (2010), at page 1735 - 1736, 'abetment', has been commented as under :

"2. Abetting Suicide

The gravamen of the offence punishable u/s.306 IPC is abetting suicide. Section 107 IPC defines abetment as comprising :

(a) instigation to commit the offence :

(b) engaging in conspiracy to commit the offence, and

(c) aiding the commission of an offence.

Abetment thus necessarily means some active suggestion or support to the commission of the offence. The word 'instigate' literally means to goad, urge forward, provoke, incite or encourage to do an act and a person is said to instigate another when he actively suggests or stimulates him to the act by any means, or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. It is

also not necessary that the instigation should be only words and may not be conduct."

30. In *Randhir Singh and Another v. State of Punjab* AIR 2004 SC 5097 : (2004) 13 SCC 129 the Hon'ble Supreme Court observed as under :

"Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In case of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC."

31. In *Ramesh Kumar v. State of Chhattisgarh* AIR 2001 SC 3837 : (2001) 9 SCC 618 : LNIND 2001 SC 2368 'instigation' has been explained by the Hon'ble Apex Court as under :

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

32. In *S.S.Chhena v. Vijay Kumar Mahajan and Another* (2010) 12 SCC 190 : LNIND 2010 SC 746 the Hon'ble Apex Court observed that :

"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 the Supreme Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit

suicide. It 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."

33. In *Amalendu Pal @ Jantu V. State of West Bengal* (2010) 1 SCC 707 : LNIND 2009 SC 1978 the Hon'ble Apex Court has opined as under :

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the Court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which let or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."

34. In *Vijay Kumar Rastogi v. State of Rajasthan* (2012) CRI.L.J. 2342 the Rajasthan High Court observed as under :

"10. The word 'urge' means to advise or try hard to persuade somebody to do something, to make a person to move more quickly or in a particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts or willful omission or conduct which may even be willful silence, until the deceased reacted, or pushing the deceased by his words or willful omission or conduct to make the deceased move forward more quickly in a forward direction. Secondly, the accused had the intention to provoke or urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly the presence of mens rea is the necessary concomitant of instigation."

35. In VijayKumar Rstogi (supra), it is also observed as under :

"13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person, who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC."

36. The offence of abetment requires 'mens rea' (guilty mind). There must be intentional doing/aiding or goading the commission of suicide by another. Otherwise, even a mere casual remark, something said in routine and usual conversation will be wrongly construed or misunderstood as 'abetment'. (See Mani Vs. State (2014 (3) MLJ (Cr1) 18)

37. In Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi) AIR 2010 SC 1446 : (2010) 3 SCC (CRI.) 367 : LNIND 2009 SC 1663, the Hon'ble Supreme Court opined as under :

"This Court had an occasion to deal with this aspect of abetment. The court dealt with the dictionary meaning of the word "instigation" and "goading. The court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straight-jacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances."

38. In M.Mohan v. State by D.S.P. Karaikudi (Supra) the Hon'ble Supreme Court observed as under :

"44. 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.

45. The intention of the Legislature and the ratio of the cases decided by this court are 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 also requires an active act or direct

act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide."

39. In *State of West Bengal v. Orilal Jaiswal* AIR 1994 SC 1418 : (1994) SCC (CrI.) 107 : LNIND 1993 SC 772 : (1994) 1 MLJ (Cr1) 187, the Hon'ble Apex Court cautioned as under :

"The Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life of committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

40. Mere reprimanding does not amount to instigation. The words stated in a fit of anger will not amount to abetment. Casual remark of husband towards his wife in the ordinary course of life will not amount to abetment to commit suicide. Because they did not say so with any mens rea. (See *Swamy Prahaladas v. State of Madhya Pradesh* (1995) Suppl. (3) SCC 438).

41. Keeping the above decisions in our mind, now we shall revert to the case at our hand.

42. P.Ws.1 to 3 would say that the accused is a drunkard. That alone is not sufficient to make him a cruel man. One may be a drunkard. But he will be a nice man. But one may not be a drunkard. But he will be a worst man. For the purpose of section 498-A IPC there must be willful conduct causing physical or mental agony, torture. But it need not be a solid incident. It need to be a continuous course of conduct. But incidents of normal wear and tear of family life will not amount to cruelty. To punish a person for any kind of cruelty, there must be acceptable legal evidence. Mere vague statements and untested allegations are quite insufficient to convict a person.

43. In this case, the allegations against the accused is that he did not provide money to his wife to run the family.

In Ex.P.10 P.W.1 stated that on 18.3.2011, she had witnessed the quarrel between her daughter and her son-in-law and she had pacified them. However, reading the entire tenor of the evidence of P.Ws.1 to 3, there used to be quarrel between the spouses. It is in connection with the accused not providing sufficient money to the deceased to run the family. P.W.1 had stated that she used to support her daughter to run her family by giving her some small amounts. It may be construed as a mother helping her daughter to run the family. But they will not be taken as cruelty under section 498-A IPC.

44. According to P.W.1, on the evening of 18.3.2011, when she had visited her daughter's house, there quarrel arose between her son-in-law and her daughter with regard to payment of salary to the deceased to run the family. The deceased wept and P.W.1 had pacified them. Thereafter, the deceased committed suicide.

45. Even as per the prosecution version, that the said incident provoked her to commit suicide. Further, the accused had failed to redeem his wife's jewels, which he had pledged for his sister's marriage. Even, if they were accepted to be true, it will not be abetment under section 306 IPC. There is no mens rea, intention on the part of accused that his wife should die. He did not provoke her, instigate her to commit suicide. An husband not earning much, not going for job or earning more but gave less to the family and use more amount for drinking may not become abetment unless there is intention on the part of the accused to force his wife to commit suicide.

46. In view of the foregoing, we hold that the prosecution has failed to establish the charges under section 498-A and 306 IPC beyond all reasonable doubts.

47. Thus, this Criminal Appeal is allowed. The conviction recorded and the sentence awarded under section 498-A and under section 306 IPC by the learned Additional Sessions Judge, Mahila Court, Chennai, are set aside. The accused is acquitted. The Superintendent, Central Prison, Puzhal is directed to release the appellant/accused forthwith, if he is not required in connection with any other case.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vrc

To

- 1.The Xth Metropolitan Magistrate,  
Chennai.
- 2.The Chief Metropolitan Magistrate,  
Egmore, Allikulam, Chennai 03.
- 3.The Principal Judge,  
City Civil Court,  
Chennai.
- 4.The Additional Sessions Judge,  
Mahila Court,  
Chennai.
- 5.The District Collector,  
Chennai.
- 6.The Director General of Police,  
Mylapore, Chennai 04.
- 7.The Inspector of Police,  
P.6 Kodungaiyur Police Station,  
Chennai.
- 8.The Superintendent of Police,  
Central Prison,  
Puzhal, Chennai 66.
- 9.The Additional Public Prosecutor,  
High Court, Madras.

+lcc to Mr.S.N.Arunkumar, Advocate, S.R.No.23240

Cr1.A.No.610 of 2014

CTK(CO)  
CA(28/04/2016)

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