

BAIL SLIP

The Appellant/Accused 1 to 3 namely, 1.Asokan, S/o.Kuppusamy, 2.Kuppusamy, S/o.Gurusamy and 3.Lakshmi, W/o.Kuppusamy were ordered to be released on bail by order of this Court dated 09.01.2009 and 18.12.2008 and made in CrI.M.P.No.2 of 2008 and M.P.No.1 of 2008 in CrI.A.No.837 of 2008 respectively.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.837 of 2008

1.Asokan

2.Kuppusamy

3.Lakshmi

... Appellants (A1 to A3)

Vs

State rep. By
The Inspector of Police,
Macheri Police Station,
Salem District,
Crime No.48/2005

... Respondent

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to allow this appeal and set aside the judgment dated 05.12.2008 in S.C.No.240 of 2007 by the Sessions Judge, Mahalir Court, Salem District.

For Appellants : Mr.A.R.Nixon

For Respondent : Ms.M.F.Shabana,
Government Advocate,
(Criminal side)

JUDGMENT

A.1 to A.3, in S.C.No.240 of 2007 on the file of the learned Sessions Judge, Mahalir Court, Salem District are the appellants herein. Totally, there are three accused in this case. All the accused stood charged for the offences under

Sections 498-A and 306 IPC. By judgment, dated 05.12.2008, the trial Court convicted the first appellant/A1 under Section 306 IPC and sentenced him to undergo Rigorous imprisonment for 7 years and also to pay a fine of Rs.1000/- in default, to undergo Rigorous Imprisonment for 3 months; and convicted the second and third appellant/A2 and A3, under Section 306 IPC, and sentenced him to undergo Rigorous Imprisonment for 3 years and also to pay a fine of Rs.1000/- each in default, to undergo Rigorous Imprisonment for 3 months. The trial Court acquitted all the three accused under Section 498-A IPC. Challenging the said conviction and sentence, the appellants are before this Court with this Criminal Appeal.

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

The deceased, in this case, one Pushpa @ Krishnaveni, is the wife of the first appellant/A1. A2 and A.3 are the father-in-law and mother-in-law of the deceased respectively. Ten years prior to the occurrence, marriage was solemnised between A1 and the deceased. At the time of marriage, the deceased family has given some dowry. Thereafter, all the accused demanded more jewels from the deceased and also harassed the deceased that she was not cooking properly, and she not even know how to cook. In such circumstances, on 17.02.2005, the deceased fell into a well and committed suicide.

3. P.W.1 is the uncle of the deceased. He was residing in Bangalore. After coming to know about the death of the deceased, he along with P.W.2, father of the deceased went to the deceased's house and saw the dead body. Then, P.W.1 filed a complaint, Ex.P.1 to the respondent police station.

4. P.W.14, Sub-Inspector of Police, in the respondent police station received the complaint and registered a case in Cr.No.48 of 2005, under Section 174, Cr.P.C, and prepared First Information Report Ex.P.11. Then he sent a copy of the F.I.R to the Revenue Divisional Officer, Mettur, as well as P.W.12, the then Deputy Superintendent of Police, Sangagiri. After receipt of F.I.R, P.W.12, commenced the investigation. He visited the scene of occurrence and prepared Observation Magazar, Ex.P.2, and Rough Sketch, Ex.P.9. He recorded the statement of witnesses and based on the investigation, he altered the F.I.R into Sections 498A, 304(B) and 306 IPC. The altered F.I.R. has been marked as Ex.P.10. Then, he handed over the investigation to P.W.13.

5. P.W.11, the District Revenue Officer, Coimbatore had conducted inquest on the dead body on 17.2.2005 at about

6.00 p.m in the presence of panchayatars and prepared an Inquest Report Ex.P.7 and has also filed a enquiry report Ex.P.8. Then, he handed over the dead body for postmortem Autopsy.

6. P.W.9, Doctor working in Medical College Hospital, Salem conducted Autopsy on the dead body and he has given the Post-Mortem report Ex.P.4 and gave his opinion that, the deceased died due to drowning.

7. P.W.13, then Additional Superintendent of Police, conducted investigation, and recorded the statement of accused and other witnesses and handed over the investigation to the Deputy Superintendent of Police, Sangagiri P.W.14. P.W.14 recorded the statement of Doctors and other witnesses and after completion of investigation, filed a charge sheet against the accused.

8. Based on the above materials, the trial Court framed the charges as detailed in the first paragraph of this judgment against the accused. The accused denied the same. In order to prove the case of the prosecution, on the side of the prosecution, as many as 14 witnesses were examined and 11 documents were exhibited, besides 3 Material Objects.

9. Out of the witnesses examined, P.W.1 is the uncle of the deceased, and he was residing in Bangalore, and spoke about the demand of jewels and also the harassment made out by the accused to the deceased. P.W.2 is the father of the deceased, who also spoke about the demand of anklet by A.2. P.W.3 is the grand mother of the deceased. She also spoke about the demand of gold jewels by the accused. P.W.4 is a person, known both to the accused and the deceased, and he only took the body of the deceased from the Well, and he was treated as hostile witness. P.W.5, who is the Village Administrative Officer, is the witness to the Observation Magazar. A.2 was produced before P.W.6, the then Tahsildar, Mettur, for an enquiry regarding human rights violation against him and he filed a report, Ex.P.3, stating that there is no violation of human rights. P.W.7, who is a Head Constable in the respondent police, handed over the F.I.R to the R.D.O and other higher officials. P.W.8, the then Head Constable attached to the respondent police, who handed over the dead body for Autopsy to the Salem Government Hospital, and identified the dead body. P.W.9 Doctor, who conducted postmortem/Autopsy, issued a Post-Mortem Report Ex.P.4. P.W.10, the then Revenue Inspector, Mechery, recorded the statement of the accused and produced them before the respondent police along with his special report Ex.P.6.

10. P.W.11, R.D.O conducted inquest and prepared

Inquest Report Ex.P.8 wherein, it is stated that the death was occurred due to drowning and harassment. P.W.12 is the Inspector of Police, commenced the investigation and altered the F.I.R, and handed over the Investigation Report to P.W.13. Thereafter, P.W.13 continued the investigation, recorded the statement of witnesses and handed over the same to P.W.14. Then P.W.14, another Inspector of police continued the investigation, recorded the statement of witnesses and filed a charge sheet against the accused.

11. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. To prove their case, the accused examined three witnesses and no document has been marked on their side.

12. Having considered all the above materials, the trial Court convicted the appellants/accused as stated in the first paragraph of this judgment. Challenging the same, the appellants/accused are before this Court with this Criminal Appeal.

13. I have heard Mr.A.R.Nixon, learned counsel appearing for the appellants and Ms.M.F.Shabana, learned Government Advocate (Criminal Side) appearing for the State and I have perused the records carefully.

14. The trial Court framed charges against the accused under Sections 498-A and 306 I.P.C. and after trial, acquitted the accused from the charge under Section 498-A I.P.C. and convicted them under Section 306 I.P.C. In the above circumstances, the only question to be decided is whether all the accused abetted the deceased to commit suicide.

15. In order to prove the charge, the prosecution examined 14 witnesses. Out of them, P.Ws.1, 2 and 3 are relatives to the deceased. P.W.1 is the uncle to the deceased. P.W.2 is the father of the deceased. P.W.3 is the grandmother of the deceased. The evidence of P.W.1 is that both P.W.1 and P.W.2 are residing at Bangalore. The accused is living in Andiyur, Mettur Taluk, Salem District.

16. It is the evidence of P.W.1 is that at the time of marriage, the accused family did not demand any dowry. But, after marriage, they have harassed the deceased on the ground that no dowry was given. Hence, they have given six sovereigns of gold jewels to the deceased. Even thereafter, they have demanded an anklet for the deceased and the same has also been provided to the deceased, further the accused have harassed the deceased on the ground that she did not know cooking, and she was not even able to cook a sprout.

17. P.W.2, father of the deceased, he has deposed that, the accused only demanded jewels and they have provided six sovereigns of jewels and A2 also demanded an anklet for the deceased, and the same was also provided by them, and she did not disclose anything about the harassment regarding cooking. P.W.3, the grand mother of the deceased, only spoke about the demand of jewels and nothing else, except that, there is no other evidence available to show that the accused have abetted the deceased to commit suicide. The trial Court acquitted the accused for the offence under Section 498-A IPC, but not convicted them under Section 306 IPC.

18. That apart, now this Court has to consider whether the Act of the accused would amount to abetment leading the deceased for committing suicide. Section 306 IPC prescribed the punishment for abetment of suicide and reads as follows:

"If any person commit 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."

The basic ingredients of this provision are the suicidal death and abetment thereof. Section 107 IPC defines "abetment" and reads as follows:-

" 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"

To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. To bring home an offence under Section 306 IPC, the prosecution has to establish that the person has committed suicide and the said suicide has been abetted by the accused, and the prosecution should also prove that the accused has a clear mensrea to commit the offence and that there ought to be an active or direct act leading the deceased to commit suicide.

19. The Hon'ble Supreme Court in Gurcharan Singh Vs. State of Punjab (2017 [1] SCC 433) has held as follows:

21. Section 306 of the Code prescribes the punishment for abetment of suicide and is designed thus:

"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."

29. Significantly, this Court underlined by referring to its earlier pronouncement in *Orilal Jaiswal* (supra) that courts have to be extremely careful in assessing the facts and circumstances of each case to ascertain as to whether cruelty had been meted out to the victim and that the same had induced the person to end his/her life by committing suicide, with the caveat that if the victim committing suicide appears to be hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which he or she belonged and such factors were not expected to induce a similarly circumstanced individual to resort to such step, the accused charged with abetment could not be held guilty. The above view was reiterated in *Amalendu Pal @ Jhantu vs. State of West Bengal* (2010) 1 SCC 707.

20. In this case, the evidence of P.W.1 shows that the accused harassed the deceased on the ground that she did not know cooking, and she not even know how to cook a sprout. At any rate, it cannot be held that by that act the accused have abetted or induced the deceased to commit suicide. Apart from that, the accused also examined three witnesses to prove that the deceased was suffering from severe stomach pain. D.W.1 is the brother of the deceased. He has spoken about the sufferings of the deceased due to stomach pain and he only took her to Doctor at various places.

21. D.W.2 is a Panchayat President. In his evidence, he has stated that, the deceased and A1 were living together separately and, A2 and A3 were living separately. He also spoke about the stomach pain suffered by the deceased, and after the death of the deceased, the family of the deceased demanded some compensation from A.2, A.1 also demanded compensation from the deceased family for the reason

that they have not disclosed the physical ailments suffered by the deceased at the time of marriage. D.W.3 has also spoken about the stomach pain suffered by the deceased. From the defence side evidence, it could be seen that the accused was suffering from stomach pain, hence that may also be a reason for suicide, and we cannot rule out that possibility also.

22. Considering all the above circumstances, I am of the considered view that the prosecution failed to prove the charge for the offence under Section 306 IPC. The Court below without considering the evidence in proper perspective, convicted the appellant. Hence, the appellants are entitled for acquittal.

23. In the result, judgment dated 05.12.2008 passed in S.C.No.240 of 2007 by the Sessions Judge, Mahalir Court, Salem District is set aside and the Criminal Appeal is allowed and the conviction and sentence imposed on the appellant for the offence under Section 306 I.P.C. is set aside. The appellants are acquitted. Fine amount, if any, paid by the accused, shall be refunded to the accused. Bail bond, if any executed by the accused shall stand cancelled.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cla

To

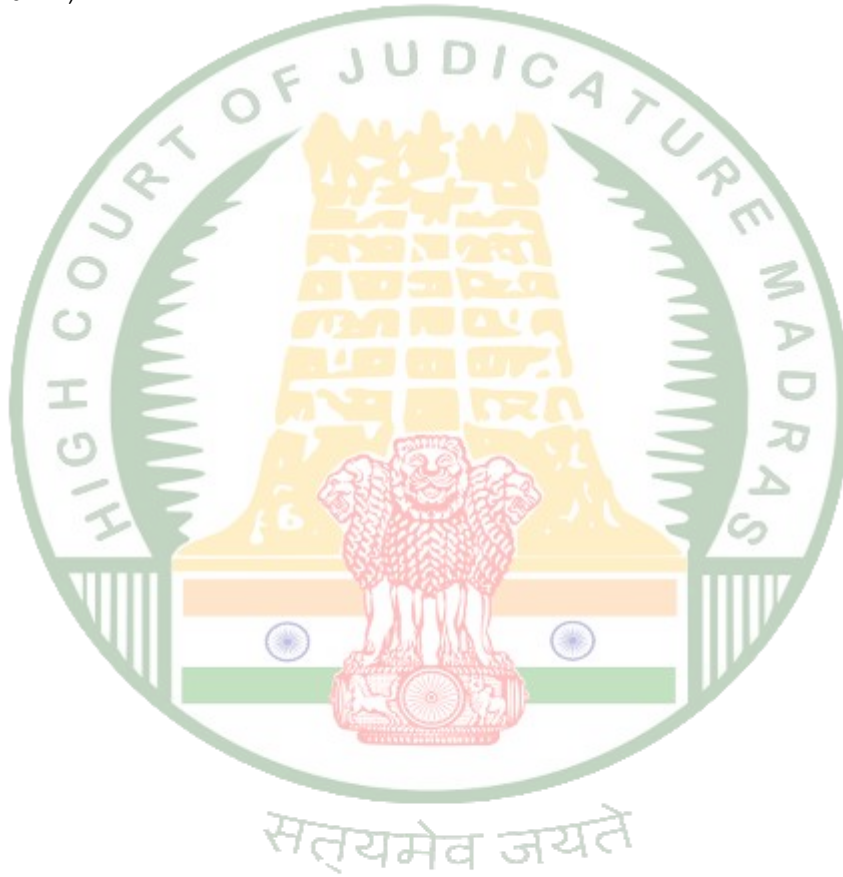
- 1.The Sessions Judge,
Mahalir Court,
Salem District.
- 2.The Judicial Magistrate No.2,
Mettur.
- 3.Do Through the Chief Judicial Magistrate,
Salem.
- 4.The Inspector of Police,
Central Prison,
Coimbatore.
- 5.The Inspector of Police,
Macheri Police Station,
Salem District.

6.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.R.Nixon, Advocate, S.R.No.11899

CrI.A.No.837 of 2008

SV(CO)
CA(16/11/2017)



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