

Bail Slip

Crl.A.No.202/2014

The Appellant / Accused Namely Sasi @ Sasikumar, S/o. Manoharan, was Directed to be released on bail as per order of this court dated 29/04/2014 made in Crl mp.No.1/2014 in Crl.A No.202/2014 on the file of this Courts.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.11.2020

Pronounced on : 19.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.A.No.202 of 2014

Sasi @ Sasikumar ... Appellant / Accused

VS.

State Represented by
The Assistant Commissioner of Police,
Washermenpet Range,
Chennai - 21. ... Respondent / Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure, against the conviction and sentence passed by the learned Sessions Judge, (Magalir Neethimandram), Chennai in S.C.No.446 of 2012 dated 18.02.2014.

For Appellant : Mr.K.Kannan

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

JUDGMENT

The sole accused in SC No.446 of 2012 on the file of the Mahila Court, Chennai, is the appellant herein. He stood charged for the offence under Sections 498-A and 306 IPC. The accused denied the charges and opted for trial. Therefore, he was put on trial of the charges. After full fledged trial, the Mahila Court, Chennai, found him guilty of the offence under

sections 498-A and 306 of IPC. The accused was accordingly, convicted under Sections 498-A of IPC and sentenced to undergo three years of rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment. Similarly. For the offence under Section 306 of IPC, he was convicted and sentenced to undergo 10 years of rigorous imprisonment with the fine of Rs.10,000/-, in default to undergo six months simple imprisonment.

2. Challenging the conviction and sentence, the accused is before this Court with the present criminal appeal.

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

(i) The deceased Kousalya, is the wife of the appellant/accused. PW1-Philomena is the mother of the deceased. In the year of 2005, due to love affair, the deceased Kousalya went away with the accused/appellant and stayed in Ooty. After some time from the date of marriage, due to the threatening made by the appellant/accused, the deceased had come to the house of PW1 along with her four months old child. Thereafter, after two years, on the request made by the appellant/accused, the deceased joined with him and was residing in Korukupettai. However, again, due to the problem created by the appellant/accused, the deceased vacated the house from Korukupettai and joined with her mother. In this regard, appellant/accused threatened PW1, for which PW1 lodged complaint before the police. Upon the complaint given by PW1, the appellant/accused herein was warned by the police and thereafter, both the appellant/accused and the deceased joined and were residing in the same street in which PW1 was residing.

(ii) On 30.11.2011 at about 10.00 pm, the deceased came to the house of PW1 and cried. On enquiry, she made a complaint against the appellant/accused that he has assaulted and made a life threat, for which PW1 suitably advised the deceased to go to the appellant's house. On 01.12.2011, at about 3.00pm, the police came and informed to PW1 that her daughter committed suicide by way of hanging, for which PW1 lodged a complaint under Ex.P1.

(iii) PW9-Thiru.Mahadevan, the then Sub Inspector of Police, H-1 Police Station, on receipt of the complaint given by the PW1 registered the case against the accused for offence under Section 174 (3) of Cr.P.C. The printed FIR is marked as Ex.P9. Since the occurrence had happened within seven years from the date of their marriage, PW9 handed over the complaint and FIR to PW10-Mr.Naveen Chandra Nagesh, for investigation. Further, he informed the occurrence to the Revenue Divisional Officer, with a request to conduct the inquest.

(iv) PW10-Mr.Naveen Chandra Nagesh, the then Assistant Commissioner, Vannarapettai, on receipt of the FIR, rushed to the scene of occurrence, in the presence of PW4-Kamaraj, and one Mohan, he prepared the observation Mahazar under Ex.P3. He had drawn the rough sketch under Ex.P11. Further, he recovered the saree, which was used for hanging under the cover of Mahazar, Ex.P4. He examined witnesses and recorded their statements.

(v) In the meantime, on receipt of intimation under Ex.P10, PW7, Tmt.Subbulakshmi, the then Sub Collector went to the Government Stanley Hospital and after examining the witnesses, she prepared the inquest report under Ex.P6. According to her, the deceased committed suicide due to the demand of dowry made by the appellant and also due to the malady that forced money to buy liquor. In this regard, she has sent the report to the Assistant Commissioner under Ex.P7. After the preparation of the inquest, she sent a requisition to the doctor attached with Stanley Medical College Hospital under Ex.P5 for conducting postmortem.

(vi) On receipt of the requisition given by the Sub Divisional Magistrate, PW8-Dr. Sathyamurthy conducted postmortem and found the following injuries.

An incomplete, ill defined, asymmetrically oblique, brown ligature abrasion 27x4-1cm on the front and sides of the neck at the level of Thyroid cartilage; on the front of the neck the abrasion is 5 cm below the chin, 09cm above supra sternal notch. On the right side of the neck, the abrasion is 4cm below right mastoid process; on the left side neck it is 1 cm below left mastoid process.

On Dissection of the Ligature mark: The base of the ligature abrasion is pale and dry. The sub-cutaneous and soft tissues of the neck are pale. No other external injuries.

Heart: Normal in size, Right side chambers contain fluid blood, left side chambers empty.

Lungs: Normal in size, multiple sub-pleural petechial haemorrhages on the surface of both Lungs. Cut section congested.

Hyoid Bone: intact

Stomach: contains 100 gms partly digested food material with no specific odour.

Liver, Kidneys, Spleen: Normal in size, cut section congested.

Bladder: Empty. Uterus: Normal in size c/s: empty.

Pelvis & Spinal Column: intact.

Brain: Normal in size, surface vessels prominent.

(vii) According to PW8-Dr.Sathyamurthy, the deceased would appear to have died of Asphyxia due to hanging. In this regard, he issued a postmortem report under Ex.P8. Before issuing the final opinion, he forwarded the viscera to the forensic science department and found that there was no poisonous substance found in the viscera.

(viii) In continuation of the investigation, PW10, altered the section of law from 174 (iii) I.P.C. to 306 IPC and sent the alteration report to the Court under Ex.P12. On 02.12.2011, he arrested the accused and sent him to the judicial custody. He examined the Doctor who conducted the post mortem and came to the positive conclusion that the appellant herein committed an offence under Section 306 of IPC and accordingly, he filed a final opinion, against the accused under Section 498-A and 306 of IPC.

4. Based on the above materials, the trial Court framed the charges under Section 498-A and 306 IPC. The accused denied the charges and opted for trial. Therefore, the accused was put on trial.

5. During the time of trial, on the side of the prosecution, in order to prove the charges against the accused, examined 10 witnesses as PW1 to PW10 and exhibited 12 documents as Ex.P1 to Ex.P12, besides, two material objects [M.O.1 and M.O.2].

6. Out of the said witnesses, PW1-Philomena, is the mother of the deceased. She has spoken about the love affair having by the appellant with the deceased, family life led by the accused with the deceased, in respect to the assault made by the accused, about the threat made by the accused and also about the lodging of complaint before the police.

7. PW2-Savarinathan, is the resident of Vannarapettai. Being the landlord, he has spoken about the dispute having by the appellant with the deceased. PW3-Vasuki, is also the neighbour to the accused. She has spoken about the quarrel between the deceased and the appellant. Further, she has stated that on the previous day of the occurrence, the deceased came to her house along with the child and requested to save the said child. She was also informed on the next day that the deceased committed suicide.

8. PW4-Kamaraj, has spoken about the preparation of the observation mahazar. PW5-Nithya, is the father of the deceased Kousalya. He has not supported the case of the prosecution. PW6-

Selvam, has spoken about the taking of the photographs in the

occurrence place.

9. PW7-Tmt.Subbulakshmi, is the Revenue Divisional Officer. She has spoken about the examination of witnesses and preparation of the inquest report.

10. PW8-Dr.Sathiyamurthy, is the Doctor attached with Stanley Medical College Hospital and he has stated about the injuries sustained by the deceased and about the details of postmortem.

11. PW9-Mr.Mahadevan and PW10-Mr.Naveen Chandra Nagesh, are the police officers. They have stated about the details in respect to receiving of complaint from PW1, registration of FIR, examination of witnesses, arrest of the accused and about the filing of final report.

12. When the above incriminating materials were put against the accused, under Section 313 Cr.P.C., he denied the same as false. However, in order to prove his case, he neither produced any witness on his side nor marked any documents.

13. Having considered the above, the learned Sessions Judge, Mahila Court, Chennai, found the accused guilty of subjecting cruelty towards his wife and also abets the commissioning of suicide and sentenced to a term as indicated in the 1st paragraph of the judgment. Aggrieved over the conviction and sentence, the accused has come up with the present appeal.

14. I have heard the learned counsel for the appellant/accused and also the learned Additional Public Prosecutor and perused the records carefully.

15. Admittedly, PW1 and PW5 are the parents of the deceased Kousalya. Since PW5, the father of the deceased has not supported the case of the prosecution, he was treated as hostile witness. More than that during the time of cross examination by the prosecution, he had not given any evidence in support of the occurrence. In otherwise, the evidence given by PW1, in respect to the threat and cruelty made by the appellant to the deceased is very clear and cogent. The said evidence is corroborated through the evidence of PW2 and PW3.

16. In respect to the alleged occurrence it is not in dispute that the death of Kousalya, is due to the hanging. The said fact was not denied on the side of appellant. Therefore, it is necessary to find out whether the appellant herein abets the commission of suicide or not. For proving the same, prosecution must prove the following ingredients.

1. that any person committed suicide.
2. that such commission of suicide was consequent of an abetment.
3. that abetment was made by the accused.

17. In this regard, in respect to the abetment, Section 107 IPC, reads as follows:

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. Illustration A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C. 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.

18. Therefore, for proving the abetment, a person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing. The scope of the word 'aids' has been clarified in Explanation 2. The said explanation does not say what would or would not amount to "intentionally aids". It only explains what meant by aiding simpliciter. Further, the ingredients of abetment are as follows:

"Abetment is constituted by:

1. Instigating a person to commit an offence; or
2. Engaging in a conspiracy to commit it; or
3. Intentionally aiding a person to commit it."

19. Here in this case, it is necessary to see that during the relevant point of time whether the accused intentionally aided the deceased to commit suicide or not. In this regard, the evidence given by PW1 to PW3 are very clear that before the occurrence, and also on the previous date of occurrence, the

appellant quarrelled with the deceased with the aim to extract money from the deceased only for the purpose of consuming the liquor. So the intention, on the accused is only to extract the money and not otherwise.

20. Surprisingly, without considering the said aspect, the learned Sessions Judge, Mahila Court, Chennai, came to the conclusion that the accused committed an offence of abetment of suicide. Therefore, the findings arrived at by the trial Court that the accused committed the offence under Section 306 of IPC, is liable to be set aside.

21. In respect to offence under Section 498-A, the prosecution must prove the following ingredients.

1. That the victim was a married lady.
2. Harassment of the women is with a view to coercing her to meet any unlawful demand for dowry.
3. Wilful conduct by the husband or the relative of the husband of such nature, which is likely to lead the lady to commit suicide or to cause grave injury to her life.
4. Further that such injury above said may be physical or mental.

22. Further, for proving the said offence, the prosecution must prove the fact that the deceased was subjected to cruelty as contemplated in Clause (a) and (b) to explanation of Section 498-A of IPC. Secondly that the women is or was married. Thirdly, the cruelty has been practised by her husband.

23. Here it is the case, admittedly the relationship between the deceased and the accused is not denied on either side. Further, as already observed, the evidence given by PW1 to PW3 reveals the fact that only to extract the money from the deceased, regularly, the accused herein assaulted the deceased and thereby, committed the cruelty. Only in the said circumstances, on the date of occurrence without any alternative, the deceased herein chose to commit suicide. The same was alternatively informed to PW1 that the accused had beaten her. Further, the deceased attempted to hand over the child to PW3, before committing the suicide. Those aspects are all ingredients to the explanation (a) to Section 498-A of the IPC. If the accused leads a normal life with the deceased, there is no necessity for the deceased to commit suicide. Only the wilful conduct of such a nature of the accused has driven the deceased to commit the suicide. Though there was no direct evidence in respect to the assault committed by the accused, the subsequent conduct of the accused would reveal the fact that the accused/appellant ill-treated the deceased and subjected her to cruelty.

24. Therefore, the entire circumstances reveals the fact that after the marriage, without doing any work, the accused herein regularly attacked the deceased for extracting the money. Only for the reason without tolerating the frequent wilful attitude of the accused, the deceased was driven to the level of committing the suicide. Particularly a day before the date of occurrence, the accused herein in a drunken mood assaulted his wife and asked to give the money and therefore, the evidence let in by PW1 to PW3, is sufficient to hold that the accused herein committed the offence under Section 498-A of IPC and therefore, the findings arrived at by the trial Court is held proper in respect to the finding committed by the accused under Section 498-A of IPC.

25. Next coming to the point of quantum of sentence, the learned counsel for the appellant submitted that the appellant had already served the sentence for few months and thereafter, let out on bail and therefore, prayed for lenient view in the matter of sentence.

26. Considering the submissions made by the learned counsel for the appellant and the mitigating circumstances, this Court is of the view that sentencing the appellant to the period of two years rigorous imprisonment with fine of Rs.15,000/- for the offence under Section 498-A of IPC and in default, to undergo further period of three months simple imprisonment, would meet the ends of justice. In otherwise, in respect to the conviction and sentence provided by the trial Court for the offence under Section 306 IPC, is set aside.

27. In the result, the Criminal Appeal is partly allowed and the conviction and sentence imposed upon the appellant/ Accused, by the learned Sessions Judge, (Magalir Neethimandram), Chennai, is modified as follows:

(i) the appellant/accused is convicted and sentenced to undergo two years rigorous imprisonment with fine of Rs.15,000/- for the offence under Section 498-A of IPC and in default, to undergo further period of three months simple imprisonment.

(ii) the conviction and sentence provided by the trial Court for the offence under Section 306 IPC, is set aside.

(iii) Since the appellant/accused is on bail, the trial Court shall take steps to secure the appellant/Accused to commit him in prison to serve out the remaining period of sentence. The period of sentence already undergone by the appellant/accused, shall be set off under Section 428 of the Code of Criminal Procedure.

(iv) The fine amount, if any, already paid by the appellant/accused, has to be adjusted, for the sentence now provided."

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ars

To

1. The Sessions Judge,
(Magalir Neethimandram),
Chennai
2. The Metropolitan Magistrate,
No.XV George Town Chennai.
3. do thro The Chief Metropolitan Magistrate,
Egmore, Chennai.
4. The Superintendent,
Central Prison, Puzhal , Chennai.
5. The Assistant Commissioner of Police,
Washermenpet Range,
6. The Public Prosecutor,
High Court, Madras.
- 7.The Section Officerm
Criminal Section,
High Court, Madras 600 104.

EV(CO)
RMP(06/01/2021)

Criminal Appeal No.202 of 2014

WEB COPY