

Bail Slip

The 1st Petitioner, 1st Accused Viz., Karthik @ Karthikeyan was released on bail as per order of this Court dated 30/06/2010 in Crl.MP No.1 of 2010 in Crl.A 377 of 2010 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2019

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.A.No.377 of 2010

1.Karthik @ Karthikeyan

2.Madasamy

(2nd appellant/3rd accused-died
-Amended as per the order of this
Hon'ble Court dated 04.10.2017)

.... Appellants

/Vs/

The State rep by
the Assistant Commissioner
Law and order (West)
All Women Police Station (West)
Coimbatore.
(Crime No.44 of 2007)

... Respondent

PRAYER: Criminal Appeal filed under section 374 of the Criminal Procedure Code, against the Judgment in S.C.No.106 of 2008 dated 11.06.2010 on the file of Mahila Court-District Judge, Coimbatore.

For Appellants : Mr.B.Ramamoorthy

For Respondent : Mr.K.Prabakar
Additional Public Prosecutor

J U D G M E N T

- 1.The Criminal Appeal has been filed against the Judgement of conviction and sentence passed by the District Judge, Mahila Court, Coimbatore, in S.C.No.106 of 2008 dated 11.06.2010, wherein, the trial Judge found the appellants guilty for offences under Sections 498A and 306 IPC, convicted and sentenced them to undergo Rigorous Imprisonment for 3 years with fine of Rs.500/- in default to undergo one month Rigorous Imprisonment for the offence under Section 498A IPC, and 5 years Rigorous Imprisonment with fine of Rs.500/- in default to undergo one months Rigorous Imprisonment for the offence under Section 306 IPC and the sentences are ordered to run concurrently. Period of detention already undergone by the accused, during the trial was ordered to be set off under Section 428 Cr.P.C.
- 2.The appellants herein are respectively accused Nos.1 and 3 in S.C.No.106 of 2008. The 2nd accused died during the trial and it is reported that the 2nd appellant/3rd accused died during the pendency of the appeal and thereby the appeal is abated against the 2nd appellant/3rd accused.
- 3.The case of the prosecution is that, the 1st appellant/1st accused married the deceased-Rajalakshmi on 08.03.2007 at Balathandayuthapani Temple, Coimbatore. At the time of marriage, the father of the deceased-Kathiresan had given 16 sovereigns of gold jewels and Rs.16,000/- cash as Sridhana to his daughter. Thereafter, the deceased was living with the appellants/accused as a joint family at Door No.55D, Katteri Chettiyar Thottam, Samy Iyer New Street No.3, Coimbatore, and that while, she was living in the matrimonial house, the 2nd appellant/3rd accused-father in law of the deceased had misbehaved with her and when she had informed it to the 1st appellant/1st accused and 2nd accused, they have told her that she should adjust with her father-in-law and then only, she could be in the matrimonial house and thereby had committed cruelty on her, due to which, on 07.08.2007 at 08.00 am, the victim/deceased-Rajalakshmi had committed suicide by self immolation.
- 4.The respondent police after completion of investigation, filed a charge sheet against the accused for the offences under Sections 498A and 306 IPC before the Judicial Magistrate No.I, Coimbatore, and after furnishing the copies to the accused under Section 207 Cr.P.C., the learned Judge finding that the case was exclusively triable by the Court of Sessions, committed the case to the Principal Sessions Court, Coimbatore, who in turn, made over the case to the District Judge/ Mahila Court, Coimbatore and upon appearance of the accused, necessary copies of the documents relied on by the prosecution were furnished to them and when they were questioned under Section

313 Cr.P.C., they had denied the charges and sought to be tried.

5. In order to prove the guilt of the accused, on the side of the prosecution 15 witnesses - P.Ws.1 to 15 were examined; exhibits - Exs.P.1 to 26 were marked and material objects - M.Os.1 to 3 were marked. On the side of the defence, no witness was examined and no document was marked.
6. During the trial, the 2nd accused expired and the charge against her got abated. The learned trial Judge, after hearing both the counsel, convicted the appellants as stated above.
7. Against the Judgment of conviction and sentence, the present appeal has been filed.
8. During the pendency of the appeal, the 2nd appellant/3rd accused died and the charges against him got abated.
9. Now coming to the evidence on record, PW.1-Ravichandran, is neighbour of the deceased and he had deposed that the appellants were residing in the house belonging to his sister and they are known to him. He had further stated that two months prior to the occurrence, the accused persons had rented his sister's house and that they were living as a joint family and on 07.08.2007, while he was returning home, after his morning walk, he had seen smoke emanating from the windows of the house and he had informed his neighbours and when they had attempted to enter into the house, the front door was locked and when they opened the front door and entered into the house, the kitchen was found locked from inside and that, he along with others, had entered into the kitchen, after breaking the kitchen door. There, they had found the victim lying dead with burn injuries. At that time, the accused were present at home and since they had not taken any steps to give a complaint to the respondent police, he had given a written complaint to the All Women Police Station, R.S.Puram and the complaint was marked as Ex.P.1.
10. P.W.2-Mohan, is another neighbour of the deceased. He had deposed that he knows the accused and that they had come as tenants two months prior to the date of occurrence. On 07.08.2007, when he was at home, he had heard noise outside his house and when he had come out, he had seen smoke emanating from the kitchen window of the accused and he alarmed P.W.1 and two other persons and knocked the house of the accused and they opened the door, and he had seen them raising alarm to save the victim and when they entered into the house, have found the kitchen door locked. He along with P.W.1 and other two persons broke the door of the kitchen and thereafter, due to suffocation, he had come out of the house and that he came to know that the deceased had died due to burn injuries.
11. P.W.3-Kathiresan, is the father of the victim/deceased. He had deposed that he is the resident of Aruppukottai and that, through his first marriage, he has got one son and daughter and since, his first wife died due to illness, he had married

P.W.4-Murugeshwari, his sister's daughter. The deceased-Rajalakshmi and one son was born to them and that, he retired on 31.03.2002, after working as an Electrical Inspector in the Tamil Nadu Electricity Board. He had further deposed that, the 1st accused/1st appellant is the son-in-law, 2nd and 3rd accused are respectively the mother-in-law and father-in-law of the deceased and that the deceased was married to the 1st accused/1st appellant on 08.03.2007 at Coimbatore and the reception was conducted in the Meeting Hall in Ashok Nagar, Coimbatore and that the marriage was an arranged marriage. He had further deposed that at the time of marriage, 16 sovereigns of gold jewels was given to his daughter and one sovereign gold bracelet was given to the 1st accused/1st appellant and apart from that Rs.16,000/- cash and household articles were given as Sridhana. After the marriage, his daughter resided along with her husband/1st accused/1st appellant and her parents/2nd and 3rd accused at Door No.55D, Katteri Chettiyar Thottam, Samy Iyer New Street No.3, Coimbatore. During the 3rd month after marriage, he had intended to call his daughter to his house and at that time, the 3rd accused had informed him that his daughter was pregnant and had asked him to take her during the Tamil month of Aadi. He had further deposed that during that time, he used to speak with his daughter over phone and that, his daughter had informed him that since her mother-in-law was not feeling well, she was made to wash the clothes of everybody in the house and she was made to do the entire household work alone. He had informed his daughter that since it is a joint family, she has to adjust with these things. Thereafter, during the Tamil month of 'Aadi', he had gone to Coimbatore along with his wife and taken new clothes to his daughter and son-in-law and had requested the in-laws to send his daughter to his house along with his son-Balashanmugam and thereby, the deceased had come and stayed at his house only for 3 days along with the 1st accused/1st appellant and that, the 1st accused left his daughter at his house and returned to Coimbatore. During her stay at home, P.W.3 had taken her to the hospital and it was found that his daughter was not pregnant whereas, she was found to be anaemic. After reaching Coimbatore, the 1st accused/1st appellant had called P.W.3 and informed him that there was nobody to look after the cooking work in his house and asked to send the deceased to Coimbatore immediately. While his daughter was at home, she had informed to his wife's brother-Murugesan/P.W.13 and his brother-Sivaprakasam that when she was at the matrimonial home, the 3rd accused/2nd appellant had watched her taking bath and changing dress and due to the abhorring behaviour of the 3rd accused/father-in-law, she was very much disgusted and that the victim/deceased had informed him not to disclose it to her father and mother, since it will create problems. Further, the deceased had told them that she had informed about the behaviour of her father-in-law/3rd

accused to her husband/1st accused and mother-in-law/2nd accused and that they have replied stating that she should adjust with her father-in-law, or else, she would be sent back to her parents house and that she had requested her uncles to speak to her in-laws to settle the issues. They had informed her that once she goes back to her in-laws house, they will come and settle the issue. While so, since, the 1st accused/1st appellant had asked P.W.3 and his wife to bring the victim/deceased to Coimbatore immediately, and that they had taken her to Coimbatore and left her at the matrimonial home and that they had stayed there for two days. Thereafter, he had returned back to Aruppukottai. On 06.08.2007, P.W.3 had called his daughter and spoken to her over phone and at that time, she had informed that she is tired of doing lot of work and she wants to sleep. On 07.08.2007 around 09.00 am while he was at home, his relative one-Nagaraj/P.W.11 had called him and informed him that his daughter was died. Immediately they had started from Aruppukottai and gone to the matrimonial house at Coimbatore at 04.00 pm and when he had gone there, the Revenue Divisional Officer was conducting an enquiry and that, the accused were present at the house. On seeing the situation, suspecting that the accused would have murdered his daughter by setting ablaze, he had given a statement to the RDO and thereafter, the body of the victim/deceased was sent to post mortem and the body was handed over to him after completion of post mortem.

12. On the next day, while he was getting ready to go to the Assistant Commissioner for enquiry, his brother-in-law/Murugesan/P.W.13 had come there and informed that, 'why he had sent his daughter to the matrimonial house without informing him' and that, he had informed about the sex torture done to his daughter by her father-in-law/3rd accused and he had informed him that he had sent his daughter to the matrimonial house without informing to him and both of them informed the same to the Investigating Officer and have stated that the accused were responsible for his daughters death.

13. P.W.4-Murugeswari, is the mother of the deceased and she had corroborated the statement of P.W.3-her husband. She had stated that on 06.08.2007 around 09.00 am., P.W.3-her husband had spoken to her daughter and at that time, her daughter had informed that she wanted to go separately from her in-laws and that her husband/P.W.3 did not agree for it. Further, her daughter had informed her husband that she was feeling disgusted to wash the clothes of her in-laws and that, she had consoled her saying that she would come to Coimbatore along with her father and enquire about it. While so, on 07.08.2007, she had received an information from her relative one Nagaraj-P.W.11 that the deceased had died and that they went to Coimbatore around 04.00 pm., and attended the RDO enquiry and she had also suspected that her daughter would have been done

to death by the accused. She had further deposed that her brother/Murugesan-P.W.13 had told her that her daughter had informed him that her father-in-law/3rd accused used to watch her while she was taking bath due to which, she was feeling disgusted and that her daughter's in-laws committed cruelty on her. She had also given a statement to the RDO.

14.P.W.5-Siva Prakasam, is the brother of P.W.3. He had corroborated the version of P.Ws.3 and 4 with regard to the marriage of the deceased with the first accused and the jewels given at the time of marriage. He had further deposed that while the victim/deceased had come to Arupukkottai she had informed him that the 2nd and 3rd accused used to commit cruelty on her and that the father-in-law/3rd accused used to misbehave with her and she was disgusted with his behaviour. He had further deposed that the deceased had informed that the 3rd accused/2nd appellant used to tease her often and that when she had informed to her husband/1st accused about the activities of his father/the 3rd accused, he had told her to tolerate with the activities of his father, or else, she would not be able to live with him. He had deposed that the victim deceased had asked him not to disclose it to her parents stating that they would fight with her in-laws. She had requested P.W.5 to come along with her to Coimbatore and reprimand her in-laws, while so, on 07.08.2007, he was informed about the death of the victim/deceased and he had come to Coimbatore on the same day and attended the RDO enquiry.

15.P.W.6-Balashanmugam, is the brother of the victim/deceased. He had deposed that the victim/deceased came to their house during the Tamil month of 'Aadi' and that she stayed with them for 10 days and thereafter, his parents took her back to Coimbatore and left her in the matrimonial home. He had further deposed that on 06.08.2007 at about 09.00 pm., he had spoken with his sister and thereafter, he handed over the phone to his mother and left the home. On the next day, he was informed by the 1st accused/1st appellant that his sister had died and that, he had attended the RDO enquiry and only after the statement of his maternal uncle/P.W.13, he came to know about that his sister is being subjected to sexual torture by her father-in-law/3rd accused and that her mother-in-law had given the entire job of doing cooking and washing clothes of all the persons in the house. He had further deposed that the accused persons were responsible for the death of his sister.

16.P.W.7-Murugan, is the witness for the Observation Mahazar (Ex.P.2) and Seizure Mahazar (Ex.P.3). He had deposed that the Investigating Officer prepared the Observation Mahazar in his presence and recovered the plastic can-M.O.1, Match Box-M.O.2 and Match Stick-M.O.3.

17.P.W.8-Subramaniam, is the Revenue Divisional Officer. He had deposed that having conducted the enquiry on 07.08.2007, recorded the statement of P.W.4, which was marked as Ex.P.12

and the statement of P.W.3 which was marked as Ex.P.13. Statements recorded from Gurudevi, Gnanaguru, Nagarajan, Sivaprakasam, Balashanmugam (P.W.6), Rajeswaran, Murugesan, Muthusamy, Raman/Mohan and Ravichandran were marked as Exs.P.14 to 22 respectively. Statements of the panchayatars was marked as Ex.P.23. Thereafter, he had given a requisition letter to the Government Medical College and Hospital, Coimbatore for conducting post mortem and had sent the body. Having found that the accused were responsible for the death of the deceased, had given a report to the Assistant Commissioner. The inquest report was marked as Ex.P.24. Ex.P.25 is the post mortem certificate enclosed with the report of the RDO to conduct further enquiry on the death of the deceased and forwarded the same to the Assistant Commissioner. He had further given a finding that the victim/deceased had died since the 1st and 2nd accused ignored the complaint made by the deceased about the behaviour of the 3rd accused/2nd appellant.

18.P.W.9-Dr.Jayasingh is the Doctor, who conducted post mortem and he had deposed that on 08.08.2007 he conducted autopsy on the body of the deceased. The Post mortem certificate was marked as Ex.P.4 and the chemical report was marked as Ex.P.5 and he had opined that the victim/deceased had died due to burn injuries and the opinion was marked as Ex.P.6.

19.P.W.10-Gnanaguru, is the cousin of the deceased and she had deposed that the deceased is the daughter of her Junior paternal uncle. She had further corroborated the evidences of P.Ws.3 and 4 about the marriage between the deceased and the 1st accused/1st appellant. She had further deposed that, she used to go to the matrimonial house of the victim and at that time, the 2nd accused was sick and that the deceased had informed her that she was asked to wash the clothes of her in-laws and that she was very much disgusted to wash the clothes and that she had stated because of that, she did not find time to have food. During an occasion, when she had gone to the house of the accused, the 2nd accused had complained her that she was not cooking properly and for that, she had informed her that the victim/deceased will get alright in course of time. While so, on 07.08.2007, she had received an information through her husband that her cousin had died. Thereafter, she had come to the matrimonial house of the deceased and she given a statement to the RDO. She further stated that after hearing the statement of her uncle-P.W.13, she came to know that the deceased was tortured by her father-in-law/3rd accused.

20.P.W.11-G.Nagaraj, is the son-in-law of P.W.5. P.W.5 is the brother of P.W.3. He had spoken about the marriage between the deceased and the 1st accused/1st appellant. He had further deposed that he along with his wife used to visit the matrimonial house of the deceased and that the deceased and her husband/1st accused also used to come to his house. He had further deposed that the deceased had informed him that she was

feeling disgusted to wash the clothes of her mother-in-law and father-in-law and that, he had consoled her stating that once her mother-in-law gets well, everything will become alright. He had further deposed that the parents of the deceased took her to the native place during the Tamil month of 'Aadi' and that they had brought her back to Coimbatore. He had further deposed that the deceased along with her husband/1st accused had come to the relatives house and also to his house and attended the temple function and returned back to the matrimonial house and while so, on 07.08.2007 he was informed that the victim/deceased had died. He had deposed that at the time of RDO enquiry, apprehending that the victim/deceased would have been done to death had told to the RDO that there was a doubt with regard to the death. Only later, he came to know from P.W.13-Murugesan, that the victim had been subjected to sex torture by her father-in-law/3rd accused and that he had told about that to the police during the police enquiry.

21.P.W.12-Annammal, who worked in the All Women Police Station, stated that on 07.08.2007, while she was in the Station and at that time, she received an information that the deceased had died due to self-immolation and immediately, she went to the scene of occurrence and identified the body of the victim/deceased to the RDO and she was present with the RDO during the enquiry and thereafter, she had taken the body along with requisition letter to the Government Hospital and College, Coimbatore for conducting post mortem. Thereafter, after completion of post mortem, received the vicera and handed over the body of the deceased to the relatives.

22.P.W.13-Murugesan, is the maternal uncle of the deceased. He had deposed that the deceased is younger sister's daughter and that the marriage between the deceased and her husband took place on 08.03.2007 at Coimbatore and after the marriage, the victim was living in a joint family along with her in-laws. He had further deposed that the victim had come to celebrate Aadi festival at his sister's house at Aruppukottai and victim being his niece used to speak with him over phone and that she had told that her husband used to come in an inebriated condition and used to create problems. He had further deposed that while she was in Aruppukottai she had during the absence of P.Ws.3 and 4 informed him that her husband used to pick up quarrel with her and the 3rd accused/father-in-law used to enter the bathroom and watch her taking bath and changing clothes, due to which, she was feeling disgusted and she had further informed him that she had complained to her husband/1st accused, whereas, he had without questioning or reprimanding his father had asked her to tolerate with him. Further, she had informed him that her father-in-law used to put a cot near the bathroom and watch her while she was taking bath, due to which, she was feeling bad and that when she had told to her husband he had told her either to tolerate or get out of the house. Further,

the victim had told him that she was asked to wash the clothes of her mother-in-law, who was sick and that she was treated like a bonded labour in the house. When he had questioned the victim, 'whether she had informed about it to her parents, she had told him that she had not informed about it to her parents about that and since, he was taking care from her childhood, she had informed to him when he had questioned, 'how long she will be at Arupukkottai', she had told him that she will be there for 10 to 20 days and he had consoled her saying that he would come to Coimbatore and see to that everything is solved through his friends who are politically influenced. While so, the victim had left to Coimbatore without informing to him and that on 07.08.2007, he had heard that the victim had died. Further, he had deposed that he attended the RDO enquiry and informed to the RDO about what was told to him by the victim.

23.P.W.14-Sugumari, is the Inspector of Police, who based on the complaint given by P.W.1 registered the case in Crime No.44/2007 under Section 174 of Cr.P.C., the FIR was marked as Ex.P.7. Since the death of the victim had occurred within seven years of her marriage, the complaint was sent to the RDO for enquiry and the copy of the FIR was send to the Assistant Commissioner through Head Constable for further investigation and she assisted the RDO during enquiry and thereafter, she had listed the articles given by the parents of the deceased during the marriage and handed over it to them.

24.P.W.15- Sakkaravarthy, is the Investigating Officer, who had stated that he had taken up the investigation and visited the scene of occurrence at 12.00 p.m., and prepared Observation Mahazar (Ex.P.2) in the presence of the witnesses and thereafter, prepared the Rough sketch (Ex.P.8) and deputed the photographer to take photos in the scene of occurrence which were marked as Ex.P.9 series; the negatives were marked as Ex.P.10 series. On the same day, at 14.30hrs, he recovered a white colour kerosene can and which was marked as M.O.1 and also recovered a Match Box and Match Sticks which were marked as M.Os.2 and 3 respectively.

25.Thereafter, he had examined the witnesses and finding that there was cruelty on the victim, had forwarded the FIR along with the complaint to the RDO for enquiry. On 09.08.2007, he had arrested the accused and send them for remand. Thereafter, he had recorded the statements of witnesses and after receiving the post mortem report and the chemical report and after examining of Doctor, after obtaining opinion of the prosecutor filed the final report against the appellants/accused for the offences under Sections 498 A and 306 of IPC.

26.The learned Counsel appearing for the appellant/accused would submit that the entire case of the prosecution is tainted with embellishments and exaggerations and would submit that the witnesses have given exaggerated statement that the victim/deceased was subjected to sexual torture by her father-

in-law/3rd accused. Immediately after the occurrence, RDO enquiry was conducted and during the RDO enquiry, the parents of the deceased have not stated anything about the victim being subjected to any harassment or cruelty by the 2nd and 3rd accused who are the parents of the 1st accused/1st appellant. The RDO, in his report, had stated that the parents of the deceased and the relatives who were examined have not given any complaint about her husband or her family members. Whereas, strangely as an after thought, one Murugesan-P.W.13, who is the maternal uncle of the deceased had been examined by the respondent police and he had stated that the victim had informed him that she was subjected to sexual harassment by her father-in-law/3rd accused and that when she had informed about the same to her husband/1st accused he told her to tolerate or to get away from the matrimonial house. He would further submit that, it is highly strange if such conduct had been exposed by father-in-law, it would have been the normal conduct of the victim that she would have either informed it to her parents rather than disclosing it to her maternal uncle P.W.13. He would further submit that even as per the evidence of P.Ws.3 and 4, the victim was aggrieved over being asked to wash the clothes of her sick mother-in-law and father-in-law and that she was feeling bad that she was made to cook and do all the domestic chores in the house. Further, on the previous night, the victim is stated to have spoken to her parents wherein, she had insisted for a separate house and when there is no direct evidence for cruelty, the trial Court erred in believing the evidence of P.W.13-maternal uncle of the deceased, which has been brought in as an after thought.

27. He would further submit that the story of the prosecution that she had informed her maternal uncle in the absence of her parents is unbelievable. The learned counsel for the appellant would further submit that even assuming for a moment, admitting the case of prosecution and even if the story of the prosecution is taken to be true, the allegations of cruelty on the deceased can be attributed only to the father-in-law/3rd accused and the mother-in-law/2nd accused who are no more now.

28. He would further submit that making wife to wash clothes and do the cooking will not amount to cruelty. He would submit that no willful conduct can be attributed to the 1st accused/1st appellant when the allegations against that him is that he had only asked the victim to tolerate with her father-in-law/3rd accused. In conclusion, he would submit that the entire story of the prosecution is only an exaggerated version brought in an after thought and would submit that the contradictions, inconsistencies, exaggerations and embellishments in this case would prove that the entire prosecution case is false. All the independent witnesses would say that the victim and the 1st accused/1st appellant were living happily and they were not having any problem between them.

29. The learned Additional Public Prosecutor appearing for the State would submit that the prosecution has proved, it is the case beyond reasonable doubt and the trial Court taking into consideration the evidence of the witnesses has rightly convicted the appellants. He would further submit that the victim had informed about the harassment meted out to her in the matrimonial home to P.W.13-her maternal uncle and it is spoken by P.W.13.
30. At this juncture, the learned counsel for the appellant would submit that the conduct of P.W.13 cannot be believed. If his sister's daughter would have informed about the abhorring conduct of her father-in-law he would have immediately informed it to his sister-P.W.4 and brother-in-law-P.W.3 and they should have taken immediate action. Whereas, only subsequent to the death of the deceased, the story of the deceased being subjected to harassment by her father-in-law has been brought in. Further, he would submit that it is the evidence of P.W.3, during his cross examination that his daughter had not informed anything when she had come to his house, about being harassed or tortured by her in-laws and he would also depose that his daughter was living happily in her matrimonial house.
31. Further, it is the evidence of P.W.4 that her daughter asked her husband for having a separate household and that she was aggrieved that since her son-in-law/1st accused did not agree for the same. The learned counsel for the appellant would submit that it is the evidence of Investigating Officer that the independent witnesses have not spoken anything about the victim being harassed in her matrimonial home. Further, there is absolutely no direct evidence let in by the prosecution to show that the victim was subjected to cruelty in the matrimonial home. He would submit that unless it is established by the prosecution beyond reasonable doubt that there was either direct or indirect act of inducement to commission of suicide, the mere fact that the harassment done by the husband is not enough to convict the accused. He would further submit that the conduct of the accused asking the victim to wash clothes and do the cooking though would amount to harassment could not fall within the advance of cruelty in terms of Section 498 A of I.P.C. Since, the conduct of the accused is not in the nature of likely to drive the accused to commit suicide. In support of his contention, he relied on the Judgments reported in (2013) 10 SCC 48 Pinakin Mahiratrav Rawal V. State of Gujarat, (2010) 1 MWN (cr.) 310 M.Sathishkumar V. State of Tamil Nadu, (2005) 6 SCC 281 Sushil Kumar Sharma V. Union of India and Others and (2002) 5 SCC 177 Girdhar Shankar Tawade V. State of Maharashtra.
32. In this case, what is to be seen is 'whether the prosecution has proved the case beyond reasonable doubt' and 'whether the trial Court is right in convicting the appellants/accused'. Admittedly, in this case the 2nd accused mother-in-law of the

deceased died during trial and the 3rd/father of the 1st accused died during the pendency of the appeal and the charges against them have got abated.

33. It is not a case of dowry death. It is a case where a married woman has died due to suicide in the matrimonial house within 7 years of marriage. The RDO enquiry was conducted and in the enquiry, initially, the witnesses have not stated anything about the harassment meted out to the victim by her father-in-law/3rd accused. Strangely, on the next day, P.W.13, has been examined and he has stated that when the victim had come to Aruppukottai she had informed him that she was subjected to sexual harassment by her father-in-law/3rd accused and that when she had informed the 1st and 2nd accused namely, her husband and mother-in-law they have told her that she should tolerate with the activities of her father-in-law/3rd accused or else she should go out of the house. Even as per the evidence of P.W.13, she has informed to him when she had come to Aruppukottai, 20 days prior to the occurrence, whereas it is highly strange that he had not informed about it to P.W.3 or P.W.4.
34. Further, it is the evidence of P.W.4 that her daughter the victim had informed her that she was asked to wash clothes of her sick mother-in-law and her father-in-law and was also asked to do cooking for the entire family and that she was feeling disgusted to wash the clothes of her in-laws and that she has asked for living in a separate house, which was refused by her husband/1st accused. The allegations against the 1st accused/1st appellant is that, when she had informed to him about the conduct of his father/3rd accused, he had asked her to tolerate with the conduct of his father/3rd accused. Even in respect of all these, there is no direct evidence is available and it is highly strange that if such an allegation has been made to the maternal uncle, he would have immediately agitated and informed it to his sister/P.W.4 and brother-in-law/P.W.3, who are the parents of the victim to take immediate action.
35. This Court is of the opinion that, such an averment has been brought in as an after thought to show that the victim was subjected to cruelty. Apart from the unbelievable evidence of P.W.13 no other direct evidence has been let in by the prosecution to show that the victim was subjected to cruelty.
36. Further, even as per the evidence of P.Ws.3 and 4, the 3rd accused is stated to have harassed the deceased even before she came to Aruppukottai, 20 days prior to the occurrence and whereas it is the evidence of P.Ws.3 and 4 that she was happy at the matrimonial house and that she had not directly complained to them about the conduct of her father-in-law/3rd accused and there is no evidence to show that the 1st accused/1st appellant abetted the victim to commit suicide.
37. Though Section 113 A of the Indian Evidence Act, imposes the presumption as to the abatement of suicide by a married woman,

to invoke such presumption, the prosecution has to establish by evidence that the victim was subjected to cruelty. Though a presumption could be drawn, the burden of showing that such an offence has been committed by the accused under Section 498 A of I.P.C., is on the prosecution.

38. In the opinion of this Court that when the evidence of P.W.13 is unbelievable, the other evidences of P.Ws.3 and 4 who are stated to have spoken to the deceased on the day prior to the occurrence, the deceased had told that she was feeling disgusted for cooking for the entire family and for washing clothes of her sick mother-in-law and father-in-law. Except the above statement of the witnesses of P.Ws.3 and 4 and no other evidence has been let in as if the 1st accused/1st appellant abetted the victim to commit suicide. The conduct of the 1st accused/1st appellant asking the victim to wash the clothes of the family members and do cooking cannot be construed as abetment as defined under Section 107 of IPC and therefore, the conviction under Section 306 of IPC cannot be sustained.

39. 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.

40. 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 doing.

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."

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

42. In so far as the question of conviction under Section 498 A of IPC is concerned, the term "cruelty" has been explained in Section 498 A of IPC.

1. A woman must be married

2. She must be subjected to cruelty.

3. Cruelty must be of the nature of harassment of such woman, (a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide and (b) with a view to coercing her to meet unlawful demand for property or valuable security or is on account of failure to meet such demand.

43. As stated above, on reading of the entire evidence, though there may seem to be allegations against the 2nd appellant (who is no more now) for having caused cruelty on the victim and, the acts of the 1st appellant cannot be termed to be conduct of of such a nature, which was likely to drive the woman to commit suicide.

44. Admittedly, it is not a case regarding demand for dowry. Though there is a presumption under Section 113A of the Indian Evidence Act, it only says that the Court may presume. Admittedly, there was no misunderstanding between the 1st appellant and the deceased. As per the evidence of PW.1, father and PW.2 mother and other relatives, the deceased had told them that she was disgusted with washing clothes of her elderly mother in law, who was sick and she had also wanted to

go to a separate house. Even taking into consideration the evidence of PW.13, it was only against the father in law, the 2nd appellant (who is no more now).

45. This Court is of the opinion that the conduct of the 1st accused/1st appellant cannot be termed as "cruelty" under Section 498 A of IPC. Therefore, the conviction under Section 498 A of IPC cannot also be sustained.

46. In (2010) 1 MWN (cr.) 310 M.Sathishkumar V. State of Tamil Nadu, it was held as under:-

"6. The learned Senior Counsel appearing for the petitioner submits that even if the allegations made against the petitioner/accused are accepted to be true, even then, there is no possibility for holding the petitioner guilty of the charges either under Section 498-A or 306, I.P.C. He further submits that all the facts spoken to by the witnesses would only indicate the misunderstanding between the husband and wife and there was no love lost. Apart from that, according to the learned Senior Counsel, there is no evidence to show that the petitioner abetted the commission of offence as defined in Section 107, I.P.C. To substantiate the said contention, the learned Senior Counsel has taken me through the oral evidences and Ex.P2. He has also relied on the judgment of the Hon'ble Supreme Court reported in Kishangiri Mangalgiri Goswami v. State of Gujarat, 2009 (4) MLJ (Cr1) 983, wherein, the Hon'ble Supreme Court had occasion to hold as to what constitute 'abetment of suicide' as contemplated under Section 306, I.P.C. in terms of Section 107, I.P.C. In para 11 to 13 read as follows:-

"11 Section 107, I.P.C. defines abetment of a thing. The offence of abetment is a separate and distinct offence provided in the Act as an offence. A person, abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aids, by act or illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment, then the offender is to be punished with the punishment provided for the original offence.

'Abetted' in Section 109 means the specific offence abetted. Therefore, the offence for the abetment of which a person is charged with the abetment is normally linked with the proved offence.

12. In cases of alleged abetment of suicide, there must be proof of direct or indirect acts of incitement to the commission of suicide. The mere fact that the husband treated the deceased-wife cruelty is not enough. See Mahinder Singh v. State of M.P., 1995 AIR SCW 4570.

13. The aforesaid aspects were highlighted in Kishori Lal v. State of M.P., 2007 (10) SCC 797: 2007 (2) MLJ (Cr1) 1830; Randhir Singh and another v. State of Punjab, AIR 2004 SC 5097: 2005 SCC (Cr) 56: 2004 (13) SCC 129; and Sohan Raj Sharma v. State of Haryana, Criminal Appeal No. 1464 of 2007 disposed of on 7.4.2008".

7. A close look into the above would show that it is crystal clear that unless it is established by the prosecution beyond reasonable doubt that there was either direct or indirect act of inducement to the commission of suicide, the mere fact that the husband treated the deceased wife with cruelty is not at all enough to convict, the accused under Section 306, I.P.C. In the case on hand, the witnesses, P.Ws. 1 to 3, 5, 6 have spoken only about what the deceased/D1 told them. They have only spoken that on several occasions either by phone or in person, the deceased/D1 told them that she was subjected to harassment by her husband. Except such vague statement, nothing more is found to satisfy the ingredients under Section 107, I.P.C. The learned Senior Counsel further submits that the allegations which were spoken by the witnesses do not find a place in the earlier report of the Revenue Divisional Officer. The said omission has also been established by way of contradictions and so much weightage cannot be given to the evidence of these witnesses.

8. In my opinion, the evidence of these witnesses would indicate that, the deceased/D1 was harassed by the accused as there was misunderstanding between them. This will not constitute abetment as defined under Section 107, I.P.C. and therefore, the conviction under Section 306, I.P.C. cannot be sustained at all.

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- 9. Now so far as the question of conviction under Section 498-A, I.P.C. is concerned, here, the term "Cruelty" has been explained in Section 498-A, I.P.C. as follows:

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

10. The learned Government Advocate (Criminal Side) would submit that the act of the accused would fall within the Explanation (a) to Section 498-A, I.P.C. But, I am not persuaded by the said argument. In my considered opinion, a close look into the evidences of P.Ws. 1 to 3, 5 and 6 would go to show that though the conduct of the petitioner would amount to harassment, the same would not fall within the definition of cruelty in terms of Section 498-A, I.P.C. since the conduct of the petitioner was not in the nature of likely to drive the deceased to commit suicide. As I have already stated, misunderstanding between the husband and wife and the consequent domestic quarrels cannot be termed as "Cruelty" in terms of Section 498-A, I.P.C. Therefore, the conviction under Section 498-A, I.P.C. also cannot be sustained."

47. 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 1st appellant/accused under Sections 498A and 306 of IPC and hence, conviction and sentence under Sections 498A and 306 of IPC is not sustainable. In view of death of the 2nd appellant/accused, the charges against him is abated.

48. In the result, this criminal appeal is allowed. The conviction and sentence imposed on the 1st accused/1st appellant by the Court below is set aside and the 1st accused/1st appellant is acquitted of all the charges. The fine amount already paid in Crime No.106/2008 shall be returned to the 1st accused/1st appellant. The charges against the 2nd appellant/accused is abated.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Mahila Court-District Judge,
Coimbatore.
2. The Section Officer
Criminal Section, High Court of Madras.
3. The Public Prosecutor
High Court of Madras.
4. The Assistant Commissioner
Law and order (West)
All Women Police Station (West)
Coimbatore.
5. The Chief Judicial Magistrate,
Coimbatore.
6. The Judicial Magistrate-II,
Coimbatore.
7. The Superintendent,
Central Prison,
Coimbatore.

Cr1.A.No.377 of 2010

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srg 21/10/2019