

BAIL SLIP

B.Ravi

.. Appellant/Accused

The above said appellant/Accused was directed to be released on bail as per order of this court dated 20.10.2009 made in CRL MP No.1 of 2009 in CRL A No.636/2009 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.636 of 2009

B.Ravi
Appellant

...

Vs

State Deputy Superintendent of Police,
St.Thomas Mount Police Station,
Chennai,

... Respondent

Prayer:- Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the judgement and conviction dated 09.09.2009 made in SC.No.29/2003 on the file of the Mahila Court, Chengalpattu.

For Appellant : Mr.M.K.Parandhaman

For Respondent : Mr.K.Prabakar, APP

JUDGEMENT

This Criminal Appeal is filed, against the judgement of conviction and sentence, dated 09.09.2009, made in S.C.No.29 of 2003, by the Mahila Court, Chengalpattu, convicting and sentencing the Appellant for the offence under Section 498(A) IPC to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default, to undergo three months simple imprisonment and for the offence under Section 306 IPC, to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to undergo six months simple imprisonment and ordering the sentences to run concurrently.

2. The case of the Prosecution has arisen on the basis of the complaint Ex.P1, dated 09.12.2000, given by PW.1, who is the mother of the deceased, alleging that the marriage between the appellant/accused and the deceased had taken place on 08.10.2000 and from the date of marriage, both were living at Pudupettai Street, Alandur and that the appellant / accused had demanded dowry, suspected the fidelity of the deceased, from the date of marriage and tortured her and that due to the torture meted out by her, the victim committed suicide by self-immolation on 08.12.2000 at 11.00 p.m at the house of the appellant/accused and the victim died on 9.12.2000 at 5.30 a.m. due to burn injuries. As the occurrence was within seven years from the date of marriage, the appellant/accused was charge sheeted for the offences under Sections 498(A), 306 and 304(B) of IPC.

3. The case was taken on file in S.C.No.29 of 2003, by the learned Mahila Judge, Chengalpattu and necessary charges were framed. The accused had denied the charges and sought for trial. In order to establish the guilt of the appellant/accused, the prosecution examined 10 witnesses as P.W.1 to P.W.10 and marked documents as Exs.P1 to P16 on its side and also examined one Court witness as C.W.1. However, no evidence was let in, on the side of the defence.

4. P.W.1 is the mother of the deceased, who gave the complaint Ex.P1. P.W.2 and P.W.3 are the brothers of P.W.1. P.W.4 is the witness, who attested in the Observation Mahazar Ex.P2. P.W.5 is the neighbour of P.W.1. P.W.6 is the Tahsildar concerned, who conducted inquest on the body of the deceased. P.W.7 is the XVI Metropolitan Magistrate, who recorded the dying declaration of the deceased. P.W.8 is the Sub Inspector of Police, who received the complaint Ex.P1 and registered a case in Crime No.904 of 2000 for the offence under Section 498A of IPC and prepared the First Information Report under Ex.P7. P.W.9 is the Deputy Superintendent of Police, who conducted further investigation and filed the final report against the accused under Sections 498(A), 304 (B) and 306 IPC. P.W.10 is the Doctor, who had conducted post-mortem on the body of the deceased. C.W.1 is the Junior Bailiff, examined as a Court witness.

5. Ex.P1, dated 09.12.2000 is the complaint given by P.W.1. Ex.P2, dated 09.12.2000, is the Observation Mahazar. Ex.P3, dated 11.12.200, is the inquest report. Ex.P4, dated 27.12.2000 is the requisition letter to conduct inquest. Ex.P5, dated 11.12.2000 is the requisition letter to Forensic Department, Government Hospital, Kalpakkam. Ex.P6, dated

09.12.2000, is the Dying Declaration of the deceased. Ex.P7, dated 09.12.2000 is the printed First Information Report. Ex.P8, dated 08.12.2000 is the requisition letter from Sub Inspector of Police, St.Thomas Mount Police Station, to Chief Metropolitan Magistrate, Egmore, to obtain Dying Declaration from the deceased. Ex.P9, dated 09.12.2000 is the rough sketch. Ex.P10, is the copy of the death memorandum of the deceased. Ex.P11, dated 10.12.2000 is the alteration report. Ex.P12, dated 11.12.2000, is the xerox copy of the post-mortem report. Ex.P13, dated 10.12.2000, is the requisition letter to Commissioner, Greater Chennai Corporation. Ex.P14, dated 11.12.2000 is the copy of the inquest report. Ex.P15, dated 27.12.2000 is the requisition letter from Tahsildar, Egmore-Nungambakkam to Deputy Tahsildar, Chengalpattu regarding to conduct post-mortem. Ex.P16, dated 11.12.2000 is the statement of Kanniammal P.W1.

6. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 of Cr.PC as to the incriminating circumstances found in the evidence of the prosecution witnesses and the accused has come with the version of total denial and stated that he has been falsely implicated in this case. However, no evidence was let in, on the side of the defence.

7. The Court below, after hearing the arguments advanced on either side and also looking into the materials available on record, found the accused/appellant guilty and awarded punishment as referred to above, which is challenged in this Criminal Appeal.

8. This Court heard the submissions of the learned counsel on either side.

9. The learned counsel for the appellant / accused has assailed the impugned judgement and conviction and sentence, on the following infirmities, discrepancies and grounds :-

(a) The trial Court ought not to have convicted the appellant / accused for the offences under Sections 498(A) and 306 of IPC based on the uncorroborated evidence of P.W.1 to P.W.3, which is self contradictory in other aspects.

(b) Ex.P6, dying declaration itself would show that the appellant / accused is not responsible for the suicide committed by the deceased and that the victim herself had stated that she had committed suicide due to the compulsion of her parents to live with the appellant/accused against her will and further, there is absolutely no material, attracting ingredients of offence under Section 306 of IPC against the appellant / accused.

(c) It is also on record that the appellant / accused used to scold and suspected the fidelity of the deceased and that she had attempted suicide on the previous month itself. Thereafter, her parents had compelled her to live with the appellant / accused and unable to bear that, she had committed suicide by self-immolation and that the appellant / accused was sleeping outside the house and after hearing her noise, the appellant / accused rushed into the house and attempted to put off the flames and that the conduct of the appellant / accused would show that he has not committed any cruelty and thereby, for the offence under Section 498(A) is not attracted.

10. The learned counsel for the appellant/accused would ultimately contend that the impugned judgement of conviction and sentence is against law and that the prosecution has failed to prove its case beyond all reasonable doubts by cogent evidence and that the Trial Court is not correct and justified in convicting and sentencing the appellant/accused and hence, the appellant / accused is entitled for acquittal.

11. The learned Additional Public Prosecutor for the respondent would contend that the prosecution has proved the charges levelled against the accused through the oral testimony of P.W.1, the mother of the deceased and the corroborating evidence of the other witnesses and also relied on the dying declaration of the deceased and hence, the impugned judgement of conviction and sentence warrants no interference by this Court.

12. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire evidence available on record and also perused the impugned judgement of conviction.

13. The case of the Prosecution mainly rests on the evidence of PW.1 to PW.3 and Ex.P6, dying declaration. In Ex.P6, dying declaration, the deceased had told that her parents had compelled her to live with the appellant / accused and that unable to bear that, she had committed suicide. It is the specific statement of the deceased that the appellant / accused had attempted to safe guard her. Since the ingredients of offence under Section 306 of IPC are lacking, this Court is of the opinion that the conviction under Section 306 of IPC cannot be sustained.

14. Further, taking into consideration the evidence of P.W.1, P.W.2 and P.W.3, this Court is of the opinion that the accused had subjected the deceased to cruelty, by suspecting her character and because of that she had not wanted to live with the Appellant/ accused, whereas she had been compelled by her

parents to live with the Appellant/ accused, which was against her wishes and thereby, she had been driven to the extent of committing suicide and that she had earlier attempted to commit suicide due to the harassment meted out to her suspecting her fidelity and thereby, this Court is of the opinion that the conviction under Section 498(A) IPC is to be sustained.

15. To bring home the guilt of the Appellant/ accused for the offence under Section 306 of IPC, the Prosecution should prove that there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option.

16. With regard to case of abetment to commit suicide, the Honourable Supreme Court in (2017) 1 SCC 433 (Gurucharan Singh Vs State of Punjab), in Paras 20 to 22 and Paras 27 to 29, has held as follows:

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

"306. 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."

21. It is thus manifest that the offence punishable is one of abetment of the commission of suicide by any person, predicated existence of a live link or nexus between the two, abetment being the propelling causative factor. The basic ingredients of this provision are suicidal death and the abetment thereof. To constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide is imperative. Any severance or absence of any of this constituents would militate against this indictment. Remoteness of the culpable acts or omissions rooted in the intention of the accused to actualize the suicide would fall short as well of the offence of abetment essential to attract the punitive mandate of Section 306 IPC. Contiguity, continuity, culpability and complicity of the indictable acts or omission are the concomitant indices of abetment. Section 306 IPC, thus criminalises the sustained incitement for suicide.

22. Section 107 IPC defines abetment and is extracted hereunder:-

"107. Abetment of a thing. - 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.

Explanation 1 - A person, who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2 - Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

Not only the acts and omissions defining the offence of abetment singularly or in combination are enumerated therein, the explanations adequately encompass all conceivable facets of the culpable conduct of the offender relatable thereto."

27. The pith and purport of Section 306 IPC has since been enunciated by this Court in Randhir Singh vs. State of Punjab (2004) 13 SCC 129, and the relevant excerpts therefrom are set out hereunder:-

"12. Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. Vs. Orilal Jaiswal (1994) 1 SCC 73, this Court has observed that the courts should be extremely careful in assessing the facts

and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

28. 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.

29. That the intention of the legislature is that in order to convict a person under Section 306 IPC, there has to be a clear mens rea to commit an offence and that there ought to be an active or direct act leading the deceased to commit suicide, being left with no option, had been propounded by this Court in *S.S. Chheena vs. Vijay Kumar Mahajan* (2010) 12 SCC 190."

17. Before Section 306 of IPC can be acted upon, there must be clear proof of the fact that the death in question was a suicidal death. The offence of 'abetment' must conform to the definition of that term as given in Section 107 of IPC, that is to say, there must be instigation, cooperation or intentional assistance given to the commission of suicide. It is not

necessary or indeed is it a part of the definition. That the suicide should have been committed in consequence of the abetment. In order to render a person liable as an abettor, it is, of course, necessary, as indeed it is in the case of any other offence, that the abettor should do something more than a mute spectator.

18. Thereby, without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

19. In the light of the decisions referred and the reasons stated above this Court is of the considered view that the Prosecution has miserably failed to prove the guilt of the accused under Section 306 of IPC and hence, conviction and sentence under Section 306 of IPC is not sustainable.

20. Taking into consideration the conduct of the appellant / accused that immediately after the occurrence, the appellant / accused had taken every attempt to safe guard the deceased and that he was the person, who had taken the deceased to the Hospital and admitted her and also the evidence of P.W.1, P.W.2 and P.W.3, which would also reveal that the appellant / accused had admitted her in the Hospital and the fact that the appellant/accused was remanded in jail for a period of 66 days, this Court is of the opinion that while upholding the conviction for the offence under Section 498A of IPC, the sentence of imprisonment may be modified to the period of sentence already undergone by him.

21. In the result, this Criminal Appeal is partly allowed. The impugned judgement of conviction and sentence, dated 09.09.2009 made in S.C.No.29 of 2003, on the file of the Mahila Court, Chengalpattu, is set aside in respect of the offence under Section 306 of IPC alone. The Appellant is acquitted from the charges levelled against him for the offence under Section 306 of IPC alone. The fine amount, if any, paid by the appellant for the offence under Section 306 IPC is directed to be refunded to him. However, in respect of the offence under Section 498(A) IPC, while confirming the conviction under Section 498A of IPC, the period of sentence is modified to the period already undergone by the appellant/accused.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

ms/Srcm

To

1.The Judge, Mahila Court,
Chengalpattu.

2.The Deputy Superintendent of Police,
St.Thomas Mount Police Station,
Chennai.

3.The Judicial Magistrate No.I,
Poonamalle.

4. The Chief Judicial Magistrate,
Tiruvallur.

5.The Public Prosecutor,
High Court, Madras.

6. The Superintendent of Police,
Chengalpattu.

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

+1 cc to Mr.M.K.Parandhaman, Advocate SR.No.18563

KS (CO)
CSL/02.04.2019

Crl.A.No.636 of 2009

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