

Reserved on : 07.06.2017

Delivered on : 27.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

Criminal Appeal No. 87 of 2010

1. Balkis
2. Mohamed Ismail .. Appellants/ accused 1 and 2

Vs

Assistant Commissioner of Police
Law and Order, South Range
Salem City, Salem .. Respondent/ complainant

Prayer:- Criminal Appeal filed under Section 374 (2) Cr.P.C., to set aside the judgment of the learned Additional Sessions Judge (Mahila Court) Salem, Salem District, made in S.C.No.68 of 2009 dated 30.01.2010 and acquit the appellants from the charge under Section 306 IPC.

For Appellants : Mr.R.Rajan

For Respondent : Mr.E.Raja,
Additional Public Prosecutor

J U D G M E N T

The appellants are the accused in S.C.No.68 of 2009 on the file of the learned Sessions Judge, Mahila Court, Salem and they have been convicted for offence under Section 306 IPC., and sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.1,000/- each, in default to undergo Rigorous Imprisonment for 3 months. Challenging the said conviction and sentence, the appellants are before this Court with this appeal.

2.The case of the prosecution in brief is as follows:-

P.W.1 and P.W.2 are brothers. The deceased Kathija was their sister. P.W.3 is the brother-in-law of the deceased. At the time of occurrence, P.W.1 was working as Warden at Thiruchur Central Prison. The marriage between the deceased Kathija and Abdul Nazer was conducted on 03.6.2007 at Salem. The said Abdul Nazar is the son of the 1st accused and brother of the 2nd accused. The marriage was arranged through one Fiari John, the husband of P.W.5. At the time of marriage, P.W.1 and P.W.2 presented 8 ½ sovereigns of gold jewels and

Rs.1,00,000/- cash. After marriage, the deceased was sent to Salem along with her husband. On 09.6.2007, the deceased and her husband came to Salem. P.W.2 called over the deceased on 18.6.2007 and enquired about her marriage life. Thereafter, on 21.6.2007, he received intimation from his brother that the deceased committed suicide at Salem. Immediately, P.W.1 and P.W.2 rushed to Salem and reached there early morning on 22.06.2007 and found that the deceased committed suicide. They also found some injuries around her neck. On examination of the body of the deceased, P.W.1 found a small piece of paper kept under the panties of the deceased, in which she has stated that the accused are responsible for her death. P.W.1 immediately handed over the said piece of paper Ex.P1 to the police and also gave a complaint under Ex.P2. Translated version of Ex.P1 letter is Ex.P3.

(b) On 22.6.2007, P.W.13, Inspector of Police, received the complaint from P.W.1 and registered the case in Crime No.755 of 2007 for the offence under Section 306 IPC. Ex.P16 is the FIR. He also seized Ex.P1. Thereafter, as per the direction of

RDO, P.W.13 gave requisition to the Government hospital for postmortem of the body of the deceased. P.W.15, police constable, took the dead body of the deceased and handed over to the Salem GMKMC hospital for postmortem and after postmortem, the body was handed over to her relatives. P.W.11, Medical Officer, attached to the GMKMC hospital, conducted autopsy over the dead body as per the request of RDO, Salem and issued Exs.P.12 and P13 postmortem certificate and the chemical examination report by stating that the deceased died because of asphyxia due to hanging. P.W.12 conducted inquest over the body of the deceased and filed his report Ex.P15. P.W.14, Head Clerk of the Judicial Magistrate Court forwarded all the materials to the Forensic Science Department for examination.

(c) Thereafter, P.W.13 arrested A1 and recorded his confession. He also arrested other accused and recorded their confession statement. P.W.16, Investigating Officer, after receipt of FIR copy, commenced the investigation and went to the place of occurrence by 8.00 a.m on 22.6.2007 and also

prepared the Observation Mahazar Ex.P17 in the presence of P.W.6 and P.W.7. He also prepared rough sketch Ex.P18 and examined other witnesses. P.W.16 also received specimen handwriting of the deceased from Kerala through Courier on 27.6.2007 and sent the same to the Judicial Magistrate, Salem for forwarding the same to the Forensic Department along with requisition. P.W.16 continued the investigation and finally laid a charge sheet against the accused for the offence under Section 498 – A IPC and 306 IPC. Since the accused denied the said charges, the trial Court went ahead with the trial.

3. On the side of the prosecution, as many as 16 witnesses were examined and marked Exs.P1 to P19. On the side of the accused, 3 witnesses were examined and no documentary evidence was marked.

4. Having considered the above materials, the trial Court found the accused guilty for offence under Section 306 I.P.C., and accordingly punished them as stated in the first paragraph of this judgment. Challenging the same, the appellants are

before this Court with this appeal.

5. I have heard the learned counsel for the appellants and the learned Additional Public Prosecutor appearing for the State and also perused the records carefully.

6. The learned counsel for the appellants submitted that there is no evidence on the record to prove the charge under Section 306 IPC. There is no evidence with regard to cruelty and abetment. The learned counsel further submitted that the alleged suicidal note has not been established. Thus, the conviction of the appellant under the said charge also cannot be sustained and therefore, the judgment of the Trial Court requires interference at the hands of this Court.

7. Whereas the learned Additional Public Prosecutor, submitted that the deceased left the suicidal note Ex.P1, wherein she has clearly stated about the role of the accused in torturing her. It is submitted that the Trial Court has rightly relied upon the suicidal note and found the accused guilty under Section 306 IPC. Therefore, the learned Additional Public

Prosecutor prayed for dismissal of the appeal.

8. Originally these accused were charged for the offence under Section 498-A and 306 IPC. It is not in dispute that the marriage between one Abdul Nazar and the deceased Kathija was conducted on 03.6.2007, i.e. just 18 days prior to the suicide. The evidence of P.W.1 to P.W.3 and P.W.5 clearly shows that the deceased Kathija hail from Kerala and the 1st accused and one Abdul Nazar, the husband of the deceased Kathija were residing in Salem. The evidence of P.W.1 and P.W.2, who are the brothers of the deceased, is carefully read, it is seen that the marriage between the deceased Kathija and he said Abdul Nazar was performed on 03.6.2007. The entire evidence do not show any demand of dowry on the part of the accused. In fact, P.W.1 and his family members voluntarily gave Rs.1,00,000/- and 8 ½ sovereign gold to the deceased at the time of marriage. P.W.1 was working as warden of the jail at the relevant time. His evidence further disclosed that the deceased never complained about any ill-treatment by her husband family members till 18.6.2007. The evidence of P.W.1 further shows that when he called the

deceased over phone and enquired about the marriage life on 18.6.2007, the deceased never complained anything about the torture or ill-treatment by any of the family members of her husband.

9. It is to be noted that the deceased committed suicide on 21.6.2007 i.e., after 18 days from the date of marriage. If really the accused were treating the deceased in such a manner, which resulted in driving her to commit suicide, normal conduct of any bride would be to inform the family members. But the same has not been done in this case and more particularly, when the P.W.1 was called on her on 18.6.2007, the deceased never stated anything about the alleged ill-treatment of the accused. Therefore, absolutely, there was no problem at all till 18.6.2007. From a perusal of the evidence of P.W.1, P.W.2 and other witnesses, this Court does not find any material even to infer that from the date of marriage, the deceased was subjected to any form of cruelty or inducement etc.

10. The prosecution has mainly relied upon the alleged

suicidal note left by the deceased i.e.Ex.P1. It is to be noted that neighbours of the deceased and accused were examined in this case and they never spoken about the alleged ill-treatment. Admittedly, the deceased committed suicide on 21.6.2007. P.W.1, P.W.2 and other relatives of the deceased rushed to Salem on the next day morning, i.e. on 22.6.2007. The evidence of P.W.3 would clearly show that the body of the deceased was lying on the cot. Further, the evidence of P.W.2 shows that when they entered the house, the body of the deceased was lying on the cot. As per their evidence, the family members brought down the body of the deceased on the date of death itself i.e on 21.6.2007. While so, the statement of P.W.1 that he found the alleged suicidal note left by her in her panties when he saw the body of the deceased on the next day i.e. on 22.6.2007 is highly improbable and the same creates serious doubt about such note. This doubt is further fortified by the evidence of P.W.1 as P.W.1 in his evidence has stated that the deceased was wearing Churidar at the time of death. If that being so, from the panties of the deceased, finding the suicidal note by P.W.1 cannot be true for the simple reason that as per

the evidence of P.W.12 as well as inquest report, the deceased worn nighty. Admittedly, the dead body was brought down from the ceiling fan and kept in a cot and all the neighbours entered into the house. If really there was any suicidal note, other family members (accused), who have brought down the body of the deceased, would not have allowed the suicidal note lying in the dead body till the brothers of the deceased reached the spot on the next date. It is also one of the circumstances create serious doubt about the suicidal note.

11. Further the prosecution has not established the fact that the alleged handwriting in Ex.P.1 is that of the deceased. P.W.5, one Ramla, who is said to have translated the alleged suicidal note and gave to police, is also examined. When her evidence is carefully seen, it also creates serious doubt about the translated version of Ex.P1, namely, Ex.P3. In the cross examination, P.W.3 has admitted that she has been asked to sign in the white paper and she did not know what has written in Ex.A3. This fact also falsify the case of prosecution with regard to the alleged suicidal note left by the deceased. Therefore, recovery of Ex.P.1, suicidal note from the deceased is highly

doubtful in this case.

12. That apart, alleged letter of the deceased said to have been seen by P.W.1, which is marked as Ex.P9, is also doubtful. It has not been established by the prosecution that how this Ex.P9 came into the hands of the investigation officer. Though Investigating Officer, in his evidence, would depose that as if this letter was sent through courier by P.W.1, absolutely, there is no materials filed by the prosecution to prove the same. Even assuming that the said letter, Ex.P9, is a specimen handwriting of the deceased, that itself will not help the prosecution to prove Ex.P1, the alleged suicidal note. P.W.10, handwriting expert, who compared Exs.P1 and P9, in his evidence has stated that he could not give opinion as to whether the handwriting are one and the same. Therefore, in the absence of proof that Ex.P1 is in the handwriting of the deceased, the same cannot be given importance. Absolutely, there is no evidence, whatsoever, available on record even to infer that there was any form of cruelty or abetment on the part of the accused to drive the deceased to commit suicide within 18 days from the date of her marriage.

13. It is well settled that to prove the charge under Section 306 IPC, there must be evidence with regard to incitement or instigation. Further, there must be reasonable evidence to suggest circumstances, which are sufficient to incite the consequences of death. Admittedly, there is no evidence whatsoever, available on record to show the same. The Trial Court simply relied upon Ex.P1 and found the accused guilty. In the absence of any evidence with regard to abetment, it is not proper for the Trial Court to convict the accused under Section 306 IPC. The oral and documentary evidence adduced by the prosecution has not even suggest any such circumstances against the accused. Therefore, this Court is of the view that the evidence available on record is not at all sufficient to prove the charges under Section 306 IPC. Since the Trial Court has not appreciated the evidence properly, I am of the view that the same is liable to be interfered with. Accordingly, this Court hold that the charge against the accused is not proved and the accused are given benefit of doubt.

14. In fine,

(a) The **Criminal Appeal is allowed.**

(b) The judgment of conviction and sentence dated 30.01.2010 made in S.C.No.68 of 2009 on the file of the learned Sessions Judge, Mahila Court, Salem is hereby set aside.

(c) The appellants are acquitted from the charges levelled against them and they are set free.

(d) The fine amount, if any, paid by the accused is ordered to be refunded to them.

(e) The Bail bond, if any executed by the appellants, shall stand cancelled.

27.06.2017

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Index:Yes/No

Internet:Yes

Speaking order/non speaking order

To

The Additional Sessions Judge (Mahila Court)
Salem, Salem District.

N.SATHISH KUMAR, J.

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Crl.A.No.87 of 2010

27.06.2017
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