



BAIL SLIP

Ganesan, S/o.Ramasamy, Appellant/Sole Accused, is released on Bail vide Court order dated 25.04.2014 made in MP(MD)No.1 of 2014 in Crl A(MD)No.99 of 2014.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.01.2020

PRONOUNCED ON : 28.08.2020

CORAM

THE HONOURABLE MR.JUSTICE **M.NIRMAL KUMAR**

Crl.A(MD)Nos.331 & 99 of 2014

Crl.A(MD)No.331 of 2014

Rengarajan ... Appellant/Defacto complainant
Vs.
1.Ganesan ... Respondents/Accused
2.The Inspector of Police,
North Police Station,
Dindigal Town,
Dindigul District. ... Respondents/Complainant

Prayer: Criminal Appeal filed under Section 372 of Cr.P.C., praying to call for the records from lower Courts and to enhance the sentence from two years to maximum sentence for the offence under Section 498(A) of IPC and to enhance the sentence from seven years to maximum sentence for the offence under Section 306 IPC and further to convict the accused under Section 340(B) of IPC and to impose the maximum sentence for that offence by allowing this appeal.

Crl.A(MD)No.99 of 2014

Dr.Ganesan ... Appellant / Sole Accused
Vs.
State represented by,
The Inspector of Police,
Dindigul Town North Police Station
in Crime No.987 of 1997,
Dindigul District. ... Respondent / Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Cr.P.C., praying to call for the records and set aside the order of conviction and sentence passed in S.C.No.21 of 2001, dated 07.03.2014 on the file of the learned Magalir Neethimandram (Fast Tract Mahila Court), Dindigul and allow this appeal and acquit the appellant/accused from the charges leveled against him.



In Crl.A(MD)No.331 of 2014:

For Appellant : Mr.C.Rexin Raj

For 1st respondent : Mr.P.Andiraj for
Mr.A.K.Azhagarsamy

For 2nd respondent : Mr.K.Suyambulinga Bharathi
Government Advocate[Crl. Side]

In Crl.A(MD)No.99 of 2014:

For Appellant : Mr.P.Andiraj for
Mr.A.K.Azhagarsamy

For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate[Crl. Side]

COMMON JUDGMENT

Crl.A.(MD).No.331 of 2014 has been filed by the *defacto* complainant to convict the accused for the offence under Section 304 (B) IPC and to enhance the sentence imposed on the accused for the offence under Sections 498(A) and 306 IPC by the learned Sessions Judge, Magalir Neethimandram (Fast Track Magalir Court), Dindigul in S.C.No.21 of 2001, dated 07.03.2014. Crl.A.(MD).No.99 of 2014 has been filed by the accused to set aside the conviction and judgment made in S.C.No.21 of 2001, dated 07.03.2014 by the learned Sessions Judge, Magalir Neethimandram (Fast Track Magalir Court), Dindigul.

2. The trial Court by judgment dated 07.03.2014 in S.C.No.21 of 2001 found the accused guilty and sentenced him as follows:-

- Convicted and sentenced to undergo Rigorous Imprisonment for two years and to pay a fine of Rs.2,000/-, in default, to undergo Rigorous Imprisonment for one month for the offence under Section 498(A) IPC.
- Convicted and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo Rigorous Imprisonment for three month for the offence under Section 306 IPC.

The above sentences were ordered to run concurrently.

3.Since the issue in both the appeals arise out of common judgment, both the appeals are taken together for disposal. For the sake of convenience, the parties are referred to as per the rank mentioned in the judgment of the trial Court.



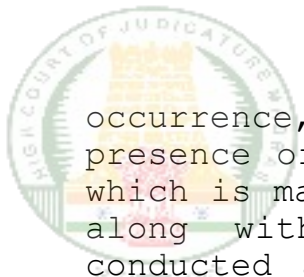
4. The brief facts of the case are as follows:-

(i) PW1/defacto complainant is the brother of the deceased Bavani. The accused Ganesan is the husband of the deceased. Both the accused and the deceased are Doctors. Their marriage was solemnized on 30.06.1991 at Dindigul. At the time of marriage, the father of the deceased presented 50 sovereigns of jewels and household articles and utensils as Seervarisai. After the marriage, they lived in the house of the accused at Dindigul. The accused not satisfied with the dowry presented, persistently demanded a bullet motorcycle from the parents of the deceased. Since the deceased could not bring it, she was harassed and tortured by the accused and she was driven out of matrimonial home. After reconciliation, the deceased returned to her husband's house. The accused suspected her fidelity and forced her to undergo abortion many times. Further the accused developed illicit intimacy with another lady and wanted to marry her as second wife. He ill-treated the deceased forcing her for his bigamous marriage. The accused was not talking with the deceased and was communicating with her through the nurses, thus he was continuously harassing the deceased.

(ii) On 17.11.1997 morning, the deceased went to Kannivadi Primary Health Centre by bus to attend duty. PW1 met his sister Bavani at Dindigul Bus stand. As the bus started, the deceased asked PW1 to come at 11.30 hours to meet her and accordingly, at 11.45 hours PW1 met his sister. At that time, the deceased informed PW1 that her husband was threatening her to sign the divorce petition and the mother and the sister of the accused compelled the deceased to sign in the divorce petition and asked PW1 to come to her house at 05.00 hours., to take her to parental home. However, at about 13.15 hours, the accused came to PW1's house and informed that Bavani had severe chest pain and hence, PW1 went along with the accused to Rajarajeswari Hospital Dindigul, where the deceased Bavani was taken for treatment. When they reached there, they were informed that the deceased was shifted to Government Hospital, Dindigul.

(iii) PW1 rushed to the Government Hospital, where he was informed that she already passed away. Later he came to understand that due to the unbearable torture and cruelty committed by the accused on 17.11.1997, at about 12.30 hours the deceased committed suicide by consuming deadly cyanide poison mixed with milk. PW1 went to Dindigul Town North Police Station and gave a complaint. PW17 R.Natarajan, Inspector of Police received the complaint and registered a case in Crime No.987 of 1997 for the offence under Section 174 Cr.P.C. Since the original complaint was missing, the copy of the complaint is marked as Ex.P16 and FIR was marked as Ex.P13. He forwarded the original complaint and FIR to the Revenue Divisional Officer, Dindigul to conduct inquest and enquiry.

<https://hcservices.ecourts.gov.in/125416> the Revenue Divisional Officer visited the place of



occurrence, conducted inquest on the body of the deceased in the presence of relatives, panchayathars and recorded their statements, which is marked as Ex.P12. He sent the body of Bavani for postmortem along with Ex.P8 requisition. PW9, PW10 and one Dr.Ramasamy conducted autopsy on the body of the deceased. They issued Ex.p9 postmortem certificate. However they reserved opinion pending report of the chemical analysis. They suggested that the death would have been occurred between 24 to 26 hours prior to autopsy. After receipt of viscera report Ex.P10, they issued final opinion Ex.P20, wherein it is found that the deceased died of cyanide poisoning.

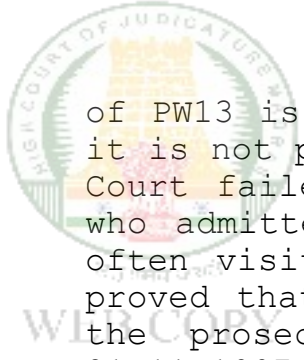
(v)PW23 the Deputy Superintendent of Police, Dindigul (Rural) took up the investigation and visited the place of occurrence on 17.11.1997 at 21.30 hours in the presence of PW7 Sivakumar, prepared Ex.P3/Observation Mahazar and drew Ex.P17/Rough Sketch. He inspected the clinic of the accused and the room where the occurrence took place and recovered MO2 to MO9 through Ex.P4/Seizure Mahazar. PW23 examined the witnesses and recorded their statements.

(vi)Thereafter, the accused, his mother Vijayalakshmi and his brother Sundaram were arrested and confession statement of the accused was recorded. The admitted portion of the confession statement of the accused is marked as Ex.P5. The accused disclosed, identified and handed over 10 grams of cyanide kept in a polythene cover and the same was recovered under Ex.P6. PW23 recovered MO1 and MO10 series under Ex.P7 and the cyanide through Ex.P6 and sent the accused for remand. The investigation was altered from Section 174 Cr.P.C to Section 498(A) and 302 IPC. The alteration report was marked as Ex.P18. Since PW23 was transferred, PW24, the Deputy Superintendent of Police took up further investigation and he examined the witnesses and recorded their statements. On 27.11.1999, after completion of investigation, PW24 laid the charge sheet against the accused under Section 498(A), 304(B) and 306 IPC.

5.Before the trial Court, on the side of the prosecution, PW1 to PW24 were examined and Exs.P1 to P20 were marked and MO1 to MO10 were seized. On the side of the defence, no witnesses examined and no documents were marked. On completion of examination of the witnesses on the side of the prosecution, the accused was questioned under Section 313 Cr.P.C., as to the incriminating circumstances found in the evidence of the prosecution witnesses and he denied complicity with the offence.

6.Considering the evidence available on record, the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Dindigul found the accused guilty and convicted as stated above, against which the present appeals.

7.The learned counsel for the accused submitted that the trial Court failed to note that PW1 could not meet the deceased at
<https://hdservicereport.gov.in/> and on 17.11.1997 at about 11.45 a.m. The evidence



of PW13 is that he dropped Doctor Bavani in front of her house and it is not possible for PW1 to meet her near the bus stand. The trial Court failed to consider the evidence of PW1, PW3, PW18 and PW21, who admitted that after the marriage the accused and the deceased often visited temples, cinemas and Sirumalai Estate, which clearly proved that there was good relationship between them. According to the prosecution, the accused was arrested at 09.00 a.m., on 21.11.1997 and they recovered MO1 and MO10, whereas PW5 admitted that on the date of occurrence the accused was in custody of the police who brought him to the place of occurrence. Further PW16, RDO deposed that MO1 was handed over by the accused during his enquiry on 18.11.1997 and PW16 handed over the same to police. The theory of strained relationship between the deceased and the accused is not proved. PW2 and PW3 admitted that the accused and deceased used to talk normally in their mother tongue Sourashtra language in front of others.

8.The learned counsel for the accused further submitted that though as per prosecution the occurrence took place at about 12.45 p.m., the complaint [Ex.P16] was lodged at about 08.30 p.m., PW5 admitted that at about 12.00 noon police was present in the hospital. PW2 admitted the same. There was 4 days delay in sending the FIR to the Court and the complaint was lodged with a delay of 8 hours which is not explained by the prosecution. As per the version of PW12, abortion of the deceased is a natural one due to her ill-health. PW2 and PW3 categorically stated that the accused brought the deceased from the bedroom and tried to revive and save her. Considering the health condition, immediately made arrangements to send her to Rajarajeswari Hospital for treatment. The deceased was in a depressed state, since on four occasions she had miscarriage and she was unable to give birth to child, which fact is admitted by PW1. The accused and the deceased were leading normal life which is admitted by PW2, PW3, PW12 and PW21. PW1 and PW5 admitted that there was agitation by the Communist Party members to arrest the accused. The accused was very much available on 17.11.1997 and on the subsequent days, the accused was called for enquiry and was available in police station. On 18.11.1997 he appeared before PW16, RDO and gave statement. The arrest of the accused is shown 21.11.1997. Thereafter, the recoveries of MO1, MO10 and cyanide powder were made for the purpose of the case. The categorical finding of PW16 is that there was no dowry demand. Thus, he prayed for setting aside the conviction and sentence.

9.In support of his contentions, the learned counsel for the accused relied upon the citations:-

- Pawan Kumar Versus State of Haryana reported in AIR 1998 Supreme Court 958.
- Sanju Versus State of Madhya Pradesh reported in 2002 SCC (Cri) 1141.

<https://hcservices.courts.gov.in/hcservices/> ● R.N. Gowari Versus State of Gujarat reported in (2009) 4 MLJ



(Crl) 983 (SC), wherein the Hon'ble Apex Court in para 11 has held as follows:-

"Section 107 IPC 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 my 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 normal linked with the proved offence."

10. The learned counsel appearing for the defacto complainant submitted that the trial Judge acquitting the accused for the charges under Section 304(B) is erroneous and unsustainable both on law and facts. The trial Court ought to have seen the nature and gravity of cruelty and harassment against the deceased and maximum punishment ought to have been imposed on the accused. The trial Court gave no reasons for a lesser punishment. The demand of dowry was proved by the prosecution. The trial Court erroneously acquitted the accused for the offence under Section 304(B) IPC. PW1, PW4, PW5, PW6, PW18 and PW19 corroborated each other. The trial Court, observed in its judgment regarding the cruelty and inhuman attitude of the accused. The confession leading to discovery of the fact is proved by the prosecution, the surrounding circumstances resulted in the death of the deceased was proved by the prosecution. PW1 the defacto complainant, brother of the deceased met his sister by 11.45 a.m., when she informed about the harassment and torture given by the accused. Thereafter, she informed him to come by 05.00 p.m., and take her to parental house. Within 1 ½ hours, PW1 was informed about the death of his sister. The accused informed PW1 that his sister had developed chest pain and referred to Rajarajeswari Hospital. PW2 and PW3 stated that the accused informed them to get stomach wash done to the deceased, since the deceased consumed poison, which would clearly prove the culpability of the accused. The demand of dowry and harassment met by the deceased was consistent right from the marriage, which fact is proved by the evidence of PW4, PW5, PW6



11. Therefore, he prayed to enhance the sentence imposed on the accused for the offence under Section 498(A) and 306 IPC and also prayed to convict the accused for the offence under Section 304 (B) IPC.

WEB COPY

12. The learned Government Advocate (Crl. Side) submitted that the accused demanded additional dowry from the deceased, which was not fulfilled and hence, the deceased was ill-treated and harassed by the accused. The accused was having illicit contact with some other lady and insisted the deceased to sign in the divorce petition. Therefore due to the torture and cruelty of the accused, the deceased committed suicide.

13. PW21, a goldsmith was in possession of cyanide for his business. The accused, a friend of PW21 received cyanide from PW21. This fact is not disputed. The postmortem certificate Ex.P9, Forensic Report Ex.P10 and Final Opinion Ex.P20 clearly prove that the death is due to cyanide poisoning. From the confession of the accused Ex.P5, the packet of cyanide powder was seized through Ex.P6. The same was confirmed by the Forensic Department through Ex.P19. The accused attempted to create a doubt that the cyanide present in the body of the deceased is potassium cyanide and the seized cyanide powder is sodium cyanide. For possession of lethal chemical cyanide, no explanation was given. Further the possession is not disputed.

14. Thus the prosecution proved its case beyond reasonable doubt. Accordingly, the trial Court rightly convicted the accused for the offence under Section 498(A) and 306 IPC and acquitted him for the offence 304(B) IPC. Since RDO in his report has found that there was no dowry demand and there is no evidence to show that the deceased was subjected to demand of dowry soon before the death. Therefore, there is no need to interfere with the conviction and sentence imposed as against the accused.

15. In support of his contention, he relied upon the decision of the Hon'ble Apex Court in the case of **"UDE Singh and others Versus State of Haryana"** in C.A.No.233 of 2010, wherein in paragraph Nos.15, 16, 16.1 and 16.2, held as follows:-

"15. Thus, "abetment" involves a mental process of instigating a person in doing something. A person abets the doing of a thing when: (i) he instigates any person to do that thing; or (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or (iii) he intentionally aids, by acts or illegal omission, the doing of that thing. These are essential to complete the abetment as a crime. The word "instigate" literally means



to provoke, incite, urge on or bring about by persuasion to do anything.

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of



human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

WEB COPY

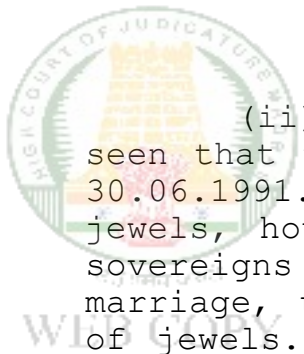
16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self- confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances."

16.He further submitted that the trial Court on analysis of evidence and materials has rightly convicted the accused as mentioned above and prayed for dismissal of the appeal.

17.This Court considered the rival submissions and perused the materials available on record.

(i)In this case, the witnesses are broadly classified as follows:-

The relatives of the deceased: PW1 is the brother, PW4, PW5 and PW6 are the junior fathers, PW18 is the Aunt. The witnesses employed in the hospital of the accused are PW2, PW3 and PW14. The Doctors who conducted autopsy on the body of the deceased are PW9 and PW10. PW16 is the RDO who conducted inquest on the body of the deceased. The witnesses for Observation Mahazar, Rough Sketch, arrest and confession are PW7, PW8 and PW19. PW12 is the Doctor who treated the deceased for gynaecological problem. PW15 is the Doctor who worked along with the deceased at Kannivadi Primary Health Centre. PW20 is the Doctor who studied along with the deceased. PW11 is the Manager of Rajarajeswari Hospital. PW13 is the Jeep Driver of Kannivadi Primary Health Centre. PW21 is the Goldsmith from whom the accused got possession of cyanide. PW22 is the Sheristhadar of the Court, who forwarded the articles to Forensic Lab. The police officials are PW17, registered FIR, PW23, who conducted major part of the investigation, PW24 conducted further investigation and filed the charge sheet.

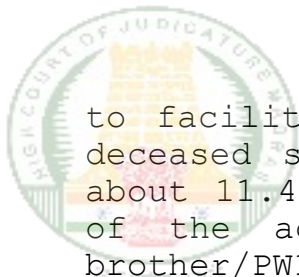


(ii) From the evidences of PW1, PW4, PW5, PW6 and PW18, it is seen that the marriage between the deceased and the accused was on 30.06.1991. Initially there was a demand for 100 sovereigns of gold jewels, household articles and a car. Later it was agreed for 50 sovereigns of jewels and household articles. Two days prior to the marriage, the accused and his family members demanded cash instead of jewels. The father of the deceased stated that already jewels were purchased and it was not possible to give cash. Thus dispute and misunderstanding started from the beginning. The accused demanded bullet motor bike as Deepavali seer which could not be fulfilled. During Deepavali festival on 06.11.1997, the accused came to the house of the deceased at late hours and refused to wear the traditional Deepavali dress and also refused to take food which caused great mental agony to the father of the deceased. The father of the deceased had brought up his children from tender age after the demise of his wife. The pain and mental agony suffered at the hands of the accused were unbearable and on the same day on 06.11.1997 at about 11.00 p.m., the father of the deceased passed away due to heart attack.

(iii) After the marriage the relationship between the deceased and the accused was not cordial. In the year 1994, the deceased got an employment in Government Primary Health Centre, Pudukottai and she was staying in her uncle's house and she used to come once in a month. Thereafter, she got admission in DGO Course at Madurai and during this period she used to visit once in two weeks. After completion of PG course, she was posted at Kannivadi Primary Health Centre and for past few months, she was regularly attending the Primary Health Centre as well as her own clinic in Dindugal. Right from the marriage, the accused and the deceased were not living happily. The accused scissored out and cut the face of the deceased in the marriage photo album and also in the marriage invitation MO1 and MO10. The accused was not in talking terms with the deceased and he was communicating through nurses working in the hospital. Further, the accused used to abuse, insult and harass the deceased in front of the hospital staffs, patients and others. Due to which the deceased was unhappy and she was pushed to end her life. The accused from his friend PW21, a goldsmith possessed cyanide powder. This cyanide powder was injected in orange fruits to deter squirrel and rats from causing damage to the plants. This was demonstrated by him in front of the deceased to scare her. Further the accused also claimed that if any one acts against him, they would also face the same fate, Right from the day of marriage till her death the deceased was harassed and treated with cruelty and the accused suspected the fidelity of the deceased.

(iv) The deceased was harassed and she was in a confused state of mind. The accused had close relationship with nurses and others, developed illegal relationship with another lady and wanted to marry her, so he sought divorce from the deceased. The accused as

<https://www.judis.ejcs.gov.in/hcsd/faces>



to facilitate the marriage of the accused with another lady. The deceased stoutly refused the same. The deceased on 17.11.1991 at about 11.45 a.m., met PW1 and informed about the marriage proposal of the accused with another lady. The deceased informed his brother/PW1 to come at 05.00 p.m., to take her to the parental house. In the meanwhile within 1 ½ hours after PW1 met the deceased, he was informed that she developed chest pain and she was taken to Rajarajeswari Hospital, Dindigul. PW1 rushed to the Rajarajeswari Hospital and found that his sister was taken to Government Hospital Dindigul where she was declared dead.

(v) The accused slipped away from the Government Hospital, Dindigul. PW1 was in a state of shock not knowing what to do, thereafter contacted his junior father and later lodged a complaint with PW17. That is the reason for the delay in lodging the complaint. The above facts of harassment and cruelty are corroborated by other witnesses PW4, PW5, PW6 and PW18. It was contended that all these witnesses are close relatives of the deceased, in such of these cases it is only the family members who could know the happenings within the four walls. Further, the deceased had informed them about the sufferings she was undergoing at the hands of the accused. PW2 and PW3 are the nurses working in the nursing home of the accused have stated that on 17.11.1991 at around 12.00 noon after seeing some patient, the deceased had instructed to close the door for coffee break and at that time the accused and deceased were alone.

(vi) It is proved that on 17.11.1991 at about 12.00 noon, the accused and the deceased were alone and the door was closed, what had transpired behind the door is not known to anyone. According to PW2, since some patients had come, she had opened the door to call the deceased. At that time she saw spillage of coffee which was whipped and cleaned. PW2 went to first floor found the door locked and there was no response. Thereafter, the accused had come there forcibly kicked and opened the door. PW2 and the accused saw the deceased lying in the floor and gasping. The deceased was brought down and put in Veranda and directed PW2 to fetch an auto. PW2 informed PW14, Lab Technician. The version of PW3 is that the door was locked for coffee break and thereafter, she heard the breakage of glass sound, she opened the door found the spillage of tea and whipped the floor and cleared the broken glass. At that time she saw the accused bringing down the deceased. The accused instructed both PW2 and PW3 to immediately take her to Rajarajeswari Hospital for further treatment. He further instructed them to give stomach wash and to administer drips. The accused is the first person to know about the deceased consuming poisonous substance and that is the reason he immediately informed PW2 and PW3 to give stomach wash for the deceased. Further, the accused also informed to the Rajarajeswari Hospital, Dindigul about the same. PW9 and PW10 are the Doctors along with one Ramaswamy who conducted autopsy on the deceased on 18.11.1997 at about 02.15 p.m.



(vii) It is seen that the cyanides in white powder form are in common use in many trades in metallurgy, photography, electroplating, fumigation of ships and aircraft. In this case, PW21 is a Goldsmith. It is a known fact that goldsmith use cyanide for purifying Gold. PW21 is a close friend of the accused. PW21 admitted to have given cyanide to the accused. This is not seriously disputed. The accused by way of explanation stated that the cyanide salt was intended to deter the squirrel and rats spoiling his fruit bearing plants and trees which is a far-fetched one. The lethal character of cyanide is well known. The other explanation of the accused is that in Viscera Report/Ex.P10, dated 26.11.1997, it is stated as follows:-

"1.Stomach and contents : Detected cyanide equivalent to five hundred and twenty Milligrams of Potassium cyanide.

2.Intestine and contents : Did not detect cyanide.

3.Liver and Kidney : Detected cyanide equivalent to one hundred and thirty (130) milligrams of potassium cyanide.

4.Skin Bit from insection site : Did not detect cyanide.

5.Preservative : Did not detect cyanide."

(viii) The cyanide seized from the residence of accused on 21.11.1997 and the description given in Ex.P6 is as follows:-

"கைப்பற்றிய சொத்துக்களின் - சுமார் 100 மிகி பிடிக்கக்கூடிய கருப்ப, முடியுடன் புளு கலர் பிளாஸ்டிக் டப்பாவின், மேலே சிவப்பு, பாட்டருடன் கூடிய வெள்ளை நிற பாலித்தின் பையில் சுமார் 100கிராம் எடையுள்ள வெள்ளைநிற சயனைடு என்ற பெயர் உள்ள இரசாயன விஷம் பொருள்."

(ix) The cyanide has been forwarded to the Forensic Lab through Ex.P14. The report of the forensic department/Ex.P19, dated 08.01.1998 is as follows:-

"9.A polythene cover containing a blue coloured cylindrical container with black lid and labelled, "... Town North Police Station in Crime No.987/1997... RPR 324/97..." and containing some white coloured substance in a polythene cover with pressing type red border:- Detected sodium cyanide."

(x) It was submitted that what was found in Viscera report is potassium Cyanide and what was seized from the deceased is sodium cyanide. Hence the accused could not be held responsible for instigating and intentionally aided in abetment of consumption of cyanide by the deceased. The character of both potassium cyanide and sodium cyanide are almost same. Both have corrosive effect on the mouth, throat and stomach. In poisoning by cyanides, the symptoms may not occur for 10 to 20 minutes. The fatal dose is 200 to 300 milligrams of sodium cyanide or potassium cyanide. From the postmortem report Ex.P9, the stomach and small intestine



observations are as follows:-

"Stomach - Contains 150 ml of dark brown coloured fluid with pungent smell. Mucosa congested with petechial hemorrhage. Congestion & petechial hemorrhages more marked along with greater curvature to the stomach greater.

Small Intestines - Contains 30 ml dark brown fluid with pungent smell Mucosa congested."

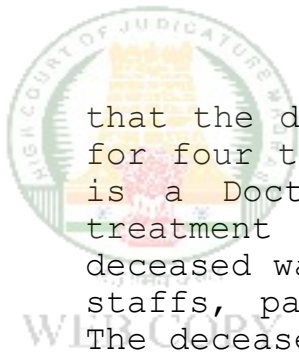
(xi)On close study of Ex.P6, it is seen that from the consultation room of the accused *"10 grams of white colour cyanide has been recovered and seized."* As per Ex.P19, the Forensic report, this white colour cyanide powder is found to be *"Sodium Cyanide"*.

(xii)In the forensic report, it is mentioned cyanide equivalent to potassium cyanide. Since potassium cyanide is used as standard/control for estimation. It does not mean or denote potassium cyanide. The reason for death of deceased Bavani as seen from Ex.P20, final opinion is that *"The deceased could appear to have died of cyanide poisoning."* Hence it is proved through Exs.P9, P10, P20 and PW9, PW10, the deceased died due to cyanide poisoning. The accused was in possession of cyanide white powder/in crystal form, which is proved through Exs.P6, P14 & P19 and from the evidence of PW8, PW19, PW21 and PW23. Hence from the above, it is crystal clear that the accused is the cause of death of deceased.

(xiii)PW21 is the friend of the accused which is not in dispute and from whom the accused got possession of cyanide. In this case, the cyanide has been deducted in the body of the deceased and also recovered at that instance of the accused. The cyanide is a prohibited item. The accused being a Doctor is well aware of the same. Further the accused had not given any probable explanation for the same.

(xiv)From Ex.P19, it is proved that MO3 hand karchief used in whipping the floor was deducted with cyanide. It is to be seen that the accused when he was questioned under Section 313 Cr.P.C., for all the questions he generally denied the same and with regard to question pertaining to PW9 and PW10, the postmortem Doctors admitted their evidence. Likewise the evidence of PW12, Doctor Roopavathy who treated the deceased for Gynaecological problem is admitted. It is pertinent to note that for the question with regard to PW21, the accused merely denied the same and failed to give any explanation. In his written explanation, he had not given reason for possession of cyanide. There is no doubt that the circumstance are reliable to Section 306 IPC which were clearly put to the accused during his examination under Section 313 Cr.P.C.

(xv)The contention of the learned counsel for the accused
<https://hcservices.ecourts.gov.in/hcservices/>



that the deceased committed suicide, since she suffered miscarriage for four time and to forbear any child is far-fetched. The deceased is a Doctor of young age who is aware of the possibility of treatment needed. From the evidence available, it is seen that the deceased was continuously harassed and humiliated in the presence of staffs, patients and others, further her fidelity was questioned. The deceased was living in isolation, the accused was not in talking terms with her. This humiliation has been there right from the marriage. Further the lethal poisonous substance has been purchased and made available by him with clear intention. The other contention of the accused that from the viscera report, it is only the potassium cyanide available in the body of the deceased and from the forensic report, the cyanide seized is sodium cyanide, both are not one and the same, is not correct, as discussed above. Therefore the basic ingredient of offence under Section 306 IPC have been established by the prosecution.

(xiv) Thus from the evidence and the materials, it is seen that the accused is the cause for the death of the deceased. It is clear that the materials brought on record clearly formed a complete chain of circumstances which unerringly pointed out at the accused being the author of the crime. Hence, this Court deserves dismissal of the appeal filed by the accused. Accordingly, Crl.A(MD)No.99 of 2014 is dismissed.

(xvii) As regards the appeal filed by PW1/defacto complainant, the trial Court elaborately discussed as regard the presumption under Section 113-B of the Indian Evidence Act. There is no evidence to show that soon before the death of the deceased, there was any dowry demand and harassment to invoke Section 113-B of the Indian Evidence Act, leading to convicting the accused under Section 304(B) IPC. Further the specific finding of RDO is that there is no dowry demand. The finding of the trial Court in acquitting the accused under Section 304(B) IPC seems to be correct which needs no interference. As regards, the enhancement of sentence, this Court finds the conviction of sentence for seven year is proper in the circumstances of the case. In view of the same, the appeal filed by PW1 in Crl.A(MD)No.331 of 2014 is also dismissed.

(xviii) The Hon'ble Apex Court in the case of "**Shamnsahed M.Mulattani Versus State of Karnataka reported in (2001) 2 SCC 577**", the significance after introduction of Section 113-A is held as follows:-

"At this stage, we may note the difference in the legal position between the said offence and section 306 IPC which was merely an offence of abetment of suicide earlier. The section remained in the statute book without any practical use till 1983. But by the introduction of Section 113A in the Evidence Act the said offence under Section 306 IPC has acquired wider



dimensions and has become a serious marriage- related offence. Section 113A of the Evidence Act says that under certain conditions, almost similar to the conditions for dowry death the court may presume having regard to the circumstances of the case, that such suicide has been abetted by her husband etc. When the law says that the court may presume the fact, it is discretionary on the part of the court either to regard such fact as proved or not to do so, which depends upon all the other circumstances of the case. As there is no compulsion on the court to act on the presumption the accused can persuade the court against drawing a presumption adverse to him."

18.In the result, both appeals are dismissed, confirming the sentence of the trial Court. The trial Court is directed to secure the accused for sufferance of the sentence.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vv2

To

1.The Sessions Judge, Magalir Neethimandram
(Fast Track Mahila Court),
Dindigul.

2.The Judicial Magistrate No.II,
Dindigul.

3.The Superintendent,
Central Prison, Madurai.

4.The Inspector of Police,
North Police Station,
Dindigal Town,
Dindigul District.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.A(MD)Nos.331 & 99 of 2014
28.08.2020

—
KK(09.09.2020) 15P 6C

<https://hcservices.ecourts.gov.in/hcservices/>