



Bail Slip

Crl.A. No. 401/2019:

The Appellant/Accused No.2 namely Radha W/o. Late Venkatesan be and hereby was directed to be released on bail as per order of this Court dated 17.07.2019 in Crl.M.P.No.8719/2019 in Crl.A. No. 401/2019.

Crl.A. No. 430/2019:

The Appellant/Accused No.1 namely Thimmaraj S/o.Saarappan be and hereby was directed to be released on bail as per order of this Court dated 17.07.2019 in Crl.M.P.No.9297/2019 in Crl.A. No. 430/2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

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

CRL.A.Nos.401 and 430 of 2019

Radha ... Appellant in Crl.A.No.401 / 2019

Thimmaraj ... Appellant in Crl.A.No.430 / 2019

Vs.

State by the Inspector of Police,
Maharajakadai Police Station,
Krishnagiri District,
(Crime No.378/2013)

...Respondent

Criminal Appeals are filed under Section 374(2) of Cr.P.C, against the Judgment and Sentence passed by the Learned Sessions Judge, Fast Track Magalir Neethi Mandram, Krishnagiri, Krishnagiri District in S.C.No.65 of 2018 dated 07.06.2019 and convicted for the offence under Section 306 of IPC and sentenced to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for six months.

For Appellant in
Crl.A.No.401 / 2019 : Mr.E.Kannadasan



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For Appellant in
Crl.A.No.430 / 2019 : Mr.M.R.Thangavel

For Respondent in
both the appeals : Mr.S.Sugendran
Government Advocate (Crl Side)

COMMON JUDGMENT

These Criminal Appeals have been filed by the appellants against the Judgment and Sentence passed by the Learned Sessions Judge, Fast Track Magalir Neethi Mandram, Krishnagiri, Krishnagiri District in S.C.No.65 of 2018 dated 07.06.2019, finding them guilty for offence under Section 306 of IPC and convicting and sentencing them to undergo Rigorous Imprisonment for 5 years and to pay a fine of Rs.5,000/- in default to undergo Rigorous Imprisonment for six months.

2. The brief facts of the case are as follows :

2.1. The deceased Sumithra is the daughter of PW1 and wife of 1st accused. The marriage between the deceased and 1st accused was solemnised on 16.09.2013. The 2nd accused is the niece of the 3rd accused. The 1st accused was working as a Lorry driver, and one year prior to the occurrence, the father of the 1st accused had partitioned his property and the 1st accused had constructed a house in front of the house of the mother of the 2nd accused. At that time, the 2nd accused has paid Rs.30,000/- to the 1st accused through the 3rd accused and that there was illegal intimacy between the 1st accused and the 2nd accused. The illegal intimacy between the 1st and 2nd accused was encouraged by the 3rd accused. The deceased Sumithra had requested her husband / 1st accused to leave the relationship with the 2nd accused, due to which, there was frequent quarrel between them. The deceased had also warned the 2nd accused and the 2nd accused is stated to have informed the deceased that her husband has taken Rs.30,000/- from her and having their relationship. The 1st accused used to stay in the house of the 2nd accused most of the time and sometime, he used to come to the house of the deceased. On 20.10.2013, the 1st accused had gone to the house of the 2nd accused and stayed in her house. At that time, the deceased had called the 1st accused to come home, but the 1st accused refused to come, due to which, there was quarrel between them.

3. The further case of the prosecution is that due to the act of the accused 1 to 3, the deceased had gone into depression and on 21.10.2013, she had committed suicide in the house by



hanging with the saree. The respondent police, finding that the deceased had committed suicide due to the abetment by the accused, had filed a final report before the Judicial Magistrate No.2, Krishnagiri, against the accused for the offence under Section 306 IPC. The case was taken up in P.R.C.No.4 of 2018. After summoning the accused and furnishing copies to them under Section 207 Cr.P.C., finding that the case is triable by the Court of Sessions, the Magistrate, committed the case to the file of the District Sessions Judge, Krishnagiri, under Section 209 Cr.P.C. The case was taken up by the District Sessions Judge in S.C.No.65 of 2018 and then it was made over to the Trial Court.

4. The Trial Court framed charges against the accused 1 to 3 for the offence under Section 306 IPC and questioned the accused concerning the charges. The accused denied the charges and sought to be tried. On the side of the prosecution, PW1 to PW17 were examined and Exs.P1 to P22 were marked. No material objects were cited on the side of the prosecution. When the accused were questioned under Section 313 Cr.P.C., they denied the charges. No witnesses were examined and no documents were marked on the side of the accused. The Trial Court, after hearing the counsel on either side, found the accused 1 and 2 guilty for the offence under Section 306 IPC and convicted them as stated above acquitting the 3rd accused. As against the conviction and sentence, these appeals have been filed by the convicted accused.

5. The learned counsel for the appellant in CrI.A.No.430 / 2019 would submit that the appellant is arrayed as A1 in this case. Even though the victim had committed suicide within few days of marriage, it was a case where there was no demand of dowry and thereby the respondent has filed the charge sheet only for the offence under Section 306 IPC. The allegation against the appellant is that he had illicit intimacy with the 2nd accused and that the deceased had asked him to leave the relationship with the 2nd accused. Since he refused to sever the relationship, there was frequent quarrel due to which, the victim is stated to have committed suicide. The prosecution has not let in any legal evidence to prove that there was illicit intimacy between the appellant and the 2nd accused and that the accused abetted the suicide. Further, despite there being absolutely no evidence to prove that the accused abetted the suicide, the Trial Court had convicted the accused.

6. The learned counsel would further submit that in order to prove the charge under Section 306 IPC, the prosecution has to prove that the victim committed suicide due to the abetment by



the accused. There is absolutely no evidence on record to show that the accused abetted the suicide of the victim. Even taking into consideration of evidence of PW1 to PW3, who are respectively parents and uncle of the deceased, their evidence do not make out a case for bringing the case under the ingredients of abetment of suicide. The prosecution has examined the neighbours and they have not supported the case of the prosecution.

7. The learned counsel for the appellant in Crl.A.No.430 / 2019 would also submit that the prosecution, during the course of the investigation, is stated to have recovered a suicide note. However, the suicide note has not been recovered in accordance with the procedure and that no investigation has been done to prove that the suicide note was left by the deceased. He would further submit that even assuming for the sake of argument admitting the suicide note and its contents, it does not make out a case for abetment of suicide. Even in the suicide note, the victim has stated that she loves the 1st accused and that the 2nd accused is the reason for her death. Excepting a vague allegation that the 2nd accused is the reason for the death, no other evidence has been brought in by the prosecution to prove that the 2nd accused abetted the suicide of the victim. Moreover, he would submit that even assuming for the sake of arguments that there was illicit intimacy between A1 and A2, it would not amount to cruelty for the purpose of abetting suicide. Further, in this case, the prosecution has failed to prove that there was illicit relationship between A1 and A2 by letting in legal evidence. Excepting the vague allegation by interested witnesses that there was an illegal relationship between the 1st accused and her, no other evidence has been let in by the prosecution to prove that there was illicit intimacy between her and the 1st accused and that she he abetted the suicide. The neighbours who have been examined have not supported the case of the prosecution that there was illicit relationship between the appellant and the 1st accused. The Trial Court, on presumption and surmises, had convicted the appellant.

8. Mr.Sugendran, Learned Government Advocate appearing for the respondent, would submit that it is a case where the victim committed suicide in the matrimonial house within one month of her marriage. The 1st accused had illicit intimacy with the 2nd accused, and when the victim had requested the 1st accused to leave the relationship, he quarrelled with her, due to which, she committed suicide.



9. However, the Learned Government Advocate appearing for the respondent would submit that the RDO has conducted an enquiry and he has given a opinion that there was no demand of dowry and the victim did not commit suicide on account of demand of dowry and that the victim had committed suicide on account of the illicit relationship of her husband.

10. Heard both sides and perused the materials available on record.

11. In the light of the above submissions, this Court has to decide whether the prosecution has proved the guilt of the accused beyond reasonable doubt and whether the Trial Court is right in convicting the appellants / accused for the offence they were charged.

12. Before proceeding further to analyse the evidence in this case, this Court feels it appropriate to refer to the relevant provisions and the law regarding "Abetment to suicide. Section 306 IPC reads as under:-

"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."

Section 107 IPC reads as under:-

"107. Abetment of a thing.-A person abets the doing of a thing, who-

First.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing."

13. In Gurucharan Singh v. State of Punjab ((2020) 10 SCC 200), a three Judges Bench of the Apex Court, referring to Section 107 IPC has held as under:-

"14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.



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West Bengal (2010) 1 SCC 707, Dr. Justice M.K. Sharma writing for the Division Bench explained the parameters of Section 306 IPC in the following terms:

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of [Section 306](#) IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under [Section 306](#) IPC.

18. In the case Mangat Ram Vs. State of Haryana (2014) 12 SCC 595, which again was a case of wife's unnatural death, speaking for the Division Bench, Justice K.S.P. Radhakrishnan rightly observed as under:-

"24. We find it difficult to comprehend the reasoning of the High Court that "no prudent man is to commit suicide unless abetted to do so". A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic



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worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning."

14. Proceeding with the above understanding of law, in this case, the victim was found hanging inside her house. It is the case of PW1 to PW3, the Parents and the Uncle of the deceased, that there was no demand of dowry. Based on the complaint given by the father (PW1), the case in Crime No.378 of 2013 was registered under Section 174(3) Cr.P.C. PW15, after registration of FIR, commenced the investigation, and then he referred the matter to the RDO (PW14) for enquiry. The RDO, after enquiry, gave a opinion that it was not a dowry death and the death was due to the illicit intimacy between A1 and A1. PW12 has conducted Post Mortem on 21.10.2013 and he has issued Post Mortem Certificate (Ex.P11). As per the opinion of PW12, the death could have been caused probably due to Asphyxia due to hanging. PW16 took up the case from PW15 and continued with the investigation and examined the witnesses. PW17 has filed the final report against the accused for the offence under section 306 IPC.

15. Though the investigation has been conducted by PW15, 16 and 17, they have not spoken about the recovery of the suicide note. Whereas, PW14 (RDO) is stated to have seized a suicide note, which was marked as Ex.P14 (under protest). At this juncture, it is relevant to refer the contents of the suicide note, which are as follows :

"I Love you மாமா, நான் உன்னை விட்டு போவதற்கு காரணம் V.ராதா."

16. Now, while analysing the evidence of witnesses PW1 to PW3, who are respectively the father, step mother and uncle of the deceased, they have deposed that there was no demand of dowry and that there was illicit intimacy between A1 and A2 and that since A1 had not severed his relationship with A2 despite the victim's advice, she had committed suicide. Though the prosecution has examined the neighbours (PW4 to PW6) to speak about the illicit intimacy between A1 and A2, they have not supported the prosecution and they have been treated hostile. The other witnesses, who have been examined with regard to arrest and confession, have also turned hostile.

17. At this juncture, this court deems it fit to refer to the Judgment of the Apex Court in In K.V.Prakash Babu Vs. State of Karnataka ((2017) 11 SCC 176. The relevant paragraphs of the judgment are extracted hereunder:-



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"13. In this regard, Mr. Singh has drawn our attention to the authority in *Pinakin Mahipatray Rawal v. State of Gujarat*. In the said case, the Court was dealing with as to whether relationship between the appellant and the second accused therein was extra-marital leading to cruelty within the meaning of Section 498-A IPC and whether that would amount to abetment leading to the act of suicide within the meaning of Section 306 IPC. Dealing with the extra-marital relationship, the Court has opined that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on, but extra-marital relationship as such is not defined in the IPC. The Court analysing further in the context of Section 498A observed that the mere fact that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498A IPC. The Court further elucidated that harassment need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. The Court ruled that in the facts of the said case the alleged extra-marital relationship was not of such a nature as to drive the wife to commit suicide. The two-Judge Bench further opined that : (*Pinakin Mahipatray case*, SCC p.58, para 27)

"27. [Section 306](#) refers to abetment of suicide which 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



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reasonable doubt that the deceased committed suicide and the accused abetted the commission of suicide. But for the alleged extra marital 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."

14. Slightly recently in *Ghusabhai Raisangbhai Chorasiya v. State of Gujarat*, ((2015) 11 SCC 753), the Court perusing the material on record opined that even if the illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty the explanation (a) to Section 498-A of the IPC which includes cruelty to drive the woman to commit suicide, would not be attracted. The relevant passage from the said authority is reproduced below : (SCC pp. 759-60, para21)

"21. ...True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a degree that it would drive the wife to commit suicide. Mere extra-marital relationship, even if proved, would be illegal and immoral, as has been said in *Pinakin Mahipatray Rawal* (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant no.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498-A which includes cruelty to drive a woman to commit suicide, would not be attracted."

15. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or



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as such would not come within the ambit of Section 498-A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.

16. We are absolutely conscious about the presumption engrafted under Section 113-A of the Evidence Act. The said provision enables the Court to draw presumption in a particular fact situation when necessary ingredients in order to attract the provision are established. In this regard, we may reproduce a passage from Pinakin Mahipatray Rawal (supra) : (SCC p.58, para 26)

"26. ... 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 498-A 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 498-A IPC is on the prosecution."

We have reproduced the aforesaid passage only to highlight that the Court can take aid of the principles of the statutory presumption.

17. In the instant case, as the evidence would limpidly show, the wife developed a sense of suspicion that her husband was going to the house of Ashwathamma in Village Chelur where he got involved with Deepa, the daughter of Ashwathamma. It has come on record through various witnesses that the people talked in the locality



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with regard to the involvement of the appellant with Deepa. It needs to be noted that Deepa, being not able to digest the humiliation, committed suicide. The mother and the brother of Deepa paved the same path. In such a situation, it is extremely difficult to hold that the prosecution has established the charge under Section 498A and the fact that the said cruelty induced the wife to commit suicide. It is manifest that the wife was guided by the rumour that aggravated her suspicion which has no boundary. The seed of suspicion planted in mind brought the eventual tragedy. But such an event will not constitute the offence or establish the guilt of the accused-appellant under Section 306 of the IPC.

18. Having said that we intend to make it clear that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction under Section 306 of the IPC but definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. And we so clarify."

18. It is the case of the prosecution that the victim had committed suicide on account of A1 having illicit intimacy with A2. Even taking into consideration the evidence of PW1 to 3 and Ex.P14, which was marked under protest, the victim has not made any allegations against the first accused for having abetted suicide. She had only stated that she loves the first accused and that the second accused is the reason for her to leave him. In this case, as stated above, the prosecution has not proved the alleged illicit intimacy between A1 and A2 by letting cogent evidence.

19. The Hon'ble Apex Court, in the judgment referred to above, held that the mere fact that the husband has developed illicit intimacy with another woman during the subsistence of marriage without discharging his marital obligations, it would not amount to cruelty, but, it must be of similar nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498A IPC. Further, the Apex Court, referring to the decision in Pinakin Mahipatray Rawal v. State of Gujarat (2013) 10 SCC 48, held that mental cruelty, of course varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life.

20. In Ghusabhai Raisangbhai Chorasiya v. State of Gujarat ((2015) 11 SCC 753), the Apex Court has opined that even



if illicit relationship is proven, unless some other acceptable evidence is brought on record to establish such high degree of mental cruelty, the explanation (a) to Section 498-A of the IPC, which includes cruelty to drive the woman to commit suicide, would not be attracted.

21. Further, it also made clear that if the husband gets involved in an extra-marital affair that may not in all circumstances invite conviction under Section 306 of the IPC, but, definitely that can be a ground for divorce or other reliefs in a matrimonial dispute under other enactments. At the cost of repetition, this court finds that the prosecution has failed to let in any legal evidence to prove that there was illegal intimacy between A1 and A2 and that they committed cruelty so as to drive the victim to commit suicide. Absolutely, no evidence has been let in to satisfy the ingredients of offence under Section 306 IPC. This court is of the considered opinion that the prosecution has not proved the case beyond all reasonable doubts. A1/appellant in Criminal Appeal No.430 of 2019 and A2/appellant in Criminal Appeal No.401 of 2019 are entitled to the benefit of doubt and thereby, they are entitled to be acquitted.

22. Accordingly, these Criminal Appeals are allowed and the Judgment and Sentence passed by the Learned Sessions Judge, Fast Track Magalir Neethi Mandram, Krishnagiri, Krishnagiri District in S.C.No.65 of 2018 are set aside. The appellants (A1 and A2) are acquitted. Bail bonds, if any, executed by the appellants shall stand cancelled. Fine amount, if any paid, shall be refunded to the appellants.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

raja/ssk.
To

1. The Sessions Court,
Fast Track Magalir Neethi Mandram,
Krishnagiri, Krishnagiri District.
2. The Judicial Magistrate No.II
Krishnagiri



3. Do thro The Chief Judicial Magistrate
Krishnagiri

4. The Superintendent
Central Prison for Women
Vellore.

5. The Superintendent
Central Prison, Vellore

6. The Inspector of Police,
Maharajakadai Police Station,
Krishnagiri, Krishnagiri District.

7. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.E.Kannadasan, Advocate sr 60878

+1 CC to Mr.C. Anbu, Advocate sr 60281.

CRL.A.Nos.401 and 430 of 2019

AJS (CO)
SP(11/01/2022)