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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.11.2021

Delivered on : 24.11.2021.

CORAM

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

Cr1. A. No.204 of 2019

State rep. by
The Deputy Superintendent of Police,
Udumalpet Sub Division,
Tiruppur District,
Udumalpet P.S.
Crime No.351/2014

...Appellant/Complainant

vs.

1. Ramarajan
2. Kaliyappan

...Respondent/Accused Nos 1 & 2

Criminal Appeal filed under Section 378 (i) Cr.P.C. against the judgment of acquittal of respondents/A1 and A2 in S.C.No.64 of 2017 dated 22.6.2018 by the Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur.

For Appellant : Mr.E.Raj Thilak,
Addl. Public Prosecutor

For Respondents : Mr.K.R.Sankaran

ORDER

The State has come up with the present Appeal against the Judgment of acquittal of respondents/A1 and A2, being father and son, relieving of charge in respect of an offence punishable under Section 306 IPC for alleged to have abetted the suicide of one Sakunthalamani, wife of the first appellant/A1.

2. The case of the prosecution as elicited from the prosecution witnesses and the documents file is as under:-

(i) Sakunthalamani, the third daughter out of the four daughters of PW1 Paramasivam was given in marriage to the first Accused Ramarajan on 22.11.2007 and after their marriage, she had lived with him in a joint family for about two years and they were blessed with a female child and thereafter, some



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disputes arose in their family. The second accused was said to have misbehaved with Sakunthalamani and when she had complained of the same to her husband, the first accused, he had only suggested to adjust her with his father and in that regard, both the accused are said to have assaulted the said Sakunthalamani.

(ii) The above incident was said to have been informed by a neighbour called Kalyani to PW1 and when he had enquired about the same with the accused, they had attempted to attack PW1 also and thereby, he had taken her daughter Sakunthalamani with him leaving the granddaughter in the house of the accused and subsequently, Sakunthalamani was admitted in Ramakrishna Hospital, Coimbatore as she had sustained some bleeding injuries.

(iii) Subsequently, pacification was done by the relatives of the accused, viz, Mayilsamy, Gopal, Selvaraj that A1 and Sakunthalamani would be kept away from the joint family of A2, however, since such an assurance could not be not complied with, Sakunthalamani was retained by PW1 in his house.

(iv) Two months later, A1 had filed a petition seeking restitution of conjugal rights with Sakunthalamani and it was allowed and thereby, Sakunthalamani went to the matrimonial home.

(v) Again, one year later, another dispute arose and the accused had assaulted her as a result, she had taken recourse to PW1 and she had stayed in her parents house for about 45 days. Subsequently, on a pacification by one Duraisami, a cousin of A1, she was sent to the matrimonial home. Things were normal for some time.

(vi) On 13.5.2014, A1, Sakunthalamani and her child went to the house of PW1 on his invitation for a temple festival and A1 had left from there after leaving his wife and child. On 15.5.2014, PW1 had taken Sakunthalamani alone to her matrimonial home retaining his granddaughter. Two days later, A1 had picked up the child.

(vii) Whiles, on 20.5.2014, at about 6.00 pm, a neighbour of the accused viz., one Annamalai, PW4 had called PW2, Eswari, wife of PW1 over phone and informed that some issues were going on in the family of the accused and asked to be there immediately and thereupon, PW1 and PW2 had rushed to the house of the accused. There, they were informed that their daughter had accidentally fallen in the well while collecting water from the compressor hose. PW1 could not see anything in the well due to darkness. One neighbour Karuppusamy had noticed that Sakunthalamani was floating in the well water. Though PW1 had pleaded the accused to rescue his daughter, the accused had not taken any steps to do so. PW1 brought one Palanisamy and Rajendran from his town, who informed him that his daughter was already dead. Thereupon, PW1 went alongwith them to Udumalpet Police Station and gave complaint Ex.P1, which was scribed by the said Palanisamy. On the next day, people from Fire Service



and Police Department had secured the body of the deceased Sakunthalamani. Thereafter, the Revenue Divisional Officer, PW6 had conducted enquiry and inquest on the dead body and then the dead body was sent to Government Hospital, Udumalpet for conducting post mortem.

(viii) Since PW1 was of the view that his daughter's death was due to the misbehaviour of A2 and the recklessness on the part of A1, the complaint was lodged against them.

(ix) PW7, Sakthivel, the Special Sub Inspector of Police, who was on duty in Udumalpet Police Station on the date of occurrence viz., on 20.5.2014, had received the complaint from PW1 and registered the same in Crime No.351/2014 under Section 174 Cr.P.C. which has been marked as Ex.P5. He had sent a copy of the same enclosing the complaint of PW1 to Judicial Magistrate I, Udumalpet and the Tahsildar and also to the Deputy Superintendent of Police.

(x) The investigation of the case was taken up by the Deputy Superintendent of Police, PW8 on receipt of FIR by 11.30 pm on 20.5.2014 and he had visited the scene of occurrence and finding that it was very dark, he had deputed two police personnel in the scene of occurrence and on the next day viz., on 21.5.2014, in the presence of witnesses Selvaraj and Baskar, PW5, he had prepared the observation mahazar and rough sketch, Exs.P2 and P6. Thereafter, with the assistance of Fire Service personnel, he had arranged for taking out the body from the well. At about 9.30 am, a Green Colour Plastic Kudam with a capacity of 12 litres was recovered, which has been marked as M.O.1 in the presence of the same witnesses, under the Seizure Mahazar, Ex.P3. After assisting the RDO in his enquiry, PW8 had enquired the witnesses Paramasivam (PW1), Eswari (PW2), Amsaveni, Vallinayagam (PW3), Saraswathi, Annamalai (PW4), Selvaraj and Baskar (PW5) separately and recorded their statements. After enquiring and recording the statement of the Revenue Divisional Officer (PW6) and after visiting the scene of occurrence, on 21.5.2014, he had altered the First Information Report to one under Section 306 IPC and sent the altered report to Judicial Magistrate I, Udumalpet, marked as Ex.P7. Thereafter, on 21.5.2014 at 4.00 pm, he had arrested both the accused and remanded them and had requested the Revenue Divisional Officer to send the original First Information Report alongwith the complaint of PW1 to Judicial Magistrate I, Udumalpet. On 26.5.2014, PW8 had enquired the Doctor, who had conducted autopsy, recorded his statement and received the Post Mortem Report, Ex.P8.

(xi) On receipt of final opinion of the Doctor, marked as Ex.P9 disclosing that the death of Sakunthalamani was caused due to asphyxia due to drowning and died about 17 to 24 hours prior to autopsy and his Report, Ex.P10 to the effect that the hyoid bone of the deceased was found in tact and after completing the investigation, PW8 had filed final report.



(xi) On the above allegations, charge was framed and the case was taken on file in S.C.No.64 of 2017 by the Mahalir Neethimandram (Fast Track Mahila Court), Tiruppur.

(xii) During the course of trial, 8 witnesses were examined, 10 documents were marked and one material object was produced by the prosecution and the respondents had not examined any witness but, produced the photographs of the scene of occurrence, marked as Ex.D1 series.

(xiii) The Trial Court, after questioning the respondents/accused under Section 313 Cr.P.C and after hearing the arguments of both sides, acquitted the respondents/accused from the charge and as against the same, the present Appeal has been filed by the State.

3. Learned Additional Public Prosecutor appearing for the Appellant/State would submit that the Trial Court erred in acquitting the respondents/accused without properly appreciating the evidence of material witnesses viz., P.Ws.1 to 4 and it failed to invoke Section 113-A of the Indian Evidence Act when the deceased had committed suicide in her matrimonial home and the accused had not come with any plausible explanation for such death and the Trial Court also failed to appreciate the fact that the accused had not rebutted the presumptions against them under Section 113-A and 113-B of the Indian Evidence Act when there is clear evidence of P.Ws.1 to 4 with regard to quarrels took place between the deceased and the accused. He would also submit that the Trial Court erred in not taking into consideration the evidence of P.Ws.1 to 4 and failed to note that the evidence of PW4 and that the statement of the daughter of the deceased at the time of enquiry conducted by the Revenue Divisional Officer, PW6 had demolished the theory of the defence stating that the death of the deceased was accidental.

4. Learned counsel appearing for the respondents/accused would submit that the abetment involves the mental process of instigating a person or intentionally aiding a person in doing a thing, without a positive act on the part of the accused to instigate or aid in committing suicide, and therefore, conviction cannot be sustained as in order to bring out an offence under Section 306 IPC, specific overtact as contemplated by Section 107 IPC on the part of the accused with an intention to bring about the suicide of the person concerned. He would further submit that there are inherent pieces of evidence available which would probabalises the defence that the death of Sakunthalamani was only an accidental one and therefore, the prosecution cannot invoke Section 106 of the Indian Evidence Act and that the presumption under Section 113-A is not an automatic one. The learned counsel for the respondent/accused would further submit that at the outset, the appeal has been preferred against a well considered judgment of acquittal passed by the



Trial Court and that the Trial Court, after carefully analysing the evidence and taking into consideration the embellishments, exaggerations and contradictions in the evidence of the witnesses and also finding that PW4 could not have witnessed the occurrence, had acquitted the respondents. He would also submit that though the power to review the evidence on record is available to the appellate court, the appellate court, while dealing with the judgment of acquittal, has to consider the evidence on record so as to arrive at a finding as to whether the views of the Trial Court was perverse or otherwise unsustainable. He would submit that in this case, the Trial Court had analysed the entire evidence in toto and had rendered a reasonable judgment of acquittal. He would also submit that when two views are possible, the appellate court should not have ordinarily set aside the judgment of acquittal though the view of the appellate court may be a probable one. The learned counsel would further submit that though the presumption under Section 113-A of the Indian Evidence Act is available, it could be drawn only when the prosecution had discharged the initial onus of proving the fact that the accused had committed cruelty. He would submit that in this case, other than the evidence of PW4, who, admittedly, had axe to grind against the respondents, there is no other evidence available on record to prove that the respondents had committed cruelty to the victim. He would further submit that the prosecution has recovered M.O.1 green colour plastic kudam from inside the well and it would elicit the fact that the death of the victim had happened due to accidental fall into the well. He would also submit that the respondents have also produced Ex.D1 series, the photographs of the scene of occurrence and proved that it was only a case of accidental death. He would further submit that the Trial Court, after carefully analysing the materials and the evidence available on record, found that the prosecution has not proved the case beyond reasonable doubt and had acquitted the respondents.

5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. The question that arises to be answered is whether the Trial Court is right in acquitting the respondents/accused and whether the prosecution has made out any valid ground warranting this court to set aside the judgment of acquittal.

7. At the outset, the appeal has been preferred by the State against the judgment of acquittal. Before proceeding further, this court reminded itself of the law regarding the scope and the principles regarding the appeal against acquittal as laid down by the Hon'ble Supreme Court in its various decisions.



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8. In *Guru Dutt Pathak v. State of Uttar Pradesh* reported in 2021 SCC OnLine SC 363 the Hon'ble Apex Court has held that:—

"24. In the case of *Babu v. State of Kerala* (2010) 9 SCC 189, this Court has stated the principles to be followed in an appeal against acquittal under Section 378 Cr.P.C.

In paragraphs 12 to 19, it is observed and held as under:

"12. This Court time and again has laid down the guidelines for the High Court to interfere with the judgment and order of acquittal passed by the trial court. The appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. While dealing with a judgment of acquittal, the appellate court has to consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. The appellate court is entitled to consider whether in arriving at a finding of fact, the trial court had failed to take into consideration admissible evidence and/or had taken into consideration the evidence brought on record contrary to law. Similarly, wrong placing of burden of proof may also be a subject-matter of scrutiny by the appellate court. (Vide *Balak Ram v. State of U.P.* (1975) 3 SCC 219, *Shambhoo Missir v. State of Bihar* (1990) 4 SCC 17, *Shailendra Pratap v. State of U.P.* (2003) 1 SCC 761, *Narendra Singh v. State of M.P.* (2004) 10 SCC 699, *Budh Singh v. State of U.P.* (2006) 9 SCC 731, *State of U.P. v. Ram Veer Singh* (2007) 13 SCC 102, *S. Rama Krishna v. S. Rami Reddy* (2008) 5 SCC 535, *Arulvelu v. State* (2009) 10 SCC 206, *Perla Somasekhara Reddy v. State of A.P.* (2009) 16 SCC 98 and *Ram Singh v. State of H.P.* (2010) 2 SCC 445)

13. In *Sheo Swarup v. King Emperor* AIR 1934 PC 227, the Privy Council observed as under : (IA p. 404)

"... the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the



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witnesses."

14. The aforesaid principle of law has consistently been followed by this Court. (See *Tulsiram Kanu v. State* AIR 1954 SC 1, *Balbir Singh v. State of Punjab* AIR 1957 SC 216, *M.G. Agarwal v. State of Maharashtra* AIR 1963 SC 200, *Khedu Mohton v. State of Bihar* (1970) 2 SCC 450, *Sambasivan v. State of Kerala* (1998) 5 SCC 412, *Bhagwan Singh v. State of M.P.* (2002) 4 SCC 85 and *State of Goa v. Sanjay Thakran* (2007) 3 SCC 755)

15. In *Chandrappa v. State of Karnataka* (2007) 4 SCC 415, this Court reiterated the legal position as under : (SCC p. 432, para 42)

"(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are



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possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

16. In *Ghurey Lal v. State of U.P.* (2008) 10 SCC 450, the Apex Court reiterated the said view, observing that the appellate court in dealing with the cases in which the trial courts have acquitted the accused, should bear in mind that the trial court's acquittal bolsters the presumption that he is innocent. The appellate court must give due weight and consideration to the decision of the trial court as the trial court had the distinct advantage of watching the demeanour of the witnesses, and was in a better position to evaluate the credibility of the witnesses.

17. In *State of Rajasthan v. Naresh* (2009) 9 SCC 368, the Court again examined the earlier judgments of the Apex Court and laid down that : (SCC p.374, para 20)

"20. ... an order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused."

18. In *State of U.P. v. Banne* (2009) 4 SCC 271, this Court gave certain illustrative circumstances in which the Court would be justified in interfering with a judgment of acquittal by the High Court. The circumstances include : (SCC p.286, para 28)

"(i) The High Court's decision is based on totally erroneous view of law by ignoring the settled legal position;

(ii) The High Court's conclusions are contrary to evidence and documents on record;

(iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice;

(iv) The High Court's judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case;

(v) This Court must always give proper weight and consideration to the findings of the High Court;

(vi) This Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal."

A similar view has been reiterated by this



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Court in *Dhanapal v. State* (2009) 10 SCC 401.

19. Thus, the law on the issue can be summarised to the effect that in exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The appellate court should bear in mind the presumption of innocence of the accused and further that the trial court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

(emphasis supplied)

25. When the findings of fact recorded by a court can be held to be perverse has been dealt with and considered in paragraph 20 of the aforesaid decision, which reads as under:

"20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide *Rajinder Kumar Kindra v. Delhi Admn* (1984) 4 SCC 635, *Excise and Taxation Officer-cum -Assessing Authority v. Gopi Nath & Sons* 1992 Supp (2) SCC 312, *Triveni Rubber & Plastics v. CCE* 1994 Supp (3) SCC 665, *Gaya Din v. Hanuman Prasad* (2001) 1 SCC 501, *Aruvelu v. State* (2009) 10 SCC 206 and *Gamini Bala Koteswara Rao v. State of A.P.* (2009) 10 SCC 636)."

(emphasis

supplied)".

32. Further the Apex Court in *Sampat Babso Kale v. State of Maharashtra* reported in (2019) 4 SCC 739 has laid down the principles with regard to the powers of an appellate Court in an appeal against an acquittal order.

"8. With regard to the powers of an appellate



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court in an appeal against acquittal, the law is well established that the presumption of innocence which is attached to every accused person gets strengthened when such an accused is acquitted by the trial court and the High Court should not lightly interfere with the decision of the trial court which has recorded the evidence and observed the demeanour of witnesses. This Court in Chandrappa v. State of Karnataka [(2007) 4 SCC 415, laid down the following principles : (SCC p. 432, para 42)

"42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances", "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further



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reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

33. The above principles have recently been reiterated by the Hon'ble Supreme Court in the case of Anwar Ali v. State of Himachal Pradesh reported in (2020) 10 SCC 166. As discussed above, this Court while examining the legality or illegality of judgment of acquittal has to keep in mind the above settled principles of criminal jurisprudence."

9. Taking into consideration the above principles in mind, this court has to now independently consider whether the prosecution has proved its case beyond all reasonable doubts and whether the judgment of the Trial Court suffers from any illegality or perversity and whether the Trial Court is justified in acquitting the accused.

10. It is the case of the prosecution that the marriage between the deceased Sakunthalamani and the first respondent/first accused was solemnized in the year 2007 and that out of the said wedlock, a female child by name Priyadarshini was born to them. After the marriage, the victim started her marital life with her husband and father in law as a joint family in the house of her husband. Whiles, since disputes arose between the deceased and the accused, the victim's parents had taken her house and later, the first appellant filed petition seeking restitution of conjugal rights before the Sub Court, Udumalpet and obtained a decree for restitution of conjugal rights and took the deceased alongwith him and was living together with her. It is the further case of the prosecution that while the deceased was in her matrimonial home, the second accused tried to misbehave with the deceased several times and when it was informed by the deceased to the first respondent, he had harassed the deceased and informed her that she would adjust with his father in law or else, he would drive her away to her parents house. It is the further case of the prosecution that respondents 1 and 2 harassed and subjected the deceased to cruelty due to which, she had committed suicide on 20.5.2004 at 6.30 pm by jumping into the well situated in front of their house and died due to asphyxia.

11. As stated above, the Trial Court framed charges against the respondents for offence under Section 306 IPC. In order to prove the guilt, the prosecution had examined eight witnesses and marked ten Exhibits as Exs.P1 to P10 and M.O.1 plastic kudam



was displayed as M.O.1.

12. PW1 is the father of the deceased. PW2 is the mother and PW3 is the sister of the deceased. They have deposed that only due to mental and physical harassment made by the accused, the deceased had committed suicide. It is the evidence of PW1 to PW3 that the second respondent, father in law of the deceased tried to misbehave with the deceased and when she had reported the same to her husband, the first accused, he had advised her to adjust his father otherwise, he would drive her away to her parents house. It is the further evidence of P.Ws.1 to 3 that in the said dispute, the accused had assaulted the deceased and harassed her. P.Ws.1 and 2 have deposed that on receiving information about the same, when they had gone to their daughter's house and questioned about the same, the second accused had attempted to assault PW1. PW1 has further deposed that he had left his granddaughter at the accused's house and had taken his daughter back to his house. It is the further evidence of PW1 that the accused had assaulted her daughter and subjected her to cruelty and she had sustained injuries due to which she was admitted in Ramakrishna Hospital, Coimbatore for treatment. He had further deposed that his daughter was under treatment in the hospital for five days. However, during his cross-examination, he admitted that when the police examined him, he had stated that the accused had assaulted his daughter and she was admitted in Ramakrishna Hospital and he had handed over all the documents in respect of the treatment undergone by his daughter at Ramakrishna Hospital. However, contrary to the evidence of PW1, the investigation officer, PW8 had deposed that while examining PW1, he had not stated anything about the accused having assaulted his daughter and being admitted in Ramakrishna Hospital, Coimbatore for treatment and that no document was produced by him during enquiry to substantiate such an allegation. Further, PW8 had deposed that the complainant had not stated anything in the initial complaint about the respondents subjecting the deceased to cruelty by assaulting her and he had only stated that there used to be only small disputes between his daughter and the first accused.

13. A perusal of Ex.P1 complaint does not disclose about the alleged misbehaviour by the second respondent or the alleged physical assault and cruelty by the respondents. Though it is the case of PW1 that the respondents did not allow the deceased to come to his house, it is the case of PW1 and PW2 that on 13.5.2014, there was a festival in their village and they had gone to the house of the respondents and invited them for the festival and the first accused alongwith the deceased and the granddaughter, had joined them in the festival and that he had left the deceased and his daughter in his house and after two days, PW1 had dropped the deceased in the house of the accused



and that the child was with them. It is the further case of PW2 that on 20.5.2014, PW4, Annamalai, had called her over phone and had asked them to come to the thottam of the accused.

14. Further, while analysing the evidence of P.Ws.2 and 3, the mother and sister of the deceased, they have spoken nothing about the accused having assaulted the deceased and that she was admitted for treatment at Ramakrishna Hospital. Thereby the averment that the respondents/accused had assaulted the deceased and subjected her to physical cruelty was not proved. Further, in respect of the alleged harassment and sexual advancement by the second respondent, P.Ws.1 to 3 have deposed that the deceased had come back to their house and that the first accused had filed petition for restitution of conjugal rights and that a panchayat was convened in the presence of the relatives of the accused viz., Mayilsamy, Gopal and Selvaraj and that the harassment of the second respondent was enquired by them whereas, such persons who are said to be panchayatdars have not been examined in this case. Further, it is the admission of PW1 that while deciding the case filed for restitution of conjugal rights, his daughter has not stated anything about the indecent advancement made by the second respondent to her and that he had also not stated anything about the same when he was examined by the police. Though the panchayatdars have been specifically named, they have also not been examined to prove the allegation of harassment by the second respondent. Further, it is the evidence of PW1 that PW4, who is a neighbour of the respondents/accused, had informed his wife to come to his son-in-law's house.

15. It is his further case that PW4 had informed about the quarrel between his daughter and the accused prior to the occurrence. While analysing the evidence of PW4, it is his case that there was a quarrel in front of the house of the accused on 20.5.2014 at 6.30 pm and that the deceased was running towards east from her house and that he had informed PW1 about the incident and after some time, he had seen the deceased inside the well and that he had found that the body was floating. His evidence is not specific as to the quarrel and his evidence has also been shattered during the cross examination. In his cross examination, he has admitted about the enmity between his mother in law and the accused and his wife. His evidence is found to be unnatural.

16. PW5, witness for the mahazar, has spoken about the investigation officer visiting the scene of occurrence and preparing the mahazar and also having recovered M.O.1, a plastic kudam from the well.



17. PW6 is the Revenue Divisional Officer. He had deposed that he had enquired P.Ws.1 to 3 and the other sisters of the daughter of the deceased. He had also examined the panchayatdars in the village. He had further deposed that during his enquiry, he came to know that there used to be misunderstanding and quarrels between the spouses and that the deceased had left the matrimonial home and thereafter, on a petition filed seeking restitution of conjugal rights, she had come back and was living with her husband. He had further stated that the daughter of the deceased had informed him that her mother jumped into the well. He had concluded that the death was not on account of any demand of dowry. In his cross examination, he had stated that none of the witnesses had informed him that the second respondent/second accused had misbehaved with the deceased. He had further stated that during enquiry, the accused had informed him that the deceased had fallen into the well accidentally. Though in this case, PW6 had stated that the daughter of the deceased had seen her mother jumping into the well, she has not been examined during the trial.

18. As per the evidence on record, PW4 is the person who is alleged to have seen the victim running towards east from her house and falling into the well. Though he had stated that there was a quarrel in front of the house of the accused, his evidence is not satisfactory and clear as to the quarrel. His evidence does not inspire confidence. Other than that, there is absolutely no evidence to prove that the accused had abetted the deceased to commit suicide.

19. Though several judgments have been relied on by the learned counsel for the respondents, this court feels it apposite to refer to the following judgments to discuss whether the accused could be held guilty for offence punishable under Section 306 IPC with the aid of Section 113-A of the Indian Evidence Act:-

20. In Ramesh Kumar vs. State of Chhattisgarh ((2001) 9 SCC 618), the Hon'ble Apex Court, after reproducing the provisions of Section 306 IPC and Section 113-A of the Indian Evidence Act, 1872, observed thus:-

"12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26?12?1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in?laws and incriminating evidence was usually available within the four corners of the matrimonial home and hence was not available to anyone outside the



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occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113A shows that to attract applicability of Section 113A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression may presume suggests. Secondly, the existence 1 (2001) 9 SCC 618 and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to all the other circumstances of the case. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression the other circumstances of the case used in Section 113A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase may presume used in Section 113A is defined in Section 4 of the Evidence Act, which says Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.

13. The present case is not one which may fall under clauses secondly and thirdly of Section 107 of the Penal Code, 1860. The case has to be decided by reference to the first clause i.e. whether the accused/appellant abetted the



suicide by instigating her to do so. (emphasis in original and supplied)"

21. The Hon'ble Apex Court has observed that to attract the applicability of Section 113-A of the Evidence Act, the following conditions are required to be satisfied:-

- (i) The woman has committed suicide,
- (ii) Such suicide has been committed within a period of seven years from the date of her marriage,
- (iii) The husband or his relatives, who are charged had subjected her to cruelty.

22. The Apex Court had observed that on the existence of availability of the aforesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. It has been held that the presumption is not mandatory; but only permissive as the words may presume suggests. It has further been held that the existence and availability of the aforesaid three circumstances shall not, like a formula, enable the presumption being drawn. It has been held that before a presumption being drawn, the court shall have regard to all other circumstances of the case. It has been held, that the consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. It thus observed that the expression the other circumstances of the case used in Section 113-A of the Indian Evidence Act suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. It has been further held that when the case does not fall under clauses secondly and thirdly of Section 107 of the IPC, the case is to be decided with reference to the first clause, i.e., whether the accused-appellant abetted the suicide by instigating her to do so.

23. Further, in Ramesh Kumar v. State of Chattisgarh referred supra, the Hon'ble Apex Court has held as under:-

"20. Instigation is to goad, urge forward, provoke, incite or encourage to do an act. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such



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circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation"

24. Further, in *Hans Raj vs. State of Haryana* ((2004) 12 SCC 257, the Apex Court has held as under:-

"12. The question then arises as to whether in the facts and circumstances of the case the appellant can be convicted of the offence under Section 306 IPC with the aid of the presumption under Section 113?A of the Indian Evidence Act. Any person who abets the commission of suicide is liable to be punished under Section 306 IPC. Section 107 IPC lays down the ingredients of abetment which includes instigating any person to do a thing or engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission takes place in pursuance of that conspiracy and in order to the doing of that thing, or intentional aid by any act or illegal omission to the doing of that thing. In the instant case there is no direct evidence to establish that the appellant either aided or instigated the deceased to commit suicide or entered into any conspiracy to aid her in committing suicide. In the absence of direct evidence the prosecution has relied upon Section 113?A of the Indian Evidence Act under which the court may presume on proof of circumstances enumerated therein, and having regard to all the other circumstances of the case, that the suicide had been abetted by the accused. The explanation to Section 113?A further clarifies that cruelty shall have the same meaning as in Section 498?A of the Indian Penal Code...

13. Unlike Section 113?B of the Indian Evidence Act, a statutory presumption does not arise by operation of law merely on proof of the circumstances enumerated in Section 113?A of the Indian Evidence Act. Under Section 113?A of the Indian Evidence Act, the prosecution has first to establish that the woman concerned committed suicide within a period of seven years from the date of her marriage and that her husband (in this case) had subjected her to cruelty. Even if these facts are established the court is not bound to presume that the suicide had been abetted by her



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husband. Section 113A gives a discretion to the court to raise such a presumption, having regard to all the other circumstances of the case, which means that where the allegation is of cruelty it must consider the nature of cruelty to which the woman was subjected, having regard to the meaning of the word cruelty in Section 498A IPC. The mere fact that a woman committed suicide within seven years of her marriage and that she had been subjected to cruelty by her husband, does not automatically give rise to the presumption that the suicide had been abetted by her husband. The court is required to look into all the other circumstances of the case. One of the circumstances which has to be considered by the court is whether the alleged cruelty was of such nature as was likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman"

25. In *Pinakin Mahipatray Rawal vs. State of Gujarat* ((2013) 10 SCC 48), the Apex Court has held as under:-

"26. Section 113A only deals with a presumption which the court may draw in a particular fact situation which may arise when necessary ingredients in order to attract that provision are established. Criminal law amendment and the rule of procedure was necessitated so as to meet the social challenge of saving the married woman from being ill-treated or forcing to commit suicide by the husband or his relatives, demanding dowry. Legislative mandate of the section is that when a woman commits suicide within seven years of her marriage and it is shown that her husband or any relative of her husband had subjected her to cruelty as per the terms defined in Section 498A IPC, the court may presume having regard to all other circumstances of the case that such suicide has been abetted by the husband or such person. Though a presumption could be drawn, the burden of proof of showing that such an offence has been committed by the accused under Section 498A IPC is on the prosecution. On facts, we have already found that the prosecution has not discharged the burden that A1 had instigated, conspired or intentionally aided so as to drive the wife to commit suicide or that the alleged extramarital affair was of such a degree which was likely to drive the wife to commit suicide.

27. Section 306 refers to abetment of suicide.



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It says that if any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment for a term which may extend to 10 years and shall also be liable to fine. The action for committing suicide is also on account of mental disturbance caused by mental and physical cruelty. To constitute an offence under Section 306, the prosecution has to establish that a person has committed suicide and the suicide was abetted by the accused. The prosecution has to establish beyond reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extramarital relationship, which if proved, could be illegal and immoral, nothing has been brought out by the prosecution to show that the accused had provoked, incited or induced the wife to commit suicide."

26. From the above judgments, though presumptions can be drawn, the burden of proof to establish that such an offence has been committed by the accused is on the prosecution. The prosecution has to establish beyond reasonable doubt that the accused had instigated, conspired or intentionally aided so as to drive the victim to commit suicide. There is absolutely no direct evidence to establish that the respondents/accused either aided or instigated the deceased to commit suicide or that they entered into any conspiracy to aid her in committing suicide.

27. As stated above, a perusal of the evidence shows that the prosecution has not proved its case beyond all reasonable doubts. There is no infirmity or perversity in the findings of the Trial Court. The prosecution has not made out any grounds for allowing this Criminal Appeal. Accordingly, it stands dismissed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

ssk.

To

1. The Sessions Judge,
Mahalir Neethimandram
(Fast Track Mahila Court),
Tiruppur.



2.The Deputy Superintendent of Police,
Udumalpet Sub Division,
Tiruppur District,
Udumalpet P.S.

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Copy to:

The Section Officer, (To send the records back to the trail Court)
V.R.Section,
High Court,
Madras.

CrI. A. No.204 of 2019

MG (CO)
PR (09/12/2021)