

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2016

CORAM

The Hon'ble Mr. Justice M.Venugopal

Crl.A.No.144 of 2015

and

M.P.No.1 of 2015

Ayyappan

...Appellant/Accused

vs.

State rep. by

Inspector of Police,

Harithuvaramangalam Police Station,

Valangaiman Taluk,

Tiruvarur.

...Respondent/Complainant

Criminal Appeal, filed under Section 374 of the Code of Criminal Procedure against the judgement, dated 18.02.2015, passed in S.C.No.18 of 2013, on the file of the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court) Tiruvarur.

For Appellant :Mr.Ilanthirayan

for M/s.Sai Bharath and Ilan

For Respondent :Ms.M.F.Shabana

Government Advocate (Crl.Side)

JUDGEMENT

The Appellant/Accused has preferred the instant Criminal Appeal before this Court, (as an aggrieved person) as against the judgment, dated 18.02.2015, made in S.C.No.18 of 2013, passed by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court) Tiruvarur/Trial Court.

2.The Trial Court, while passing the impugned judgment on 18.02.2015, in S.C.No.18 of 2013, at Para No.25, had among other things observed as follows:-

" It is proved by the prosecution that the accused made harassment on the score of issue-less to his wife. The above harassment on the score of issue-less definitely amount to mental cruelty on the deceased. Further, the above such cruelty is such a nature to drive the deceased to commit

a suicide accordingly to her lift condition. Hence, the case of the clearly coming under the Explanation (a) to Section 498 (A) IPC. However, there is no any direct evidence to prove the intention of the accused that he was intended the suicide of the deceased. The Court may presume that the accused was abetted the suicide of the deceased as per section 113 (A) if the death occurred within seven years of marriage. In the present case, the deceased died within 1-1/2 years of the marriage, but P.W.1 and 5 made a statement before the RDO that the accused maintained the deceased properly and there is no external injury found by the doctor on the body of the deceased. In this circumstances, this Court not inclined to make such presumption in this case. "

3. By observing so, the Trial Court came to a resultant conclusion that the acts of the Appellant/Accused shall not come under the ingredients of Section 306 of the Indian Penal Code (hereinafter, referred to as 'IPC') but under Section 498-A IPC. In short, the trial Court had held that the Respondent/Prosecution had proved the charges levelled against the Appellant/Accused, in respect of an offence under Section 498-A IPC beyond reasonable doubt and convicted and sentenced him to undergo Rigorous Imprisonment for a period of two years and imposed a fine of Rs.1,000/-, in default of payment of fine, the Appellant/Accused was further directed to undergo six months Rigorous Imprisonment.

4. As a matter of fact, this Court, at this stage, very relevantly points out that the trial Court had found the Appellant/Accused not guilty of offence under Section 306 IPC and acquitted him under Section 235 (1) of the Criminal Procedure Code (in short, Cr.P.C').

5. Challenging the judgment, dated 18.02.2015, made in S.C.No.18 of 2013, passed by the trial Court, the Appellant/Accused has focused the present Criminal Appeal, primarily contending that the trial Court had committed an error in coming to the conclusion that there were materials available against the Appellant/Accused in respect of an offence under Section 498-A IPC. In fact, the trial Court's Judgment needs to be set aside, because of the simple reason that the Respondent/Prosecuting Agency had not proved its case.

6. The Learned Counsel for the Appellant/Accused takes a legal plea that the trial Court had wrongly placed reliance upon the evidence of P.W.1 to P.W.5, being the relatives of the deceased (who were interested witnesses).

7. The Learned Counsel urges before this Court that the trial Court had given a go-by to the well laid-down Principle in law that, 'no man can be convicted on presumption, and there must be concrete evidence/proof without any iota of doubt to convict an individual in respect of a particular offence, alleged'. Furthermore, in the present case, there was no necessary or valid proof and the trial Court had passed a Judgment of Conviction against the Appellant/Accused by merely resting upon assumptions and presumptions.

8. Lastly, it is contended by the Learned Counsel appearing on behalf of the Appellant/Accused that the trial Court had failed to appreciate in a real and proper perspective manner, in regard to the fact that there were no substantial materials, whatsoever, against the Appellant/Accused, to hold the commission of acts of cruelty by the Appellant/Accused against his wife (since deceased). Viewed in that perspective, the Judgment of conviction, delivered by the trial Court, much against the Appellant/Accused, is clearly an unsustainable one.

9. In response, the Learned Government Advocate (Crl.Side) for the Respondent/Prosecution submits that before the trial Court, the Respondent/Prosecuting Agency had very well established that the Appellant/Accused had committed an act of harassment, on the ground that his wife (Sivasankari) had 'no issues', and because of the said harassment, she was driven to such an extent, which forced her to commit suicide, and therefore, the act of the Appellant/Accused falls within the ambit of Explanation (a) to Section 498-A IPC.

10. In effect, the stand of the Respondent/Prosecution is that, the trial Court had rightly found the Appellant/Accused guilty in respect of an offence Section 498-A IPC, and imposed him the necessary punishment of Rigorous Imprisonment for two years, besides imposing a fine of Rs.1,000/- etc., and the same does not suffer from any legal infirmities. Therefore, the Criminal Appeal filed by the Appellant/Accused is liable to be dismissed, in the interest of justice.

11. Before the trial Court, in the main case, on behalf of the Respondent/Prosecution, witnesses P.W.1 to P.W.12 were examined and Exs.P.1 to P.10 were marked. On the side of the

Appellant/Accused, no one was examined as a witness and no exhibits were marked.

12. At the outset, this Court aptly points out that to know the entire factual gamut of the matter in the present case, it is useful to refer to the Oral Testimonies of P.W.1 to P.W.12.

13. P.W.1 (Father of the deceased/Sivasankari) had deposed before the trial Court that the Appellant is his son-in-law and the deceased/Sivasankari was his eldest daughter, and he had given her daughter in marriage to his nephew (Appellant) and at the time of her marriage, he gave 10 ½ sovereigns of Gold Jewels, a Two Wheeler (Splendour Bike) and Household Articles, worth about Rs.2,00,000/- as 'Sreedhana Articles', and that the Appellant/Accused frequently demanded money from the deceased daughter and caused harassment to her and that the Appellant/Accused used to leave his (P.W.1's) daughter in his house and they used to compromise the dispute, and lastly, after effecting compromise, within 10 days, her daughter died and when he went and saw his daughter, he found her lying on the 'Bench', and when he enquired about the same, he was informed that her daughter had died and because of the suspicion, as regards the death of his daughter, he lodged a Complaint/Ex.P.1 before the Harithuvaramangalam Police Station, Valangaiman, and that, he was examined by the Revenue Divisional Officer (R.D.O.) and he narrated the details of the happening and that, he was examined by the Police.

14. P.W.1 (in his cross-examination) had stated that he does not remember that in his R.D.O. Enquiry, he had mentioned that the Accused was keeping well of his daughter. Further, he had added that her daughter had not addressed any letter to him on the aspect of demand of dowry by the Accused.

15. P.W.2, in his evidence had stated that the deceased Sivasankari is his elder sister's daughter, and the Accused is her husband, and that on 18.05.2011, at 12 'O' clock in the night, he received an information that his sister's daughter had expired and he saw in the house of the Appellant/Accused that Sivasankari was kept lying on the bench, and he went to the Harithuvaramangalam Police Station, Valangaiman, after taking P.W.1 (Dhanabalan), his nephew and gave a complaint, stating that the Accused used to cause harassment/torture by frequently demanding the money, saying that the 'Jewels' which were given at the time of marriage were not enough, and, he used to leave Sivasankari in his house and that the Accused more often used to harass Sivasankari, because of the reason that, she had 'No Issues' and that, he was examined by R.D.O. and the Deputy Superintendent of Police, Papanasam.

16. P.W.3, in his evidence had proceeded to state that the deceased/Sivasankari was his brother's daughter, and that, the Accused was her husband, and that, on 18.05.2011 during night time, he received a phone call that Sivasankari had died and he along with his brother/P.W.1 went and saw Sivasankari kept lying on the bench. Thereafter, he along with his brother went to the Harithuvaramangalam Police Station, Valangaiman, and gave a Complaint.

17. Furthermore, it is the evidence of P.W.3 that the Appellant/Accused used to create trouble/problem with Sivasankari and would leave her in the house and they used to effect a compromise and send them back and that his brother's son left Sivasankari in her house and one week later, he received an information that the said Sivasankari had expired, and he was examined by the Police.

18. P.W.4, in her evidence had stated that the deceased/Sivasankari was her sister, and P.W.1 was her father and P.W.2 her husband, and that, the Accused is her sister's husband, and further that the Accused was hailing from Veeranam Village and her sister was given in marriage to the Accused on 11.03.2010, and that her sister/Sivasankari (since deceased) informed that the Accused harassed and scolded her, stating that she had no issues and during the month of April, the Appellant's brother son dropped Sivasankari in her house and that her, sister would give a telephone call to the Accused, and make enquiry with him, but the Accused would not enquire about her sister in that fashion and also, he would not speak of her in a proper manner.

19. P.W.4 adds in her evidence that, when she enquired her sister/Sivasankari separately, she informed that the Accused was often scolding and she used to say that she would not go to the Accused's house any more and through her brother, Sivabalagurunathan, her sister/Sivasankari was sent to the Accused' house and after 10 days, on 18th date, night, through a phone message, they came to know that Sivasankari had committed suicide by 'hanging'. Further, they went and saw her sister kept lying on a bench and the right cheek and ear portion of her sister were injured and hear stud was broken and she was examined by the Police.

20. P.W.5 (the brother of the deceased) in his evidence had stated that on 18.05.2011, at about 11.00 p.m. an information was received by him to the effect that his sister had died and they went to the house of the Accused and that, they found the deceased lying on the bench, and they lodged a complaint before

the Police, and 10 days before the occurrence, the Accused's had left the deceased in the house for the reason that she had 'no issues' and that he (P.W.5) took his sister for treatment at Mannargudi Government Hospital, and thereafter, left his sister at the Accused's house, after 7, 8 days later, his sister/Sivasankari phoned to him and stated that the Accused was scolding and beating her on account of 'no issues', to which, P.W.5 replied that he was having work and that he would come along with his father after two days. Two days later he received an death information of his sister/Sivasankari, and that he was examined by the Police.

21. P.W.5 (in his cross-examination) had stated that it was correct to state that at the time of inspecting the occurrence house, the entrance door, windows were broken and only after breaking the door, since inside a lock was put and suicide was committed, and that he had examined the witness separately.

22. P.W.6 (the elder brother of the Accused) in his evidence had stated that on the date of the complaint, Temple Festival has been conducted, and he went for that purpose, and on coming to know that Sivasankar died, came to the house and saw her, in a hanging condition, and later, after breaking the door and the windows they went inside and after severing the suicidal knot, they kept Sivasankari down and gave information to Sivasankari's house over phone and that he was examined by the Police.

23. P.W.7, in his evidence had deposed that he knew the deceased/Sivasankari as also the Accused, and that, the Police came to the scene of occurrence and asked for his signature in a blank paper. As a matter of fact, P.W.7 was treated as an 'Hostile Witness'.

24. P.W.8 (Assistant Surgeon), in his evidence had stated that, at present, he is serving as Assistant Doctor at Valagaiman Hospital and that on 19.05.2011, when he was on duty, one Rajendran of Valangaimaan Circle, Veeranam Village asked for the conduct of Post-Mortem of Iyapan's wife, Sivasankari, who committed suicide (By Hanging), and also sought for sending the inner parts of the body to the Forensic Science Examination and afternoon at 1.40 p.m. the Post-Mortem was conducted in the presence of R.D.O. Tiruvarur, and that, the deceased's face was seen swelling, in the nose, blood was oozing out; in the mouth, saliva was in a dropping state and her mouth was slightly in a open state, and on the right side portion of the neck, in the slanting portion, there was a deep blood clot, measuring 4 centimeter, caused due to the pressure caused by the knot of the saree, and the injury was not in seen in full, but it was only on the right side above the neck above, in slanting portion, and

the other parts, like hands, legs, chest and in private parts, there were no blood injury or a nail's scratch and the palms were in open condition and that the stools came out. It is the evidence of P.W.8 that he gave the Post-Mortem Report, Ex.P.2 and Viscera Report, Ex.P.3.

25. P.W.9 the Sub Inspector of Police, (Retired) in his evidence had stated that, presently, he got retired from the Police Department, and already, he served as a Sub Inspector of Police at Harithuvaramangalam Police Station, and while he was on duty on 19.05.2011, in the morning at 8 'O' clock, P.W.1, the complainant presented himself before the Police Station and gave a written complaint, which was registered by him, in Crime No.37 of 2011, under Section 174 Cr.P.C., and the First Information Report registered by him was Ex.P.4, and he sent the aforesaid First Information Report to R.D.O and to the concerned Higher Officials and that, he was examined by the Inspector.

26. P.W.10, (the Sub Inspector of Police, Retired) in his evidence had stated that he was on duty on 19.05.2011, at the Harithuvaramangalam Police Station, in P.S. Crime No.37 of 2011, under Section 174 Cr.P.C., he produced the deadbody of Sivasankari for conducting Post-Mortem, as per R.D.O's Order, at the Valangaimaan Government Hospital at 1.40 and after completion of Post-Mortem, he handedover the deadbody to the relatives and that he was examined by the Police.

27. P.W.11 (Investigating Officer) in his evidence had stated that, while he was serving as Deputy Superintendent of Police, at Papanasam, on 19.05.2011, at about 9.00 a.m., he received a First Information Report of Harithuvaramangalam Police Station, in Crime No.37 of 2011 (registered under Section 174 Cr.P.C.) and went to the scene of occurrence at Keela Street, Veeranam Village and at about 9.30 a.m. he inspected the rooms of the Accused's and also the outside of the house with the help of R.D.O. in the presence of witnesses, i) Govindraj and ii) Chandrasekaran, and prepared Ex.P.5, Observation Mahazar and Exs.P.6 and P.7, Rough Sketch, and later, examined separately, the witnesses, Dhanapalan (P.W.1), Ganesan (P.W.2), Kanagasabai (P.W.3), Sivagamasundari (P.W.4), Guru @ Sivabalagurunathan (P.W.5) Marimuthu (P.W.6), Parvatham, Anbarasan, Murugaiyan, Natarajan, and Raja, and recorded their statements, and altered the Section from 174 Cr.P.C. to 306 IPC, and sent a report to the learned Judicial Magistrate, Mannargudi.

28. P.W.11 adds that he sent a requisition to the Mannargudi R.D.O. to transmit the F.I.R to the Court. In the Report of Mannargudi R.D.O., it was mentioned that the deceased had not died due to 'Dowry Harassment' and that, he sent the

case for filing of Charge-sheet. After conducting enquiry by the Inspector, the R.D.O. Sri Ram had expired and that Ex.P.8 was the Report of the R.D.O. and the Ex.P.9, was the Inquest Report, and Ex.P.10 was the Alteration Report.

29. P.W.11 (in his cross-examination) deposed that it was incorrect to state that in R.D.O's Enquiry, the witness Dhanabalan (P.W.1) mentioned that his son-in-law had maintained his daughter in a proper condition/manner and in the R.D.O's Enquiry, it was correct to state that P.W.5 had stated that son-in-law was keeping her sister properly in his enquiry. Further, P.W.11, in his evidence had proceeded to make a mention that it was correct to state in R.D.O's enquiry, P.W.5 had stated that his sister was kept in a proper manner and further, in his enquiry, it was correct to state that P.W.5 had not stated that 10 days prior to the death of his sister, the Accused had bet Sivasankari, his sister for having 'no issue' and that he took his sister for treatment along with him.

30. It is the evidence of P.W.12 (Investigating Officer) that, while he was serving as Inspector of Police, at Valangaimaan Police Station, on 19.05.2011, he received the complaint of the complainant/Dhanapalan (P.W.1) of Veeranam, in Crime No.37 of 2011, under Section 174 Cr.P.C., registered by the Sub Inspector of Police, Thasthageer (P.W.9) and he took up further investigation and went to the place of occurrence, (Veeranam, where, the occurrence took place) and examined the witnesses Dhanapalan (P.W.1), Ganesan (P.W.2), Kanagasabai (P.W.3), Sivagamasundari (P.W.4), Guru @ Sivabalagurunathan (P.W.5) Marimuthu (P.W.6), Parvatham, Anbarasan, Murugaiyan, Natarajan, and Raja, Chandrasekaran, and Thasthageer (P.W.9.) and obtained their statements separately/individually and after examining the Dr.Ganga (P.W.8), he obtained the statement and also obtained Post-Mortem Report from him and also after conducting enquiry with Rajendran S.I. (P.W.10), he recorded his statement and after completion of investigation, laid down a 'Final Report' for offence under Section 306 IPC.

31. At this juncture, this Court's pertinently points out that in the case on hand, the First Information Report was registered as per Section 174 Cr.P.C. on 19.05.2011, at 12.30 a.m. and it was received by R.D.O. Tiruvarur on 19.05.2011 at 1.05 p.m. As such, it is patently evident that there was no delay in dispatching the First Information Report. Further, in respect of the offence under Section 498-A IPC, the essential requisites are that i) the victim was a married person (also she may be a widower). Moreover, she should have been subjected to cruelty by her husband or relatives of her husband. The term 'Cruelty' comprised/consisted of an harassment of woman with a view to coerce meeting of demand for dowry or

intentionally/deliberately practiced by the husband or relative of her husband of such a nature as is likely to lead a woman to commit suicide or to cause injuries to her limb, health or life. In this connection, this Court aptly points out that such an injury, as afore stated, may be a physical or mental one. In reality, when the husband or relatives of the husband subjects such woman to cruelty, he shall be punished with imprisonment for a term, which may extend to 3 years and also saddled with fine.

32. To establish an offence under Section 498-A IPC, the 'onus' is on the part of a Prosecuting Agency to establish 1) that the woman in question was subjected to cruelty, as specified in clause (a) or (b) to Explanation of Section 498-A IPC. 2) A woman is or was married also that, the cruelty was practiced by her husband or his relatives, as the case may be.

33. Insofar as the offence under Section 306 IPC is concerned, viz., the 'Abetment to suicide', the necessary requisites to be established by the Prosecution in a given case are that i) that the deceased committed suicide, ii) the Accused instigated or abetted for commission of suicide, iii) direct involvement of an Accused in such abetment, or instigation, is necessary. It may be out of place for this Court to make a pertinent mention that the statement of P.W.1 (Dhanabalan), and P.W.5 before the Revenue Divisional Officer was that the Appellant/Accused had maintained the deceased properly, and therefore, the act of the Appellant/Accused does not come within the purview of 'Abetment of Suicide'. However, in the present case, the Respondent/Prosecution had proved that the Appellant/Accused had scolded the deceased Sivasankari by saying more often that she had 'no issues', and because of the said continued harassment/persecution, the Appellant/Accused had committed the act of mental cruelty, which ultimately lead to the commission of Suicide of the deceased.

34. In this connection, one cannot brush aside an important fact that it is very difficult to fit in the word 'Cruelty' in a strait-jacket cast iron formula and is no wonder the said word/term is a relative one. May be that what constituted the act of cruelty in a criminal case may not be an act of cruelty in respect of an individual, as opined by this Court. The term 'Cruelty', defined in Explanation to Section 496-A IPC, enjoins harassment of woman with a view to coerce or any person related to her to comply with any unlawful demand for any property.

35. In the light of the upshot detailed qualitative and quantitative discussions, and also this Court, by looking into the evidence of Prosecution Witnesses, viz., P.W.1 to P.W.5 etc., the relatives of the deceased, comes to a consequent

conclusion that the Respondent/Prosecution had proved its case against the Appellant/Accused in respect of an offence under Section 498 -A IPC. In this regard, the finding of guilt recorded by the trial Court is flawless one in the considered opinion of this Court. At this stage, it is represented on behalf of the Appellant/Accused that the Appellant/Accused is in Prison/Duress ever since the date of the trial Court's Judgement, dated 18.02.2015, and till date, 21 months had completed.

36. Therefore, this Court, while upholding the finding of guilt rendered by the trial Court in respect of an offence under Section 498 A IPC, and taking into consideration of the representation that the Appellant/Accused had served 21 months of incarceration in the concerned Prison, comes to a resultant conclusion that the said incarceration would suffice as a means of punishment to prevent an aberration of Justice. However, this Court is not dislodging/displacing the imposition of fine of Rs.1,000/- ordered by the trial Court and the same is sustained.

37. However, the representation made on the side of the Appellant/ Accused is found to be untrue or incorrect one and since it surfaces that the trial Court in Cr.M.P.No.44/2015 in S.C.No.18/13 had suspended the sentence of two years Rigorous Imprisonment for one month only (vide order dated 18.2.2015) and also in M.P.No.1 of 2015 in CrI.A.No.144/2015, there being no suspension of sentence granted by this Court, then, the Appellant/Accused is directed to serve the punishment of 21 months Rigorous Imprisonment. In this regard, the Learned Sessions Mahalir Neethimandram (Fast Track Mahila Court), Tiruvarur is directed to secure the presence of the Appellant/Accused and to immure him in Prison.

38. Accordingly, this Criminal Appeal is allowed in part in above terms. The Prison Authorities are directed to act in terms of the Judgement passed by this Court in the present Criminal Appeal and do the needful in a diligent and got speed fashion, inasmuch as it pertains to the freedom and liberty of the Appellant/Accused and the well being of Prosecution.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Sessions Judge,
Magalir Neethi Mandram,
(Fast Track Mahila Court) Tiruvarur.
 2. -Do- Thro The Principal Sessions Judge,
Tiruvarur.
 3. The District Munsif Cum Judicial Magistrate,
Needamangalam.
 4. -Do- thro The Chief Judicial Magistrate,
Tiruvarur.
 5. The Superintendent,
Central Prison at Tiruchirapalli.
 6. The Inspector of Police,
Harithuvaramangalam Police Station,
Valangaiman Taluk,
Tiruvarur.
 7. The Public Prosecutor,
High Court, Madras.
 8. The Section Officer,
Criminal Section,
High Court, Madras.
- +1cc to Mr.Sai Bharath & Ilan, Advocate Sr.66226

Cr1.A.No.144 of 2015

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