

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2016

(Judgment reserved on 02.09.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.A.No.390 of 2015

Murugesan

.. Appellant/Accused

Vs.

State rep. by
The Inspector of Police,
All Women Police Station,
Mathimam, Coimbatore
(Crime No.29 of 2009)

.. Respondent/Complainant

Criminal Appeal filed under Section 374 Cr.P.C., against the judgment, dated 21.11.2014 in S.C.No.175 of 2010 on the file of the Sessions Court, Mahila Court, Coimbatore.

For appellant : Mr.A.Selvendran for Mr.K.Sadhananthan
For respondent : Mr.P.Govindarajan, Addl.P.P.

JUDGMENT

This Criminal Appeal is filed against the judgment dated 21.11.2014 in S.C.No.175 of 2010 on the file of the Sessions Court, Mahila Court, Coimbatore, in and by which, the appellant/accused was convicted and sentenced as tabulated hereunder:

Sl. No.	Conviction under Section	Sentence of imprisonment	Fine
1	Section 498-A IPC	one year rigorous imprisonment	Rs.2,000/-, in default, to undergo three months simple imprisonment
2	Section 306 IPC	ten years rigorous imprisonment	Rs.5,000/-, in default, to undergo six months simple imprisonment

The trial Court ordered the sentences imposed on the

appellant/accused to run concurrently.

2. The case of the prosecution leading to conviction of the appellant/accused is as follows:

The marriage between the appellant herein and the deceased Maheswari took place in the year 2007. At the time of marriage, she was given five sovereigns of jewels by her parents. Since the appellant is a drunkard, the deceased handed over the jewels for the safe custody to her sister Hemalatha P.W.2. Since the appellant was under huge debt, he was continuously harassing the deceased-wife to hand over the jewels to him in order to sell the same. Further, he has also compelled the deceased to bring another five sovereigns of jewels and Rs.20,000/- cash and also beat the deceased very often. In this regard, already a complaint was lodged in Paramakudi Police Station, but subsequently, there was compromise between the husband and wife. Even thereafter, the appellant was continuously torturing by beating her. On 22.12.2009 at about 7 p.m., the deceased committed suicide by pouring kerosene and setting fire to herself. On receiving the information over phone, P.W.1, the mother of the deceased and her relatives went to the appellant's house. On 23.12.2009, P.W.1 lodged complaint Ex.P-1, which was received by P.W.9 Inspector of Police, who registered a case under Section 174 Cr.P.C., since the death occurred within seven years of marriage. A copy of the complaint/FIR was sent to higher officials and also to the concerned Magistrate and also to the Revenue Divisional Officer. Ex.P-10 is the FIR. P.W.10 Additional Superintendent of Police took up the case for investigation. He went to the place of occurrence on 23.12.2009 at about 3.30 p.m., examined the witnesses, prepared Ex.P-2 observation mahazar and drew Ex.P-11 rough sketch. He also recovered the suicide note. On the same day evening, he altered the FIR into one under Sections 498-A and 306 IPC and prepared Ex.P-12 alteration report and forwarded the same to the concerned Magistrate. At about 7 p.m. on the same day, P.W.10 arrested the accused and recorded the statement of witnesses. On 13.01.2010, he recorded the statement of Doctor. On 09.02.2010, he recovered the specimen signature of the deceased under Form 95. After completing all formalities and after completion of investigation, P.W.10 filed charge sheet against the accused, which was taken on file by the trial Court in S.C.No.175 of 2010. During the course of trial, on the side of prosecution, P.Ws.1 to 10 were examined, Exs.P-1 to P-12 were marked and M.O.1 was produced. When the appellant/accused was questioned under Section 313 Cr.P.C., he denied his complicity in the crime. He neither examined any witness nor marked any document. Upon hearing the submissions of both sides and considering the oral and documentary evidence available on record, the appellant/accused was convicted and sentenced by the trial Court as tabulated above. Challenging the said conviction and sentence, the appellant/accused has filed this appeal.

3. Learned counsel for the appellant/accused submitted that absolutely, there is no evidence against the appellant/accused to attract the offence under Section 306 IPC. In order to attract the offence under Section 306 IPC, there should be an evidence to the effect that there is positive act on the part of the accused to induce or had intention to instigate the deceased to commit suicide. The only evidence the prosecution has relied upon is the suicide note. In this regard, learned counsel for the appellant/accused submitted that on 23.12.2009 at about 4.30 p.m., P.W.10 recovered the suicide note from the scene of occurrence. Thereafter, at about 5 p.m., P.W.10 altered the FIR from Section 174 Cr.P.C. to one under Sections 498-A and 306 IPC. Learned counsel for the appellant further submitted that Ex.P-8 inquest report submitted by the Revenue Divisional Officer does not speak about the suicide note stated to have been seized by P.W.10. Learned counsel further submitted that none of the witnesses speak about the details with regard to the recovery of the suicide note from the scene of occurrence and hence, this creates a doubt on the suicide note. Learned counsel also submitted that the alleged suicide note does not contain any single word that the appellant/accused instigated the deceased to commit suicide, so as to attract the ingredients of Section 306 IPC.

4. Learned counsel for the appellant/accused further submitted that there are contradictory statements as to who has written the complaint. As per the evidence of P.W.1, Ex.P-1 complaint has been written by the Police in the Police Station, but it is stated differently in the FIR Ex.P-10. Further, by inviting the attention to the evidence of P.W.1, learned counsel submitted that the deceased and her husband (appellant) were living happily after their marriage. This piece of evidence is totally contradictory to the allegations made in Ex.P-1 complaint. Learned counsel further contended that from Ex.P-8 inquest report of the R.D.O., it is seen that none of the neighbouring witnesses of the deceased or the appellant, complained about the ill-treatment or harassment meted out to the deceased by the appellant. Hence, the prosecution has not proved its case and he prayed for allowing the appeal by acquitting the appellant/accused. In support of his submissions, learned counsel for the appellant/accused relied on the following decisions:

(i) CDJ 2007 SC 631 = 2007(11) SCC 205 (Bhagwan Das Vs. Kartar Singh and others);

(ii) CDJ 2016 MHC 2457 (Madras High Court--Madurai Bench) (Manikandan Vs. State, rep. by the Inspector of Police, Thanjavur Distrit);

(iii) CDJ 2016 MHC 3667 (Madras High Court--Madurai Bench) (Ayyappan Vs. State, rep. by the Inspector of Police) and

(iv) CDJ 2010 MHC 2733 (Madras High Court) (Murali Vs. State, rep. by Assistant Commissioner, Chennai).

5. Countering the above submissions, learned Additional Public Prosecutor appearing for the respondent-Police submitted that the evidence available on record shows that the appellant/accused induced the deceased to commit suicide. The prosecution has adduced cogent and convincing evidence and thereby, the prosecution has proved its case beyond reasonable doubt. Learned Additional Public Prosecutor therefore submitted that the trial Court, by well-considered and valid reasons, convicted the appellant, with which, this Court may not interfere and hence, he prayed for dismissing the appeal.

6. Keeping in mind the above submissions made on either side, I have carefully considered the same and perused the materials available on record.

7. On a careful perusal of the evidence available on record, I find that the mother of the victim-deceased who was examined as P.W.1, has stated in her evidence that after marriage, the appellant/accused has given continuous torture to the deceased and demanded money and jewels from the parental house, and unable to tolerate the torture, she has committed suicide. The evidence of P.W.2, the sister of the deceased, also corroborates with the evidence of P.W.1. P.W.2 has stated in her evidence that within six months from the date of marriage, the appellant/accused started to harass the deceased and the appellant's relatives also used to harass her. Hence, unable to tolerate the harassment, she has committed suicide.

8. In order to prove the offences under Sections 498-A and 306 IPC, apart from the evidence of P.Ws.1 and 2, the prosecution has also produced suicide note M.O.1. It is the submission of the learned counsel for the appellant/accused that according to the prosecution, the suicide note of the deceased was recovered from the scene of occurrence, but the same was not referred to in the RDO report. He further submitted that the suicide note is surrounded by suspicion and therefore, the trial Court ought not to have relied upon the suicide note M.O.1 for recording the conviction against the appellant/accused. On a perusal of the materials available on record, it could be seen that the suicide note along with the specimen signature of the deceased, was sent for expert opinion and the expert was also examined as P.W.8. In Ex.P-9 expert opinion, it is stated that, "A1 to A3 and Q have all been written by one and the same person". Thus, it is clear that the specimen signature and the signature found in the suicide note belong to one and the same person. Therefore, I am not inclined to accept the submission of the learned counsel for the appellant/accused that the suicide note was not written by the deceased.

9. Now, the question that falls for consideration is as to

whether the contents of the suicide note themselves, are sufficient to convict the appellant under Section 306 IPC. Before dealing with the contents of the suicide note, it would be appropriate to extract the relevant wordings in the suicide note:

" அன்புள்ள அம்மா உன் மகள் மகேஸ்வரி எழுதுவது. என் சாவுக்கு என் புருசன்தான் காரணம். அவன் திருந்துவான் நினைத்தேன். அவன் திருந்தமாட்டான் என்று எனக்கு தெரிந்தது. அதனால் சாவதற்கு முடிவெடுத்து விட்டேன். குடிச்சட்டு வந்து என்னை கொடுமை படுத்தி தினம் குடிச்சட்டு வந்து கொடுமை படுத்தி கொள்கிறான். அதனால் எனக்கு வேறு வழி தெரியலை. என் உயிரை விடலாம் என்று முடிவுக்கு வந்துவிட்டேன். அவன் அம்மா பேச்சை கேட்டு என்னை ரொம்பவும் கொடுமைப்படுத்துகிறான். அதனால் என் சாவுக்கு காரணமானவர்களை சும்மா விடமாட்டேன். அவங்களை பழிவாங்குவேன்.இப்படிக்கு மகேஸ்வரி"

10. From a reading of the above contents of the suicide note, it conveys the meaning to the effect that the husband (appellant) alone was responsible for the death of the deceased, and as he was harassing her frequently, she had no other option except to commit suicide. In my considered opinion, just because in the suicide note, it has been stated that her husband is responsible for her death, that by itself would not be sufficient to come to the conclusion that there is positive act on the part of the appellant/accused so as to drive the deceased to go to such an extent of committing suicide. Since it has been mentioned in the suicide note that the appellant (husband) is the cause of the death of the deceased, the entire evidence has to be scrutinised, because, always there is every possibility for a person to take a decision emotionally even in a quarrel and an abrupt decision may also be taken to end one's life out of emotion. Moreover, even if there is continuous harassment by her husband, that by itself cannot be construed as inducement for the deceased to commit suicide. The positive act of the appellant/accused has to be established by the prosecution by cogent and convincing evidence to the effect that soon before her death, she was subjected to cruelty/harassment and thereby, the appellant/accused induced or intentionally aided the deceased to commit suicide.

11. In the above context, it is useful to refer a judgment of the Supreme Court, which is reported in 2010 (1) SCC 707 (Amalendu Pal Vs. State of West Bengal), relevant portion of which reads as follows:

"12. 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 led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

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." (emphasis supplied)

12. Furthermore, in the judgment of the Apex Court reported in 2011 (3) SCC 626 (M.Mohan Vs. State), with regard to bringing an accused under the purview of the offence under Section 306 IPC, the Apex Court held as follows:

"41. This Court in SCC para 20 of Ramesh Kumar (Ramesh Kumar Vs. State of Chhattisgarh (2001 (9) SCC 618 = 2002 SCC (Cri) 1088) has examined different shades of the meaning of "instigation". Para 20 reads as under: (SCC.p.629):

"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."

... ..

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."

(emphasis supplied)

13. From the dictum laid down by the Apex Court in the above decisions, it is clear that before holding an accused guilty of the 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 as to whether the cruelty/harassment meted out to the deceased/victim had left her with no other alternative except to commit suicide. Merely because there is continuous harassment, without there being any positive act on the part of the accused which led or compelled the person to commit suicide, the conviction under Section 306 IPC is not sustainable.

14. Moreover, even if we analyse the evidence of P.Ws.1 and 2, it is seen that there was only harassment by the appellant/accused, demanding dowry. Even their evidence did not reveal any positive act on the part of the appellant/accused so as to drive the deceased to go to the extent of committing suicide. Further, if the suicide note is taken into consideration, it does not show that the act of the appellant has instigated the deceased to commit suicide. On the whole, on an analysis of the evidence available on record, this Court is constrained to hold that since there is continuous harassment demanding dowry, the appellant/accused is liable to be convicted only under Section 498-A IPC and not under Section 306 IPC.

15. In the above view taken by this Court, it is not necessary to dwell into the decisions relied on by the learned counsel for the appellant/accused.

16. For the reasons stated above, the conviction and sentence imposed on the appellant/accused for the offence under Section 306 IPC are set aside and he is acquitted of the charge under Section 306 IPC. The conviction and sentence of one year rigorous imprisonment, imposed on the appellant/accused for the offence under Section 498-A IPC, is confirmed. If the fine amount of Rs.5,000/- is paid by the appellant/accused in respect of the conviction under Section 306 IPC, the same shall be refunded to him.

17. With the above observations, the appeal is partly allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Copy to

1. The Sessions Judge, Mahila Court, Coimbatore.
2. The Public Prosecutor, High Court, Madras.
3. The Inspector of Police, All Women Police Station, Mathimam, Coimbatore. (Crime No.29 of 2009)
4. The Record Keeper, Criminal Section, High Court, Madras.
- 5 The Superintendent, Central Prison, Coimbatore
- 6 The District Collector, Coimbatore
- 7 The Director General of Police
Mylapore, Chennai

+1cc to Mr.K. Sadhananthan, Advocate, S.R.No.53168

ctr(CO)
md(3/11/2016)

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