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BAIL SLIP

The Petitioner/Accused namely A.Sangameshwaran, S/o Ammasai kutti, was released on bail vide order dated 06.08.2019 in Crl.MP.6442 of 2019 in Crl.A.No.257 of 2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.03.2021
Pronounced on : 24.06.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Appeal No.257 of 2019

A.Sangameshwaran ... Appellant/Accused
Versus

The State Rep.by
The Assistant Superintendent of Police,
Tiruppur North Sub Division,
Tiruppur. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, to call for the records and set aside the judgment dated 09.04.2019 passed in S.C.No.176 of 2015 on the file of the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

For Appellant : Mr.R.Singgaravelan, Senior Counsel,
for Mr.C.Muthu Saravanan

For Respondent : Mr.R.Suryaprakash,
Government Advocate (Crl.side)

JUDGMENT

This Criminal Appeal has been filed against the conviction and sentence imposed on the appellant vide Judgment dated 09.04.2019 made in S.C.No.176 of 2015 on the file of the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

2.The respondent-police registered a case against the appellant in Crime No.4778 of 2011 for the offence punishable under Section 174 of Cr.P.C., (Hanging). After enquiry by the Revenue Divisional Officer and based on his report, the offence was altered to Sections 498(A) and 306 of IPC, on the basis of the complaint given by the father of the deceased. After



completing the investigation, the respondent-police laid charge sheet before the Judicial Magistrate No.I, Tiruppur, for the offences under Section 489(A) and 306 of IPC. The learned Magistrate after taking the charge sheet on file in PRC.No.35 of 2012, has come to the conclusion that the case is triable by the Court of Session and committed to the Principal Sessions Court, Tiruppur, since the offence is against the women, the case was taken on file in S.C.No.176 of 2015 and made over to the Special Court.

3. After framing charges, during trial, in order to prove the case of the prosecution, on the side of prosecution as many as ten witnesses were examined as PW1 to PW10, ten documents were exhibited as Exs.P1 to P10. Besides two material objects were marked as M.O.1 and M.O.2. After completing the evidence of prosecution witnesses, when incriminating circumstances were culled out from the evidence of the prosecution witnesses were put before to the appellant/accused by questioning under Section 363 of Cr.P.C., he denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

4. After completion of the trial, upon hearing of the arguments advanced on either side and considering the materials, the learned Special Judge convicted the appellant for the offence under Section 498(A) of IPC, he was sentenced to undergo 3 years Rigorous Imprisonment with fine of Rs.5,000/- in default to undergo 6 months Rigorous Imprisonment and for the offence under Section 306 of IPC, he was sentenced to undergo 10 years Rigorous Imprisonment with fine of Rs.10,000/- in default to further undergo 2 years Rigorous Imprisonment. Both the sentences were ordered to run concurrently and the period already undergone was ordered to be given set off under Section 428 of Cr.P.C. Challenging the said Judgment of conviction and sentence imposed on the accused/appellant herein has filed the present Criminal Appeal before this Court.

5. Mr.R.Singgaravelan, learned Senior Counsel for the appellant would submit that originally the complaint was registered under Section 174 of Cr.P.C, Subsequently, after enquiry report of the Revenue Divisional Officer, the police altered the offences of the case under Section 498(A) and 306 of IPC. Neither in the First Information Report nor in the statement made before the Revenue Divisional Officer, the witnesses have spoken about the demand of dowry said to have been made by the appellant. Even the Revenue Divisional Officer gave his opinion in his report that there was no dowry demand and the deceased committed suicide due to family dispute. There is nothing to show that the appellant has induced the deceased to commit the suicide. When there is no dowry demand the



question of abetment by inducement under Section 306 of IPC would not attracted. Further, the learned Senior Counsel submitted that even in the complaint given by the defacto complainant based on which the First Information Report was registered, he has not stated anything about the demand of dowry or inducement. During the enquiry before the Police officer, none of the witnesses have spoken about the demand of dowry or abetment or inducement. It is settled proposition of law that for death by suicide there must be some inducement or abetment or instigation which would drive the deceased to commit suicide. In this case, there is no evidence as such. There is some quarrel in the family like in all other family but that would not be construed as an abetment or inducement to attract the offence under Section 306 of IPC. He would further submit that the marriage between the appellant and the deceased had taken place on 02.06.2010, there was an alleged quarrel between the deceased and the appellant on 16.12.2011. On 18.12.2011 at about 1.00 pm, the deceased said to have committed suicide. The father of the deceased made a complaint before the respondent/police on the same day i.e., 18.12.2011 at about 10.00 p.m, which was registered in Crime No.4778 of 2011 under Section 174 of Cr.P.C., The Revenue Divisional Officer conducted an enquiry on 19.12.2011 between 9.00 a.m, to 9.45 a.m, The body of the deceased was sent for conducting postmortem on 20.12.2011 at about 11.45 a.m, Thereafter, the alteration of First Information Report was made on the same day i.e, 20.12.2011 at about 7.15 p.m, for the offence under Section 498(A) and 306 of IPC. The respondent/police investigated the matter and filed a charge sheet on 02.06.2012. As per the report of the Revenue Divisional Officer, the death was not due to demand of dowry. The complaint/Ex.Pl was also silent about the demand of dowry or abetment. Even the Trial Court has held in the impugned judgment that demand for dowry stands not proved. The deposition made by PW.2 before the trial Court is contrary to the report of the Revenue Divisional Officer. Even the evidence of PW.1 to PW.4 itself show that there was no demand for dowry or the appellant abetted the deceased to commit suicide. Therefore, the conviction under Section 306 of IPC is not sustainable and the same is liable to be set aside.

6. The learned Senior Counsel for the appellant, in support of his arguments, placed reliance on the following judgments:-

(i) in the case of Ramesh Kumar Vs. State of Chattisgarh reported in 2002 SCC (Cri) 1088;

(ii) in the case of S.S.Chheena Vs. Vijay Kumar Mahajan and another reported in (2011) 2 SCC (Cri) 465;

(iii) in the case of Rajesh Vs. State of Haryana reported in AIR 2019 SC (Cri) 513;

(iv) in the case of Gurjit Singh Vs. State of Punjab reported in AIR 2020 SC (Cri) 1369;

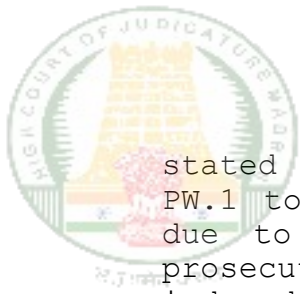


(v) in the case of Gurucharan Singh Vs. State of Punjab reported in (2021) 1 SCC (Cri) 417; and
(vi) in the case of Meena Vs. State of Tamil Nadu reported in (2017) 3 MLJ (Crl) 102.

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7. The learned Senior counsel submits that on reading of the above judgments, particularly the recent decision rendered in the case of Gurucharan Charan Singh vs. State of Punjab reported in (2021) 1 SCC (Crl) 478, it was held that in order to render a finding of abetment under Section 107, it is necessary to sustain the finding of abetment to commit suicide under Section 306 of IPC. For this purpose, it must be established that accused instigated the deceased either to commit suicide by his act of omission or commission or persistent committed cruelty or harassment, only then the question of abetment to suicide will be made out. Therefore, to convict the accused under Section 306 of IPC, there must be a specific overt act or omission on his part to give due care to the deceased wife. The accused ought to have perpetrated cruelty or harassment to attract the ingredient of Section 306 of IPC. Therefore, in the absence of any mens-rea, the husband cannot be convicted for the offence under Section 306 of IPC. To prove mens-rea there must be something to show the state of mind of the accused to commit a particular crime, which must be visible, to determine the culpability. It must be held that the accused had a guilty mind and in furtherance of such state of mind, abetted the suicide of the deceased. Therefore in the absence of any finding regarding instigation or any action to drive the deceased to commit suicide, the judgment of the learned trial court cannot be sustained. There was no witness to prove the cruelty said to have been inflicted against the deceased. The testimony of PW.1 - PW.4 cannot be relied on as they are interested witnesses and therefore, the judgment of the Trial Court is liable to be set aside.

8. The learned Government Advocate (crl.side) would submit that the appellant is husband and the deceased is his wife. Their marriage was solemnized on 02.06.2010 and within 18 months, the deceased committed suicide on 18.12.2011. The complaint was given based on suspicion and therefore the case registered under Section 174 of Cr.P.C, After conducting enquiry by the Revenue Divisional Officer and based on his report the First Information Report was altered for the offence under Section 498(A) and 306 of IPC. The Revenue Divisional Officer's report clearly shows that there was a dispute between the appellant and the deceased. The witnesses recorded by the Revenue Divisional Officer spoke about the cruelty made by the appellant herein. The witnesses PW.1 to PW.4 clearly shows that there was an harassment made by the husband and in-laws, therefore, the deceased committed suicide. PW.1 to PW.2 clearly



stated that there was a demand made by the appellant for dowry. PW.1 to PW.4 have stated that there was harassment and cruelty due to which the deceased committed suicide. Therefore, the prosecution proved that the appellant along with his parents induced and harassed the deceased, due to which she committed suicide. The Trial Court rightly analysed the entire evidence and convicted the appellant for the offence under Sections 498 (A) and 306 of IPC. Thus, the prosecution has proved the case against the appellant beyond all reasonable doubt. There is no merit in the appeal and the judgments relied on by the learned Senior counsel for the appellant are not applicable to the present case.

9. Heard both sides and perused the materials available on record. The case of the prosecution is that marriage between the appellant/accused and the deceased was solemnized on 02.06.2010 and out of their wedlock, they have got male child, who was aged about 9 months at that time of occurrence. After the marriage, the accused harassed the deceased and subjected her to cruelty by demanding dowry and thereby instigated the deceased to commit suicide. Therefore, the case was registered for the offence under Section 498(A) and 306 of IPC. After investigation, the respondent/police laid a charge sheet before the learned Judicial Magistrate No.1, Tiruppur. The learned Judicial Magistrate taken the charge sheet on file and committed the case to the Principal Sessions Court, since the offence is exclusively triable by the Court of Session. The learned Sessions Judge has taken the case on file in S.C.No.176 of 2015 and after completing the formalities, since the offence involved against the women, the case was made over to the FTC, Mahila Court, Tiruppur. The learned Special Judge, after trial come to the conclusion that the appellant is guilty of the offence under Section 498(A) and 306 of IPC and convicted and sentenced him against which, the present appeal filed before this Court.

10. Since the Appellate Court is final Court of fact finding Court it can re-appreciate the entire evidence and to render an independent finding. Accordingly, this Court as fact finding Court is re-appreciating the evidence recorded before the trial court.

11. The prosecution examined 10 witnesses and marked 10 documents and exhibited two material objects. The de-facto complainant is the father of the deceased, who was examined as PW.1. He has spoken about the marriage between the deceased and the appellant and also providing jewels and other articles. He also deposed that the appellant treated the deceased in a dignified manner. He further stated that the deceased was residing joint family along with her in-laws during which the deceased was harassed by the appellant along with his parents,



physically and mentally and her daughter informed it to him over phone. Whenever the daughter goes to the house of the de-facto complainant the appellant asked something to bring from the matrimonial home.

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12. The mother of the deceased was examined as PW.2. She also corroborated the evidence of PW.1. PW.2 and PW.3 are first and second wives of PW.1. The mother of the deceased was examined as PW.3. She has also corroborated the evidence of PW.1. The sister of the deceased was examined as PW.4 and she has also corroborated the evidence of PW.1. From the evidence of PW.1 to PW.4, it could be seen that there is nothing to show that the appellant made demand for dowry. The deposition shows that mother-in-law asked the deceased to bring something from the paternal house. There is no specific demand of dowry. Further PW.1 clearly shows that there was a harassment and cruelty. Even the evidence of PW.1 -PW.3 clearly show that one day prior to the occurrence, the appellant and family members attacked the victim but she escaped from such assault and the hands of the appellant hit the wall. In that process, the appellant suffered a fracture and he was admitted in the hospital. Thereafter there was some quarrel and the victim informed it to PW.1 about the appellant and his parents scolding and harassing her and asked PW.1 to come and take the deceased. After some time the father of the appellant called PW.1 over phone and informed that he need not come to their house.

13. From the reading of the entire evidence of PW.1-PW.4 and also the report of the revenue divisional officer, there is no specific demand for dowry made by the appellant. There is no demand for dowry and only they have referred to some harassment and cruelty met to his daughter. They have also alleged that the deceased was not treated properly. Even on the day of occurrence, PW.3 was in the house of the appellant. She has not stated anything about the demand for dowry or instigation or abatement. Therefore the ingredients of Section 107 have not been made out in this case. In order to convict the appellant under Section 306 of IPC, it is to be established that victim committed suicide. If the facts and circumstances establish the suicide and it must be further established that the accused instigated the deceased either to commit suicide by his act of omission or commission. If a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. It is useful to extract the Sections 306 and 107 of IPC hereunder:-

"107. Abetment of a thing.—A person abets the doing of a thing, who— First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any

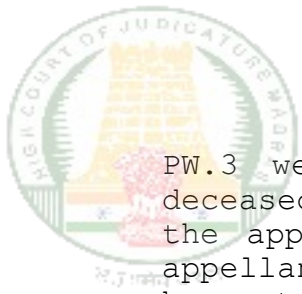


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conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

306. Abetment of suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

14. Thus, to prove the commission of offence under Section 306 IPC there must be abetment to commit suicide. A person who is said to have abetted to commit suicide must have played a vital role and instigated or facilitated the deceased to commit the suicide. Therefore act of abetment must be proved and established by the prosecution, before the appellant is convicted for the offence under Section 306 of IPC. In this case the deceased said to have committed suicide, however, the prosecution has not proved the instigation or abatement on the part of the appellant. Therefore, the conviction under Section 306 of IPC is liable to be set aside. As for as the commission of offence under Section 498(A) of IPC is concerned, even in the compliant/Ex.P1 and the evidence of PW.1-PW.4 as well as the report of the revenue divisional officer it is seen that there was some harassment and cruelty made by the appellant and the victim was harassed. PW.3 also deposed that one day prior to the suicidal death of the deceased, the appellant attempted to attack the deceased, but he turned aside, with the result, the appellant hit the wall and sustained injuries. For such injuries, the appellant was admitted in the hospital. Even for this incident also, the appellant scolded the victim. It is also stated that even during the pregnancy of the deceased, the appellant did not take care of her properly. Further, even after giving birth to the child the deceased was harassed by the appellant continuously. It is seen that even soon before the date of occurrence there was a quarrel between the appellant and deceased and it was informed to PW.1. PW1 was therefore, called upon to come and take back the deceased. Subsequently, the father of the appellant requested PW1 not to come to their house as everything is normal. Again PW.1 was informed that the appellant sustained injury and admitted in the hospital. PW.1 -



PW.3 went to the hospital and PW.1 left the PW.3 with the deceased. PW.3 accompanied the deceased and was in the house of the appellant. She in her evidence has stated that either the appellant harassed the victim and caused cruelty. No where, she has stated that there was demand for dowry for which the deceased was harassed or any instigation to commit suicide. On over all appreciation of the evidence, this Court is of the view that the offence of Section 306 of IPC., against the appellant is not proved by the prosecution beyond all reasonable doubt. However, offence of Section 498-A of IPC., is proved. Every criminal case has to be decided on the basis of facts and evidence available and not on precedence.

15. It is settled proposition of law that Sections 498-A and 306 of IPC., are independent and constitute different offences. Though depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because and accused has been held liable to be punished under Section 498-A, IPC., it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. Further it is settled that acquittal of a charge under Section 306, though not by itself a ground for acquittal under Section 498-A as well, without which the charge cannot be said to be maintained.

16. In the result the conviction and sentence imposed on the appellant for the offence under Section 306 of IPC., in the judgment dated 09.04.2019 passed in S.C.No.176 of 2015 on the file of the learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur is set aside. Conviction and sentence passed for the offence under Section 498-A of IPC., is confirmed. The Criminal Appeal is partly allowed. The fine amount, if paid for the offence under Section 306 of IPC., is directed to be refunded to the appellant. The Trial Court is directed to secure the appellant to serve remaining period of sentence of imprisonment, if any.

Sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

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To

1. The Session Judge,
Magalir Neethi Mandram,
Mahila Court, Tiruppur.
2. The Assistant Superintendent of Police,
Tiruppur North Sub Division,
Tiruppur.
3. The Superintendent of Prison,
Central Prison,
Coimbatore.
4. The Public Prosecutor,
High Court of Madras.

Copy to:

The Section Officer, Criminal Section,
High Court, Madras.

+1CC to Mr.C.Muthusaravanan, Advocate, Sr.No.29713/21

Pre-Delivery Judgement in
Crl.A.No.257 of 2019

RLD (CO)
K.RK. (22.07.2021)