



Bail Slip

The Petitioner/Appellant/Accused namely K.Velmurugan, was released on Bail as per order of this court dated 05.03.2015 made in MP(MD).No.1/2015 in CrI.A. (MD).No.306/2014.

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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Dated : 30.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

CRL. A. (MD) No. 306 of 2014

K.Velmurugan .. Appellant / Accused No.1

- Vs -

The State of Tamil Nadu,
Represented by the Deputy Superintendent of Police,
Umachikulam sub Division,
Madurai.

Crime No.532 of 2008 .. Respondent / Complainant

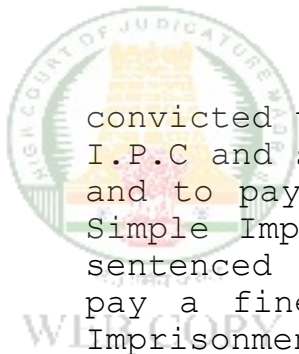
Prayer : Appeal filed u/s 374 (2) of the Code of Criminal Procedure, to allow the Appeal and set aside the judgment of conviction imposed in S.C.No.312 of 2012, on the file of the Sessions Court cum Mahila Court, Madurai, dated 05.11.2014.

For Appellant : Mr.K.Baalasundaram

For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

JUDGMENT

The appellant is Accused No.1 in S.C.No.312 of 2012, on the file of the Sessions Court cum Mahila Court, Madurai, dated 05.11.2014. The appellant / Accused No.1 was tried along with Accused Nos.2 to 4. Accused No.2 is the mother of the appellant. Accused No.3 is the sister of the second accused. Accused No.4 is the grandmother of the appellant. In the trial Court, they were charged for the offences under Sections 498 A and 306 of I.P.C. and Section 4 of Dowry Prohibition Act. The trial Court had acquitted Accused Nos.2 to 4 from all charges framed against them and



convicted the appellant for the offence under Sections 498 A and 306 I.P.C and sentenced him to undergo three years Rigorous Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment for the offence under Section 498 A I.P.C and sentenced him to undergo seven years Rigorous Imprisonment and to pay a fine of Rs.2,000/- in default to undergo six months Simple Imprisonment for the offence under Section 306 I.P.C. and he was acquitted for the offence under Section 4 of the Dowry Prohibition Act. Against which, the present Appeal has been filed.

2. The facts of the case are briefly stated hereunder:-

2.(1). The case of the prosecution is that the appellant and the deceased had married on 11.09.2008. During their marriage, 10 sovereigns of gold and Rs.10,000/- was insisted to be given as seethana articles. But, P.W.1 / father of the deceased had given five sovereigns of gold and Rs.10,000/- as seethana articles to their marriage. After their marriage, both of them were living in a separate home. The mother of the appellant had compelled them to live in joint family with her. The third and fourth accused also compelled them to live in joint family. The appellant on their compulsion insisted his wife viz., Selvarani to live in only joint family. But, his wife resisted and she was physically assaulted and subjected to cruelty. Further, the demand for balance five sovereigns of gold jewels as dowry persisted by the accused. Due to which, unable to bear the same, on 12.11.2008, the deceased Selvarani had lodged a complaint with All Women Police Station, Thallakulam and P.W.16-Sub Inspector of Police, attached to the Thallakulam Police Station, had summoned all the accused and there, it was agreed that within ten days, the appellant would find out a separate place and take back his wife Selvarani. Since Selvarani was pregnant at that time, she was asked to stay with her parents during that time. The appellant had not called the deceased and even after twenty days, the appellant had not taken back his wife and hence, on 25.11.2008, there was a panchayat and the accused including the appellant reiterated the demand of five sovereigns of gold jewels, failing which, the appellant uncle's daughter was ready to marry him with ten sovereigns of gold. On 30.11.2008, the deceased Selvarani at about 07.30 a.m. called the appellant from a PCO / STD Booth. The deceased returned back home, crying and thereafter, she committed suicide by using her shawl. Hence, a case came to be registered under Section 174 Cr.P.C. Thereafter, the Revenue Divisional Officer conducted an enquiry and the offences were altered into Sections 304 (b) and 306 I.P.C. and charge sheet came to be filed.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 19 witnesses were examined as PW.1 to PW.19 and 16 documents were marked as Ex.P.1 to Ex.P.16. one material object was marked as M.O.1. On the side of the accused, no witness was examined nor any document was marked.



4. When the appellant was questioned u/s 313 Cr.P.C. about the incriminating circumstances appearing against him, he denied the same.

5. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid, challenging the legality of the said conviction and sentence, the present appeal has been filed by the appellant.

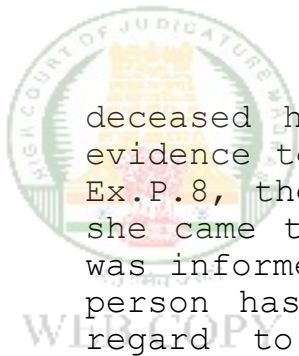
Submissions

6. The learned counsel appearing on behalf of the appellant made the following submissions:

6.(1). During the trial, the appellant was tried along with his mother, aunt and grandmother, who were arrayed as Accused Nos.2 to 4. The lower Court on proper appreciation of the evidence had acquitted Accused Nos.2 to 4. On the same set of evidence, the trial Court had convicted the appellant, which is not sustainable in law. Further, the deceased Selvarani had committed suicide in her parental house. The admitted case is that after their marriage they were living happily, but, from 12.11.2008, she was living only in her parents house. It is also seen that immediately after their marriage, the appellant and the deceased were living separately in the second floor of the house of P.W.6 as tenant.

6.(2). The case projected by the prosecution is that the deceased committed suicide for the reason failed to have a separate home and she was forced and compelled to live in joint family. Further, P.W.16-the Sub Inspector of Police, All Women Police Station, Thallakulam, states that there is no demand of any dowry as well as P.W.11-Revenue Divisional Officer, who conducted inquest, in his report viz., Ex.P.8, it is only mentioned that for the purpose of joint family there was a dispute between the deceased and the appellant and there is no demand of dowry. The trial Court had wrongly convicted the appellant for the reason that the deceased was subjected to cruelty. P.W.12-the Revenue Divisional Officer has given a report viz., Ex.P.10. Ex.P.10 is not a report and it is a letter addressed by P.W.12-the Revenue Divisional officer to the Investigating Officer. Ex.P.10 is not supported with any statement or any other material. Hence, it cannot be said to be a report in proper form and the reason given in Ex.P.10 is not supported with any materials.

6.(3). It is seen from the evidence of P.W.7 and P.W.8 that the deceased had spoken to her husband / appellant through P.C.O / STD Booth and thereafter, she went home, crying and immediately committed suicide. P.W.7 specifically states that he had seen the deceased returning back home, crying, but, he has not spoken to her. P.W.8 though states that he had asked the reason for crying, the



deceased had not given any reason to P.W.8. Thus, there is no evidence to show that the appellant being the reason. Further from Ex.P.8, there is no mention about P.W.2/ mother of the deceased how she came to know the reason. In Ex.P.8, it is mentioned that she was informed by the owner of PCO / STD Booth. In this case, no such person has been examined. The allegations made by P.W.2 in this regard to the Revenue Divisional Officer is only a hearsay. Further, it is an admitted case of P.W.1 and P.W.2 that they had gone early in the morning for work and they both came to know about the death of her daughter while they were at the work spot. P.W.3 is the other sister, who is living elsewhere. P.W.4 is the another brother, who lives along with P.W.1 and P.W.2, he categorically states that the appellant and the deceased were living happily. Further, the marriage between the appellant and the deceased was not to the liking of P.W.1 and it is admitted by P.W.1 and also by P.W.4. P.W.1 was insisting his daughter to get in marriage with the maternal uncle's son and forced her to get marriage to him. P.W.4 confirms the same and that is the reason which triggered the deceased to commit suicide and not the appellant. Hence, he prayed for acquittal. In order to substantiate his submissions, the learned counsel appearing for the appellant relied on a judgment of the Hon'ble Supreme Court in the case of **S.S.Chheena Vs. Vijay Kumar Mahajan and another** reported in **(2010) 12 SCC 190**. The relevant portion of the said judgment is extracted hereunder:-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

6.(4). The learned counsel appearing for the appellant relied on a judgment of the Hon'ble Supreme Court in the case of **Ayyappan Vs. State represented by the Inspector of Police, Arupukottai Town Police Station, Virudhunagar District in Crime No.938 of 2004** reported in **(2016) 4 MLJ (Cr1) 460**. The relevant portions of the said judgment are extracted hereunder:-

"37. Sometimes, the decision to commit suicide might be taken by the victim himself/herself, unaccompanied by any act or instigation etc. on the part of the accused. A person may die like a coward. On his failure in the examination, a student may commit suicide. They are weak minded. They are persons of frail mentality. For their



foolish mentality/decision, another person cannot be blamed.

38. Thus, for an offence under Section 306 IPC., there must be two ingredients. One is there must be suicide. In this case, when Exs.P13 and P10 dying declarations are not relied on, its fallout would be that the deceased has committed suicide by self immolation. So, the first part of the ingredient to Section 306 IPC., is established.

39. The next part is, whether by not providing the required money to the deceased to run the family, the accused has abetted her commission of suicide. Suicide is stated in Section 306 IPC. But what 'abetment' means is not stated in Section 306 IPC. Then necessarily one has to refer to the word, 'abetment' used elsewhere in the Indian Penal Code. So, we have to look at Section 107 IPC., where the word, 'abetment' has been employed and explained. As per the dictionary meaning, it means provoke, aid, instigate a person to do an act or omit to do an act, which he is legally entitled to do. If one read Section 107 IPC., there would be similar meaning for the very same word, 'abetment' used in 306 IPC., we have to arrive at the same meaning.

40. There must be 'mensrea' for an overt act. Even for the allegation that a person has instigated, provoked another person to commit suicide, there must be intention on the part of the accused to do so. It is not the wish of the victim to commit suicide. The requirement of mensrea will be attributed only to the accused. There cannot be mensrea for a victim in criminal law. There must be intention or desire on the part of the accused that the victim should commit suicide, die."

6.(5). The headnote of a judgment of the Hon'ble Supreme Court in the case of **Gurcharan Singh Vs. State of Punjab** reported in **(2017) 1 SCC 433**, reads as follows:-

"-Held, the basic ingredients of Section 306 I.P.C. are suicidal death and abetment thereof-To constitute abetment, intention and involvement of accused to aid or instigate commission of suicide is imperative-Any severance or absence of any of these constituents would militate against said indictment-Remoteness of culpable acts or omissions rooted in intention of accused to actualise the suicide would fall short of offence of abetment essential to attract Section 306 I.P.C-Contiguity, continuity, culpability and complicity of indictable acts or omission are concomitant indices of abetment -Section 306 I.P.C. thus criminalises sustained incitement for suicide "



7. The learned Government Advocate (Criminal side) appearing on behalf of the respondent Police made the following submissions:

7.(1). On the prosecution side, P.W.1 to P.W.19 were examined and 23 documents were marked as Ex.P.1 to Ex.P.16 and one Material object was marked as M.O.1.

7.(2). P.W.1 had given the complaint which is Ex.P.1. P.W.3 is the sister and P.W.4 is the brother of the deceased. P.W.5 is the relative, who is the attesting witness to the complaint i.e., Ex.P.1. P.W.6 is the owner of the house, where the appellant and the deceased were living as tenants. P.W.7 and P.W.8 are Panchayatars, who went to the house of the appellant and tried for re-approachment, wherein, the accused had reiterated the demand of dowry. P.W.9 is the witness for observation mahazar and recovery mahazar. P.W.10 is the Doctor, who conducted postmortem, gave the Accident Register copy i.e., Ex.P.5. P.W.13 is the causality Medical Doctor attached to the Government Hospital, who examined the deceased and declared her dead. P.W.11 is the Revenue Divisional Officer, who conducted preliminary enquiry and given Ex.P.8-preliminary report and Ex.P.9- inquest report. P.W.12 is the another Revenue Divisional Officer, who conducted further enquiry and gave a report Ex.P.10. P.W.17 is the Sub Inspector of Police, who received the complaint and registered the First Information Report / Ex.P.11. P.W.18 is the Investigating Officer, who visited the scene of occurrence, prepared observation mahazar / Ex.P.12 and rough sketch / Ex.P.13 and seizure mahazar- Ex.P.14 and Ex.P.15-Form 95. P.W.19 is the succeeding Investigating Officer, who examined the postmortem Doctor and thereafter, filed an alteration report-Ex.P.16 and concluded the investigation and filed charge sheet in this case. The prosecution through the evidence of the above witnesses and materials had clearly proved the case more specifically they have categorically stated about the demand of dowry, which is corroborated by evidence of P.W.7 and P.W.8 and thereafter, the deceased herself had given a complaint and enquiry has been conducted by her. Thus, the demand of dowry and subjected the deceased to cruelty had been clearly proved.

7.(3). Further, from the evidence of P.W.7 and P.W.8, it is seen that they saw the deceased crying and rushing back to her home and immediately committing suicide after speaking to the appellant. Hence, the appellant is the cause for the abetment of suicide of the deceased.

7.(4). The Lower Court on consideration of the above facts had rightly convicted the appellant which need not be interfered with.



8. Discussions:-

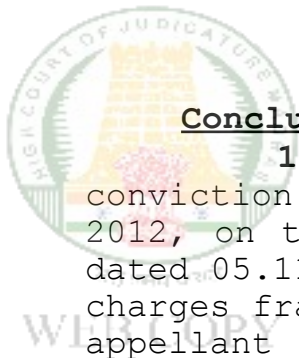
8.(1). Considering the rival submissions made on either side, and the other materials available on record, it is seen that the parents of the deceased are not happy of the marriage of the deceased with the appellant. P.W.4-brother of the deceased admits the same. Further, P.W.1 was exhorting and compelling the deceased to get in marriage with her maternal uncle's son. P.W.6-owner of the house, had clearly stated that the appellant and the deceased were living as tenants in his house. Hence, there is no reason for the appellant and the deceased to have misunderstanding as regards to live as a joint family with the other accused. P.W.6-Sub Inspector of Police, All Women Police Station, Thallakulam, has clearly stated that the dispute between them is with regard to they are living separately and not for dowry.

8.(2). Further, the Revenue Divisional Officer viz., P.W.11, who conducted the preliminary enquiry in his report viz., Ex.P.8 as well as the Panchayatars in his report viz., Ex.P.9 had categorically stated that there is no demand of dowry. P.W.12's report viz., Ex.P.10 is without any supporting materials. The reason given by the Revenue Divisional Officer is on the evidence of P.W.2 he had come to the conclusion that the deceased had spoken to the appellant soon before her death cannot be considered for the simple reason that both of them had left for job and they were informed about the death while they were in the work spot. From Ex.P.8, it is seen that P.W.2 came to know through P.C.O / S.T.D Booth owner about her death. Unfortunately, the owner of the P.C.O / S.T.D Booth has not been examined as witness. The attempt made through P.W.7 and P.W.8 cannot be considered for the simple reason that P.W.7 had not stated anywhere that they had seen the deceased speaking to appellant and the deceased had not informed anything to them. P.W.8 states that when he questioned the deceased about the reason for crying, she had not given any reason. Hence, it cannot be stated that the appellant is the reason, who had abetted the deceased to commit suicide.

8.(3). Further the lower Court had only inferred that the appellant could not have spoken in voice of solace with the deceased, who was pregnant and was in a depressed mood.

8.(4). The prosecution has failed to prove its case beyond reasonable doubts. In such view of the matter, this Court is inclined to interfere with the findings of the Trial Court.

9. Considering the rival submissions as discussed above and the other materials available on record, this Court is inclined to interfere with the findings of the Trial Court.



Conclusion

10. In the result, the Criminal Appeal is allowed. The conviction and sentence imposed on the appellant in S.C.No.312 of 2012, on the file of the Sessions Court cum Mahila Court, Madurai, dated 05.11.2014, is set aside and the appellant is acquitted of the charges framed against him. The bail bond, if any, executed by the appellant shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

To

- 1) The Sessions Court cum Mahila Court, Madurai,
- 2) The Judicial Magistrate No.II, Madurai.
- 3) Do through The Chief Judicial Magistrate, Madurai.
- 4) The Deputy Superintendent of Police, Umachikulam sub Division, Madurai.
- 5) The Superintendent, Central Prison, Madurai.
- 6) The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, Criminal Section, (2 Copies)
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.BAALASUNDARAM, Advocate (SR-4354[F] dated 31/01/2020

JUDGMENT IN
CRL. A. (MD) NO. 306 of 2014
Dated : 30.01.2020

JMN(25.02.2020) 8P : 10C