

BAIL SLIP

The appellant herein/Accused viz., Sasikumar, S/o. Sambandhan, was directed to be released on bail as per order of this court dated 18.08.2009 made in CrI.M.P.No.1 of 2009 in CrI A.No.472 of 2009.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.03.2018

DELIVERED ON: 13.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.472 of 2009

Sasikumar

...Appellant/Accused 1

Vs

State rep. by Deputy Superintendent of Police,
Madipakkam Sub Division,
Pallikkarana Police Station.
(Crime No.299 of 2004)

...Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code, against the conviction and sentence imposed upon them by the learned Judge, Mahalir Court, Chengleput in S.C.No.515 of 2006 dated 06.08.2009.

For Appellant : Mr.V.Gopinath, Senior Counsel
For Mr.L.Mahendran

For Respondent : Mrs.T.P.Savitha
Government Advocate (CrI.Side)

JUDGMENT

This Criminal Appeal is filed by the Appellant against the Conviction and sentence imposed by the Learned Sessions Judge, Mahila Court, Chengaleput in S.C.No.515 of 2006 dated 6.8.2007 for the offence under section 498(a) of I.P.C. and sentenced to one year Rigorous Imprisonment and also fine of Rs.500/- in

default to undergo three months simple imprisonment and under section 306 of I.P.C. and sentenced to five years Rigorous Imprisonment and Rs.1000/- fine in default to undergo one year Simple Imprisonment.

2. Brief case of the appellant:

The deceased was married to the appellant/accused on 04.10.2002. Initially they were residing at Villupuram then accused and the deceased shifted to Saidapet and thereafter residing at Medavakkam. The deceased is a M.Com. graduate at that time and was working at DAV school at Saidapet. The accused is a diploma in Mechanical Engineering and was working at SIPCOT at Gummidipoondi.

3. The case of the prosecution is that the accused were demanding dowry from the parents of the deceased and she used to complain about the same. The accused along with the deceased stayed with A2 and A3 for about a month only. Thereafter they were living separately at Madipakkam. On the date of occurrence i.e. on 04.06.2004 the deceased is alleged to have poured kerosene and set fire to herself. PW1 was informed about the occurrence by one Santhakumar and proceeded to the Royapetta hospital. PW2 was informed by the owner of the house about the occurrence and he proceeded to Royapettah Hospital. He asked PW1 to lodge a report before Pallikaranai Police Station. PW1 proceeded to Police Station and gave a report Exhibit-P1 to PW18 Sub-Inspector of Police, Pallikarani police station. He registered a case of accidental fire. Ex.P12 is the printed FIR. The deceased was taken to Royapettah hospital by A1 and PW15 doctor attached to the Royapettah hospital admitted her at 08.30 AM on 4.6.2004 as an in-patient and issued the accident register Ex.P2. PW18 Sub-Inspector of Police, Pallikaranai Police Station proceeded to the Ropyapettah hospital and found her dead. He received the death intimation and returned to the police station.

4. On the basis of the statement given by PW-2, PW18 altered the offences under Sections 498A and 306 of IPC and Exhibit-P13 is the altered report. PW24 who was the Assistant Superintendent of Police received the FIR from PW18 and took up investigation. He went to the scene of occurrence prepared observation mahazar Ex.P19 and made arrangement to take photographs of the scene examined PWs-1, 2, 5, 13 and 23 and recorded the statement. He sent a requisition to conduct post-mortem on the dead body of the deceased. PW4 Doctor attached to the Royapettah Government Hospital and conducted postmortem and issued Exhibit-P3 is the post-mortem report. PW13 R.D.O. on 5.6.2004 conducted an inquest on the dead body of the deceased and issued Exhibit-P9 page-125 the inquest report then he sent a letter Exhibits-P10 to PW14 Additional P.A. to Collector. After that PW24 examined PWs-2, 6 and others. PW24 arrested A1 on 7.6.2004 at 12.30 PM at

Medavakkam. He altered the offences under Sections 498A, 306 of IPC and Exhibit-P20 is the altered report. He went to the scene of occurrence, drew a rough sketch Ex.P21 and seized the articles at the scene of occurrence. He received the report from PW12 Forensic Expert. After completing investigation, he filed a final report on 13.9.2004 for the offences under Sections 498A, 306 and 304B of IPC. PW2 sent a petition to the Chief Minister's Cell on 5.8.2004 asking for transfer of investigation. He also filed a Crl.O.P.No.39953 of 2004 before this Court for the transfer of investigation Exhibit-D3 is the order of this Court dated 2.2.2005 directing for fresh investigation by CBCID, Chennai. PW25 took up investigation on 20.4.2005 as per the order Exhibit-P23 dated 29.3.2005. During the investigation, he examined PWs-3, 8 and prepared sketch Exhibit-P24. After completing investigation, he filed a final report for the offences under Sections 498A, 306 and 304B of IPC.

5.The learned trial Court framed charges against A1 to A3 under sections 498(a), 306 and 304(b) of IPC and explained to the accused and questioned for which they pleaded not guilty. On the prosecution side, 25 witnesses were examined and 26 Exhibits were marked and M.Os-1 to 7 was marked.

6.On the basis of the evidence adduced, incriminating circumstances under Section 313 of Cr.P.C. were put to the accused. They denied their complicity with the crime. Exhibits-D1 to D3 were marked on the side of the accused. After going through the evidence both oral and documentary, the learned trial judge has come to a conclusion that the guilt against the accused A1 was proved beyond reasonable doubt and convicted him under section 498A of IPC sentenced to one year Rigorous Imprisonment and a fine of Rs.500/- in default 3 months Rigorous Imprisonment under Section 306 of IPC sentenced to 5 years Rigorous Imprisonment and a fine of Rs.1,000/- in default one year Rigorous Imprisonment. A2 and A3 have been acquitted by the Trial Court of all the charges. A1 was acquitted for offences under Section 304(b) of IPC.

7.Rival Submissions:

The learned senior counsel Mr.V.Gopinath, appearing for the appellant submits that the entire case rest on the evidence of PW2 and PW6 who were the father and mother of the deceased. The evidence of the above witnesses clearly illustrates there is no prima facie proof for the alleged offence against the accused. Further the motive was not established by the said witnesses.

8.The learned senior counsel for the appellant submits that the ingredients of the offence under section 306 of IPC have not been established by the prosecution. The evidence of prosecution witnesses itself establishes that A1 used to go for official tours and the deceased used to prevent him out of passiveness. Further the evidence of witness shows that the deceased was

possessive and pre-sensitive lady. This particular aspect shows that she was in a mental distress mood and she has committed suicide without any abetment from anyone. Hence the lower Court has erred by convicting the Appellant under section 306 of IPC when there is ample material to show that the deceased committed suicide on her own without any proper reason.

9.The learned senior counsel for the appellant submits that the evidence of PW6 mother of the deceased clearly discloses that Appellant is a caring person towards the deceased. As per the evidence of PW6 she has stated that only on the instructions of A1 she has took the deceased to her home at the time when she was conceived and after her abortion and she has categorically stated the Appellant was caring towards his wife. Hence the particular aspect shows the lower Court has erred by convicting the Appellant under section 498 of IPC without considering the above aspects.

10.The learned senior counsel for the appellant submits that the evidence of PW1 and the report Exhibit-P1 lodged by him is highly doubtful. As per Exhibit-P1 there is not even whisper about the demand of dowry, torture or cause of death. Further in his evidence he has stated that he went to the police station at about 10.00 AM and waited upto one hour and he lodged the complaint. Since the deceased died only at 11.10 PM and the report has been registered at 1.00 PM itself shows that he could not have lodged the complaint at 11.00 PM. Hence the above aspect creates serious doubt on the genuineness of the report lodged by PW1.

11.The learned senior counsel for the appellant submits that the evidence of PW3 is highly reliable. According to her evidence she and the deceased went to attend an interview and at that time the deceased is alleged to have narrated the ill-treatment meat out to her by her in laws. But in her cross examination she has admitted that she did not reveal the fact during enquiry and for the first time she has stated only before the Court. Further she has stated she did not note the address of the deceased and had never visited the residence of the deceased and this particular aspect reveals that she is an interested and untrustworthy witness.

12.The learned senior counsel for the appellant submits that Exhibit-P2 Accident Register is highly unreliable piece of evidence. The Accident Register Exhibit-P2 was marked through PW 4 the post mortem doctor which was issued by PW15 who treated the deceased at the time of admission. PW4 in his cross examination has admitted that he does not personally know about the injuries mentioned in Exhibit-P2 and he has stated that the deceased has sustained 96% of deep burn injuries and sedative medicines such as Fortwin, Pethadine and Morphia would be administered at that stage. Further he has also admitted that a

person conscious will not be always conscious state of mind and it will be called as fit state of energy. In such conditions the statement found in Exhibit-P2 is highly doubtful and the prosecution has deliberately failed to examine either the doctor or the nurse who attended the deceased from 8.30 AM to 11.10 AM. Further no certificate that reflects the condition of the deceased to give statement has been places by the prosecution. Hence this particular aspect creates serious doubt on the genuineness of Exhibit-P2.

13.The learned senior counsel for the appellant submits that the Court below ought to have rejected the evidence of PW5. In chief examination PW5 has stated that he and his uncle pulled her out of fire and took her to the hospital. But in his cross examination he has admitted that the Appellant and his uncle only extinguished the fire and during enquiry he has not stated accused stood outside the scene of occurrence.

14.The learned senior counsel for the appellant submits that the Court below ought to have rejected the evidence of PW6. Though PW 6 has made certain allegations in her chief examination, in her cross examination she has admitted that the Appellant was present in the hospital at the time of treatment to the deceased. Further though she has stated the deceased spoke to her for about one hour in the presence of others but she was unable to mention the names of the persons who present in the ward at that time.

15.The learned senior counsel for the appellant submits that the investigation done by the PW-25 Investigation Officer is tainted and biased. PW-25 in his deposition has admitted that he conducted re-investigation as per the orders of the High Court. In this context it is just and necessary to enlighten the provision of section 173(2) of Criminal Procedure Code. From plain reading of section 173 of Code of Criminal Procedure, it is evident after completion of investigation under Section 173 (2) of the Code of Criminal Procedure, the police have the right for further investigation under Sub-Section 8 of 173 Cr.P.C. But no fresh investigation or re-investigation can be done. But in the instant case PW-25 admitted that he only conducted reinvestigation and not further investigation. Hence it establishes that there was gross violation of the code.

16.The learned senior counsel cited the following decisions in support of his submissions:

1. 2002 S.C.C. Cr1.1141 (Sanju Alias Sanjay Singh Sengar v. State of M.P.)

2. 2010 (1) L.W. Cr1. 680 (Gangula Mohan Reddy v. State of Andhra Pradesh)

3. 2010 (1) SCC CrI. 896 (Amalendu Pal Alias Jhantu v. State of West Bengal)

4. 2008 (2) MLJ CrI. 645 (Sohan Raj Sharma v. State of Haryana)

17.The learned counsel for the Respondent supported the findings of the Trial Court and sought for dismissal of the appeal filed by the appellant.

18.I have carefully peruse the evidence and materials on record and duly considered the submissions made by learned advocates before us. The appellant was charged for committing offence under Sections 498(A) and 306 of IPC.

19.Let me now discuss what are the requirements to establish a charge under Sections 498(A) and 306 of IPC. Several decisions were placed before me on behalf of both appellant and the State.

20.From the decisions placed before me by the learned advocate for the appellant the law is clear that in order to establish a charge under Section 306 of IPC the following elements must be fulfilled:

"In order to amount to abetment there must be means rea or community of intention. Without knowledge or intention there can be no abetment and the knowledge and intention must relate to the crime and the assistance must be something proximate and something more than a mere passive acquiescence. The mere fact that the deceased wife was treated by the accused husband and her mother-in-law with cruelty is not sufficient to prove that the accused abetted commission of suicide by the deceased. In the absence of proof of any direct or indirect acts of incitement to the commission of suicide or a conspiracy or any act facilitating the commission of suicide it cannot be said that the accused were guilty of abetment to commission of suicide by the deceased merely because they treated the deceased with cruelty. The definition of abetment in Section 107 of the Penal Code includes not merely instigation which is the normal form of abetment but also conspiracy and intentional aiding. In order that there may be abetment, there must be either instigation or intentional aiding or engaging in a conspiracy as laid down in this section. The word "instigate" literally means to goad or urge forward or to provoke, incite, urge or encourage to do an act, by usage now an evil act."

Another Judgment of the Hon'ble Apex Court observed that "The Court in having recourse to the presumption observed that "The Court in having recourse to the presumption under Section 113A of the Evidence Act must be Circumspect. The legislative mandate of that section is that where a woman commits suicide within seven years of marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as the terms has been defined in Section 498A of IPC the Court may presume, having regard to all the other circumstances of the case that such suicide had been abetted by such person. It is evident that the legislature was extremely careful in drafting the provisions of Section 113A of the Evidence Act. Had it been the intention of the legislature that the Court should in all cases jump upon a conclusion as a rule that there has been abetment of suicide simply because suicide has been committed by the woman within seven years of marriage and she was subjected to cruelty, the legislature would not have used such flexible expression as "the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband..". The expression used is 'may presume' and not that rigid as 'shall presume'. In view of Section 4 of the Evidence Act, the import of the expression 'may presume' is that the Court may either regard the fact in question as proved, unless and until it is disproved, or may call for proof of it. In Section 113A of the Evidence Act, the legislature in its wisdom did not leave it at that by using the expression 'may presume' alone, but has supplemented the same by using the further expression "having regard to all the other circumstances of the case" which casts a positive responsibility on the Court to take into consideration all the other circumstances of the case also, namely the circumstances which may be there besides the two basic circumstances mentioned in the section itself which are suicide within seven years of marriage and proof of cruelty, in deciding whether the presumption of abetment of suicide should be drawn in a particular case from the proof of cruelty which itself is separately punishable under Section 498A IPC".

There is no need of quoting observations of all the above stated reported cases referred to by the learned advocate for appellant to make the matter lengthy and dull. It would be worthwhile if we quote few lines from the judgment of Madhya Pradesh High Court reported in Padmabai's case reported in 1987 Cri. LJ 1573, where it was observed that "It is of the essence of the crime of abetment of suicide that the abettor should be proved to have substantially assisted in the commission of the offence of suicide. Investigation, incitement, provocation, encouragement,

insinuation, solicitation, which words connote different meanings are, no doubt, some of the acts, which may constitute an 'abetment' for commission of suicide. But all such acts or any of them have to be positive and potent in nature, of such a degree, that the direct result of such acts may be none other, but the commission of suicide. Stray domestic quarrels, perfunctory abuses by mother-in-law, to her daughter-in-law in the Indian society, crude and uncultured behaviour by the in-laws or the husband towards his wife being mundane matters of normal occurrence in the traditional joint Hindu families, will not go to form and constitute 'abetment' unless these acts or conduct singly or cumulatively, are found to be of such formidable and compelling nature as may lead to the commission of suicide or may lead to the commission of suicide or may facilitate in a singular and prime manner, the commission of the same".

21. Analysing the evidence of witnesses I find that deceased came to her parents house and stayed there till 09.03.2004 and she returned back to her separate residence on 10.03.2004 and lived along with appellant and on 04.06.2004 at about 10.30 p.m, she committed suicide by pouring kerosene and letting fire on her. There is nothing in evidence that on 09.03.2004 or 04.06.2004, this appellant did such act or uttered such things which was so formidable and compelling in nature that lead to the commission of suicide. I have already observed that except general or casual remark of torture by the appellant demanding more money, ornaments etc there is no particular evidence as to quantum of money, ornaments etc demanded by the appellant or the months and dates on which such demand was made. Rather it transpires that deceased Radhika was in visiting terms to her parents house off and on after a gap of 5/10 days and sometimes members of her in-laws accompanied her to her parents house. The evidence also established a fact that he often used to talk with her parents over telephone and evidence of PW 1 and PW 2 is silent that over phone adhika ever informed them about torture on her.

22. In a joint family of Indian society domestic quarrel, between a wife and her husband or in-laws, difference of opinion between the daughter-in-law and her mother-in-law or father-in-law, between wife and husband are natural and expected, but these circumstances are not sufficient so as to constitute abetment to commit suicide unless there is strong and cogent evidence that act or conduct of in-laws or husband either singly or cumulatively were of such formidable and compelling nature which lead to the commission of suicide. Stray domestic quarrels, perfunctory abuses by mother-in-law to daughter-in-law in Indian society is common and such incidence cannot be denied. There may be some indecent and uncultured behaviour by the in-laws or the husband towards the wife and these are normal

incidence or occurrence in traditional joint Hindu family. Unfortunately in the instant case I did not find any such evidence to show that the acts or conduct either singly or cumulatively of the appellant was of such formidable and compelling nature which lead to the commission of suicide by Radhika.

23. On the other hand, from evidence of PWs-2 and 3, I find that nothing more serious disputes between the deceased and A1 and both were living separately. PW1 stated that Radhika was living separately and it is 3-4 kms away from his residence. Evidence of PWs-2, 3 and 6 reveals that the deceased Radhika did not use to visit his in-laws house i.e. house of A1 and there were disputes regarding the marriage. It was a known fact to Radhika that her husband does not attend any function or ceremony in her parents house and he is affected by soriasis. Therefore the issues deposed by the witnesses cannot be a ground sufficient to cause abetment to commit suicide. There may be many instances where a wife may feel hurt by the conduct of her husband and mother-in-law but these are not sufficient to commit suicide by the wife and such incident of conduct of husband or mother-in-law causing hurt to the wife resulting ultimate suicide of the wife cannot be regarded as abetment to commit suicide.

24. The evidence which the prosecution could introduce before the Court was not sufficient at all to prove abetment by the appellant in the commission of suicide by deceased Radhika. There is no evidence of any act or conduct of appellant to establish direct nexus or close in proximity prior to the suicide sufficient to establish abetment by appellant. There is no evidence at all as well as circumstance to prove that the appellant assisted in the commission of the offence of suicide by her active suggestion, solicitation, insinuation or encouragement. There is also no evidence that incitement, provocation, encouragement etc were given by the appellant and all such acts or any of them was positive in nature or of such a degree that the outcome of such act was none other but commission of suicide. General allegations of torture by the husband, father-in-law, mother-in-law etc. on the married wife or torture or teasing the newly married wife demanding dowry, more ornaments, articles etc. may be elements of other offence, namely, under Section 498A of IPC, but such general allegations of torture is not sufficient at all to prove abetment by the accused appellant in the commission of suicide by deceased.

25. I find that the prosecution has failed to bring home the charge under Sections 498(A) and 306 of IPC against the appellant and conviction of the appellant cannot be allowed to stand. Accordingly, the conviction and sentence under Sections 498(A) and 306 of IPC imposed upon the appellant is set aside.

26. Before conclusion I must observe that the investigation was not conducted by PW25 in a fair manner. It appears from his evidence that he examined some of the inmates of the rented house but did not record their statements. It further transpires that he conducted re-investigation against the violation of section 173 of Cr.P.C. Investigation of a case does not indicate that the Investigating Officer will record statement of witnesses only who were supporting the FIR story. Purpose of investigation is to find out truth behind the incident and the story revealed in the FIR and in order to find out truth it is the duty of the Investigating Officer to visit all probable places where the deceased spent time and to examine the witnesses including independent witnesses of places of stay and visit of deceased. But PW25 failed in doing his duties.

27. In the result:

(a) the criminal appeal thus stands allowed by setting aside the order passed by the learned Judge, Mahalir Court, Chengleput in S.C.No.515 of 2006 dated 06.08.2009;

(b) the appellant is acquitted of the charges under sections 498(A) and 306 of IPC;

(c) the appellant who is on bail is hereby discharged from bail bonds;

(d) the fine amount if any paid by the appellant is directed to be returned to him.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Judge, Mahalir Court,
Chengleput.

2. The Section Officer,
Criminal Section,
High Court,
Madras.

+3cc to Mr.L. Mahendran, Advocate, S.R.No.87245

Criminal Appeal No.472 of 2009

mr(co)

kak(07/01/2019)