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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.03.2022

Pronounced on : 12.04.2022

C O R A M

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

Criminal Appeal No.14 of 2021

and

Crl.M.P.No.287 of 2021

Devaraj

... Appellant/Accused No.1

-vs-

The State Rep. By

Inspector of Police,

K-5, Peravallur Police Station,

Chennai - 600 082.

(Crime No.204 of 2014)

... Respondent/Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure, to set aside the conviction and sentence dated 17.12.2020, passed by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.359 of 2016.

For Appellant : Mr.P.Govindarajan

For Respondent : Mr.Leonard Arul Joseph Selvam

Government Advocate (Crl.Side)

J U D G M E N T

The present criminal appeal has been filed by the appellant to set aside the judgment of conviction and sentence dated 17.12.2020 passed by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.359 of 2016.

2. The appellant is arrayed as Accused No.1 in the above referred sessions case. Along with the other accused, he stood charged for the offence under Sections 498-A and 306 of IPC. By judgment dated 17.12.2020, the learned Sessions Judge, Mahila Court, Chennai, came to the conclusion that the appellant is found guilty under Sections 498-A and 306 of IPC, convicted and sentenced him as follows:

Offence	Sentence
498-A IPC	to undergo imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month.
306 IPC	to undergo imprisonment for seven years and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for two months.
The trial Court also ordered the sentences to run concurrently.	



Challenging the said conviction and sentence, the Accused No.1 is before this Court, by way of filing this Criminal Appeal. For the sake of convenience, hereinafter, the Accused No.1 is referred to as 'appellant'.

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3.The case of the prosecution is as follows:

(i) PW1-Narayansamy, is the father of the deceased Jayashree. PW2-Lalitha and PW3-Gowri, are the mother and sister of the deceased respectively. PW4-Mohan is the uncle of the deceased. The appellant is the husband of the deceased Jayashree.

(ii) The marriage between the deceased and the appellant was solemnised in V.C.Mahal at Katpadi as per the Hindu Rites and Customs. During such time, PW1 had given all sridhanas, as demanded by the appellant's family. After the marriage, the deceased was living with the appellant at Perambur in Chennai, along with other two accused (now acquitted), as a joint family.

(iii) After the marriage, in order to get reimbursement of the amount, which was paid towards the rent of marriage hall, the appellant herein demanded PW1 to give the receipt of the same. After six months from the date of marriage, due to the reason that all the accused made a demand for bringing dowry, PW1 had given Rs.1 Lakh in the month of October 2012. Further, in the year of 2013, the appellant demanded the deceased to bring Rs.50,000/- from her parents' house. Moreover, the appellant and the other accused abused the deceased as she could return to the matrimonial house, only if a male child is born to her. In otherwise, if female child was born, she won't be permitted to live in the matrimonial house.

(iv) Later, on 06.04.2013, the deceased gave birth to one male child and afterwards, PW1 sent his daughter to the matrimonial home, wherein, all the accused tortured the deceased as she is not fit to pass the TNPSC exam. On 24.01.2014, since the deceased was unable to bear with the harassment of all the accused, went to her uncle's [PW4] house at Puzhal and informed about the harassment committed by the accused. After hearing the same, both PW3 and PW4 consoled the deceased and left the deceased in her matrimonial home, at night 1' O clock. In the meantime, the appellant did not permit PW1 to see his daughter. Thereafter, on 01.02.2014, around 7.00 pm, the deceased contacted PW3 and informed that her parents had pushed her into a abyss and later the same was informed by PW3 to PW1.

(v) When at the time PW1 went to PW3's house on the next day for the house warming function, PW3 informed PW1 that the deceased requested her to recharge her cell phone for Rs.50/- as the 3rd accused instructed not to recharge the cellphone of the deceased. Thereafter, on 02.02.2014, all of them were informed that the deceased committed suicide.



(vi) Later PW1 to PW3 along with the husband of PW3 went to the police station to lodge a complaint under Ex.P1. On receipt of the complaint given by PW1, Rajeshkanna [PW7], the then Inspector of Police registered a case as against the appellant and two others under Sections 498-A and 306 of IPC. The copy of the printed FIR is marked as Ex.P6. After registering the case, PW7 handed over the said FIR to PW8 for investigation.

(vii) Immediately, after the receipt of the FIR, PW8-Vijayaraghavan, the then Inspector of Police, informed the incident to the Revenue Divisional Officer and in turn the Revenue Divisional Officer conducted enquiry and prepared the inquest report. Afterwards the requisition for post mortem was sent to the hospital authorities and on receipt of the same, PW6-Dr.Jithenthara Singh conducted post mortem and found the following injuries.

"Injuries: An incomplete, asymmetrically oblique, well level defined, brownish ligature abrasion 25 cm in length seen on front and sides of the neck at the level of thyroid cartilage and merges posteriorly with the hair line. On front - the lower border of the ligature mark lies 9cms above the suprasternal notch with breath 1cms, and the upper border is 6cm below the chin of breath 1 cm. On the right side - the upper border of the ligature mark lies 8cms below the right mastoid process with 1.5cm breath, on the left side - the upper border of the ligature mark lies 3 cms below the left mastoid process with 1cms breath, Posteriorly- the ligature mark merges with the hair line.

On dissection: The tissues under the ligature mark is pale and parchment, the underlying neck structure and subcutaneous soft tissues of the neck are pale, the Hyoid bone and other laryngeal cartilages were intact. There were no other external or internal injuries anywhere on the body.

Heart: Normal in size, multiple petechial hemorrhage seen over surface of left ventricle, C/S: Right side chambers contained fluid blood, left side chambers were empty; Valves: Normal; Coronaries: Patent; Great Vessels: Normal.

Lungs: Normal in Size; Multiple sub-pleural petechial hemorrhages on the surface of both the lungs, C/S: Congested.

Stomach: 150 gms of semi solid semi digested food particles seen with no specific smell.

Intestines: brown chyme present.

Liver, Spleen and Kidneys: Normal in size: C/S: Congested. Bladder: Empty.

Pelvis and Spinal Column: Intact.

SCALP / DURAMATER / SKULL BONES: Intact. Brain: edematous; surface vessels engorged C/S congested."



He collected the viscera particles and sent the same for chemical examination. In the report submitted by the Scientific Officer under Ex.P5, it was stated that there was no poison or alcohol found in the viscera particles. After the receipt of the said report, PW6, gave his opinion as the deceased would have died of Asphyxia due to hanging. The postmortem certificate issued by PW6 was marked as Ex.P4.

(viii) In the meanwhile on 02.02.2014, PW8-visited the scene of occurrence and prepared the observation mahazar and site plan in the presence of witnesses. The site plan and the observation mahazar are marked as Ex.P7 and Ex.P8 respectively. In the presence of witnesses, who have signed as witnesses in the observation mahazar, PW8 recovered a diary and a nylon rope [M.O.1 and M.O.2] under the cover of Mahazar-Ex.P9. After the receipt of the report submitted by the Revenue Divisional Officer, he altered the Section of law from 174(3) IPC to 498-A and 304B IPC. In this regard, the alteration report submitted by PW8 was marked as Ex.P11. Later, on 04.02.2014 around 4.15pm, all the accused were secured at their houses and remanded to judicial custody. Thereafter, PW8-handed over the case records to PW9 for further investigation.

(ix) PW9-John Joseph the then Assistant Commissioner of Police, on seeing the records, instructed PW10 to file a final report for the offence under Sections 498-A and 306 IPC. By obeying the direction given by PW9, PW10-Velu, the then Inspector of Police, filed a final report alleging that all the accused are liable to be convicted under Sections 498-A and 306 IPC.

4. Based on the above materials, the trial Court framed the charges under Sections 498-A and 306 IPC. All the accused pleaded not guilty. Hence, the accused were put on trial. In order to prove their case, on the side of the prosecution, PW1 to PW10 were examined and 11 documents were marked as Ex.P1 to Ex.P11, besides, two material objects [M.O.1 and M.O.2].

(i) Out of the said witnesses PW1-Narayanasamy, who is the father of the deceased, has spoken about the date on which the marriage had happened between the deceased and the appellant, about the demand made by the accused and also about the abuse committed by the accused towards the deceased.

(ii) PW2-Lalitha, who is the mother of the deceased, has also spoken about the occurrence as stated by PW1.

(iii) PW3-Gowri, is the sister of the deceased, has spoken about the occurrence as whenever she visited the house of the deceased, the appellant never had the courtesy to receive her. She would further state that the deceased went to the house of her uncle at Puzhal along with the child, by getting Rs.50/-



from her neighbour. She would further state that while at the time, the deceased and the appellant developed misunderstanding, she and her husband went to PW1's house, pacified the deceased and sent her along with the appellant.

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(iv) PW4-Mohan, who is uncle of the deceased residing in Puzhal, has deposed about the visit of the deceased to his house and also about the compromise happened in his house. While at the time, the appellant took the deceased to his house, he made a promise to take care of the deceased in a well manner. When at the time the deceased refused to go with the appellant, the appellant asked the deceased to give him the child born to the deceased. Even after the same, the deceased refused to go along with the appellant. Thereafter, only on considering the future of the child, all have advised the deceased to go to her matrimonial home.

(v) PW5-Kala, alleged independent witness did not support the case of the prosecution.

(vi) PW6-Dr.Jithender Singh, attached with Kilpauk Medical College Hospital, Chennai, has spoken about the injuries sustained by the deceased and about the opinion given by him in respect to the cause of death.

(vii) PW7-Rajeshkanna, PW8-Vijayaraghavan, PW9-John Joseph and PW10-Velu, are the police officers, who have spoken about the receipt of the complaint from PW1, registration of the case, investigation and about the filing of final report.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they all denied the same as false. On their side, they examined two witnesses as DW1 and DW2.

(i) DW1-Rajasekhar, is the resident of Kolathur Village. He knew the accused for the past 15 years, even before the appellant married the deceased. He gave evidence as of now, the child born to the deceased is being brought up by the accused. In otherwise, there is no quarrel between the deceased and the appellant at the relevant point of time.

(ii) DW2-Suresh Kumar, is also a family friend of the appellant. He gave evidence as during the relevant point of time, after receiving the information about the incident from the appellant, he immediately rushed to the occurrence place and while such time, the body was taken to the hospital and also the accused were taken to the police station.

6. Having considered all the above, the learned Sessions Judge, Mahila Court, Chennai, convicted and sentenced the accused as stated in paragraph No.2 of this judgment. Aggrieved



over the said conviction and sentence, the appellant is before this Court, with this Appeal.

7. I have heard Mr.P.Govindarajan, learned counsel appearing for the appellant and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (Crl.Side), appearing for the State and also perused the records carefully.

8. The first and foremost submission made by the learned counsel appearing for the appellant is that before the trial court, except the family members of the deceased, none have been examined to speak about the occurrence, particularly in respect to the harassment committed by the appellant. Therefore, for the said sole reason alone, the case of the prosecution fails and therefore, the appellant is liable to get an order of acquittal.

9. In this connection, now on considering the said submission with the relevant records, here it is case, the witnesses who are all spoken about the occurrence are all the family members of the deceased. Though they are related with the deceased, being the reason that the alleged occurrence had happened in the Matrimonial Home, they are the only available witnesses to speak about the occurrence.

10. In this regard, in the case of Ganapathi and another Vs. State of Tamilnadu, reported in 2018 (5) SCC 549, our Hon'ble Apex Court has held as follows:

"15. Merely because the eye-witnesses are family members their evidence cannot per se be discarded. When there is allegation of interestedness, the same has to be established. Mere statement that being relatives of the deceased they are likely to falsely implicate the accused cannot be a ground to discard the evidence which is otherwise cogent and credible. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent person. Foundation has to be laid if plea of false implication is made [See : Maranadu and Anr. Vs. State by Inspector of Police, Tamil Nadu (2008) 16 SCC 529]."

Therefore, the said observation made by our Hon'ble Apex Court is clear that only because of the reason that the witnesses are related to the deceased, their evidence cannot be discarded as they are interested witnesses.

11. Secondly, the learned counsel appearing for the appellant would contend that the evidence given by PW1 to PW4 is not a cogent one in respect to the harassment alleged to be committed by the accused. Further, there is no iota of evidence



to show that the accused alone abetted the deceased for committing suicide. Therefore, in the absence of any specific evidence in respect to those aspects, convicting the accused as above by the trial Court, is an erroneous one.

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12. Now, on considering the said submission with the relevant records, for proving the offence under Section 498-A, IPC it would be necessary for the prosecution to show that the accused being the husband of a woman committed cruelty towards his wife. In this regard, it would be necessary and useful to see Section 498-A of IPC, which reads as follows:

Section 498A. Husband or relative of husband of a woman subjecting her to cruelty.—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.—For the purpose of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Accordingly, it would be necessary to see whether the appellant committed cruelty by means of any wilful conduct or by making harassment with a view to coerce her to meet a unlawful demand for any property or valuable security.

13. In this regard, though the witnesses examined on the side of the prosecution as PW1 to PW4 gave contradictory evidence as to the harassment committed by the appellant, the whole case projected by the prosecution is that after the marriage, the appellant/accused herein demanded to give the receipt of the rent paid to the Marriage hall for the purpose of getting reimbursement of said amount from his office. In this regard, none of the witnesses examined on the side of the prosecution gave evidence as neither PW1 nor his relatives paid the marriage hall expenses. But at the same time, the appellant herein intended to reimburse the same unlawfully. Further, it is the evidence given by them that in the year 2012, PW1 gave Rs.1 Lakh to his daughter. Also it was stated that the appellant herein attempted to receive Rs.12,000/- which was paid by the Government for the delivery of minor child. It is also the evidence that the appellant refused to send the deceased in order to celebrate the deepavali function.



14. The another one allegation levelled against the accused is all the accused tortured the deceased saying that she has not passed TNPSC examination. Therefore, all allegations levelled against the accused are all common and not against the appellant alone. Further, the whole evidence projected by them would reveal the fact that the appellant has not demanded the deceased to bring dowry for the purpose of a particular issue. In the said circumstances, it would be necessary to see the suicide note which was marked as Ex.P3.

15. Admittedly, the suicide note which was marked as Ex.P3 was written by the deceased. Through the said letter, the deceased asked apology only from appellant/accused. Though it was stated as the words used by the appellant is abusive in nature, in the absence of any clarification in respect to the words used at the time of occurrence, this Court is not in a position to see whether the words uttered by the accused amounts to harassment. If really the evidence given by the prosecution witnesses as to the demand of dowry is true one, it is not necessary for the deceased to ask apology from her husband through the suicide note. Further, the deceased had requested the appellant to remarry. In otherwise, the evidence given by the prosecution witnesses, did not connect the accused with offence under Section 498-A. Moreover, the document relied on by the prosecution itself would show that there is no question of abetment committed by the accused towards the deceased.

16. The basic difference that lies between the offence under Section 498-A and 306 IPC is that of 'intention'. Under Section 498-A IPC, cruelty committed by the husband or his relations drag the woman to commit suicide, while under Section 306 IPC, suicide is abetted and intended. Therefore, the difference between Section 498-A and 306 IPC, is that of 'intention'.

17. Now, as already observed, here it is a case, the evidence put forth by the prosecution witnesses did not show the intention having by the appellant/accused. Further, the suicide note written by the deceased throw out the entire prosecution case and would create a doubt whether there was cruelty committed by the husband towards the deceased.

18. One more aspect which is yet to be decided in this case is that though it was stated by the prosecution witnesses as Sub Collector conducted enquiry, the report given by the Revenue Divisional Officer has not been exhibited in this case. In the statement given by PW2 before the Revenue Divisional Officer alone was marked as Ex.P2. The reason for non marking the inquest report has not been explained on the side of the prosecution.

19. Though an investigation under Section 174 Cr.P.C., is



limited in scope and is confined to the ascertainment of the apparent cause of death, it is concerned with discovering whether in a given case, the death was accidental, suicidal or homicidal. If a person dies naturally, then there lies no suspicion so as to the death of the person. But in case of unnatural death, the death is caused due to the circumstances which needs to be explained and examined.

20. In the said circumstances, without offering an explanation, and without marking the inquest report as an exhibit, this Court is not in a position to decide 'what was the cause of death? In this aspect also, the prosecution failed in its attempt and the learned Public Prosecutor, who appeared before the trial Court without knowing the rudimentary principles of law, has participated in the trial and the learned trial Judge had passed this judgment.

21. Therefore, from the light of the discussions stated supra, this Court is of the considered opinion that the prosecution has failed in its attempt to prove the case. Accordingly, the appeal is allowed. The conviction and sentence imposed upon the appellant/Accused No.1, by the learned Sessions Judge, Mahila Court, Chennai, in S.C.No.359 of 2016 dated 17.12.2020, is set aside. The appellant/Accused No.1, is acquitted of the charges and he is directed to be set at liberty forthwith unless his custody is required in connection with any other case. Bail bond executed, if any, shall stand terminated. Fine amount paid, if any, is directed to be refunded to the appellant/Accused No.1. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Mahila Court,
Chennai.
2. The Superintendent of Prison,
Central Prison, Puzhal, Chennai.
3. The Public Prosecutor,
High Court, Madras.



4. The V Metropolitan Magistrate,
Egmore, Chennai.
5. The District Collector,
Chennai.
6. The Director General of Police,
Mylapore, Chennai.
7. The Inspector of Police,
K-5, Peravallur Police Station,
Chennai 82
8. The Chief Metropolitan Magistrate,
Egmore, Chennai.
9. The Section Officer,
Criminal Side,
High Court, Madras 104.

judgment in
Criminal Appeal No.14 of 2021

NRL (CO)
KM(12/04/2022)