



Crl.A.No.620 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 05.07.2022

Pronounced on : 13.07.2022

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.A.No.620 of 2015

Srinivasan,

... Appellant/Accused

/versus/

State by
The Inspector of Police,
Mangalam Police Station,
Tiruppur.
Crime No.2360 of 2010.

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C., against the sentence and order passed in S.C.No.154 of 2013 dated 19.09.2015 by the Learned Magalir Neethimandram (Fast Track Mahila Court), Tiruppur and seeks to set aside the same.

For Appellant : Mr.P.Thamaraiselvan
Mr.P.Palaninathan, Amicus Curiae

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)

J U D G M E N T



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The appellant herein is the husband of deceased Mageshwari. They got married in the year 2006 and had two female children by name Harini (3 years old) and Hasini (6 months old). On 30/10/2010, Mageshwari doused herself with kerosene and set fire to herself. Her 6 months old daughter Hasini, who was near her also caught in fire, both died.

2. Next day, on 31/10/2010, at about 2.00 p.m, Chandrapal, the father of the deceased informed the police about the incident. He alleged that, a month before the occurrence when he and his wife came to see their daughter, she complaint about her husband Srinivasan that, he is having illicit relationship with several women and not taking care of her and their children. He stay away from the home for several days. A month prior to the incident, they heard Srinivasan has set up a house for one Radha, daughter of Neelaperumal and living with her. When they reported about the behaviour of Srinivasan to his parents, they supported him and retarded saying, he as a male will marry 1000 ladies. Nobody should blame his conduct. When this matter was reported to Palladam Police, they called Srinivasan and warned him to desist from such behaviour. On 30/10/2010, at about 11.00 p.m, he received a call from her daughter's house informing that his



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daughter Mageshwari and grand daughter Hasini caught fire and died.

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3. For the above said incident, First Information Report registered in Crime No.2360/2010 under Section 174 Cr.P.C. Thereafter, the Deputy Superintendent of Police, Palladam, took up the investigation and visited the scene of occurrence at 17.00 hrs. He prepared the observation mahazar, rough sketch and recovery mahazar in the presence of local witnesses. Since the unnatural death of Mageshwari occurred within 7 years of her marriage, enquiry by RDO was arranged. Her body was sent to post-mortem along with requisition letter. Therefore, F.I.R was altered from 174 Cr.P.C to Sections 306, 498-A and 302 I.P.C. After completion of the investigation, final report filed before the Judicial Magistrate-II, Tiruppur and taken on file as P.R.C.No.13/2012. After furnishing copies to the accused, the final report copy and the documents relied by the prosecution, committed the case to Sessions Court for trial.

4. The case was taken on file by the District and Sessions Court as S.C.No.154/2013 and later, transferred to the Special Court for offence against Women, on its constitution at Tiruppur. The Mahila Court framed charge under



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Section 306 of I.P.C against the accused and put him on trial.

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5. To prove the charge, the prosecution examined 14 witnesses, marked 21 documents and one material object.

6. P.W-2 and P.W-3 are the father and mother of Mageshwari. P.W-4 is the brother of P.W-3, P.W-7 is the brother of the deceased Mageshwari. These witnesses had deposed about the demand of money and physical assault by the accused. The extra marital affair of the accused with one Vaishnavi and then, with Radha. P.W-2 had deposed that, he heard that, on the date of occurrence, when the accused was questioned by the deceased about his behaviour, he attacked her and told her that he will not change his behaviour. She may go to her father's house or die, so that, he can live happily with Vaishnavi, his second wife. P.W-7 the brother of the Mageshwari had deposed that, when the accused kidnapped the minor girl Radha and kept her in his second wife's Vaishnavi house, Palladam Police rescued the said Radha, on the complaint of Radha's father. By this, the accused got furious and told his sister to die, then only he can live happily with her. He had also deposed about the call he received from his sister at about 8.00 p.m on



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30/10/2010. According to P.W.7, his deceased sister told him the accused did not return home for 3 days and when he came after 3 days, she questioned him for staying away from home, for which the accused attacked her and scolded her.

7. Based on the evidence, the Trial Court, held the accused guilty of offence under Section 306 I.P.C. Sentenced him to undergo 5 years R.I and to pay fine of Rs.50,000/- in default, 1 year R.I. The fine amount was ordered to be paid as compensation to the surviving minor daughter.

8. The above said judgment of conviction and sentence is under challenge in this appeal.

9. There was no representation for the appellant when the matter was taken up for final hearing on 28/06/2022. This Court, therefore, appointed Mr.P.Palaninathan as Amicus curiae to assist the Court and adjourned the matter to 30/06/2022. On that day, the Learned Counsel on record also appeared and sought excuse for not appearing on the earlier dates when the case was listed for final hearing.



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10. According to the Learned Counsels representing the appellant/accused, the delay in registering the F.I.R not explained. When the incident occurred on 30/10/2010 at 10.00 pm, the F.I.R came to be registered only on the next day 31/10/2010 at about 14.00 hrs. The evidence of the prosecution witnesses establishes the fact that the body of Mageshwari and the minor child Hasini were removed to Government Hospital, Tiruppur on the same day. However, the investigation has started only at 17.00 hrs on the next day, after receiving the belated complaint.

11. The R.D.O enquiry has ruled out dowry harassment as cause for committing suicide. The alleged extra marital affair not proved through any independent reliable evidence except the oral evidence of P.W-2, P.W-3, P.W-4 and P.W-7 all are related to the deceased and interested witnesses. Particularly, no evidence regarding the said Vaishnavi or Radha placed before the Court to show that they were in affair with the accused. It is contended that the oral evidence of P.W-9, Inspector of Police, All Women Police Station that she received oral complaint on 01/10/2010 from Thiru.Neelaperumal about her daughter Radha ran



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away from the home and staying at the residence of Vaishnavi, the second wife of Srinivasan and her refusal to return home since she was compelled to continue her studies, cannot be relied in the absence of any documentary proof for the same. The untested, uncorroborated oral evidence of PW-9, Police Inspector has been erroneously relied by the trial court.

12. The defacto complainant P.W-2 has informed the police during investigation that on 30/10/2010 at about 10.00 p.m, he received call from one Shanthi, who is the brother's wife of the accused. The said Santhi not examined. Vaishnavi, Radha and Neelaperumal, the father of Radha not examined. The witnesses P.W-2, P.W-3, P.W-4 and P.W-7 had deposed several facts which does not form part of their previous statement to the police as well as to the RDO enquiry. Hence, the conviction of the accused for offence under Section 306 I.P.C without any evidence or proof that the deceased was aided or abetted to committed suicide by the accused is liable to be set aside.

13. Per contra, the Learned Government Advocate (Criminal Side) for



the respondent submitted that, the death of Mageshwari and her 6 months old daughter inside the residence of the accused is proved beyond any pale of doubt through the prosecution witnesses. According to the final opinion of the post-mortem doctor (Ex.P-18), she died on burn injuries and its complication. The death occurred within 7 years of marriage. Ex.P.21, the report of R.D.O discloses the fact that Mageshwari committed suicide due to the quarrel with her husband regarding his extra marital life and for neglecting her and their children. She got dejected and provoked by the accused saying, 'die and get lost' she has committed suicide. The cruelty as explained under I.P.C does not necessarily be physical. Even mental cruelty or act of omission will amount to abetting, if the said cruelty forced her to take a decision that she has no other alternative except to die. In this instant case, the prosecution has proved cruelty as well as the instigation to commit suicide by utterance of words like 'get lost', 'go to your father's home or die', 'if you die, I will be live happily with Vaishnavi'. These words were the factors which forced Mageshwari to commit suicide. Improper recording of the statements of witnesses by the Investigating Officer during investigation is not fatal to the prosecution since, the witnesses on oath had narrated the sequence of events happened in the deceased family and which stood the rigor of cross examination.



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14. Heard the Learned Counsel for the Appellant, Amicus Curaie and the Learned Government Advocate (Crl.Side) for the State.

15. According to the prosecution wife of the accused committed suicide due to the cruelty she met at the hands of the accused and his instigation to commit suicide. The cruelty as stated by the prosecution is the frequent demand of money and the extra marital affair.

16. As pointed by the Learned Counsel for the appellant and the Amicus Curaie, the prosecution has not placed any independent witness or documentary evidence to corroborate the said extra marital affair of the accused with Vaishavi. Except the oral evidence of the relatives of the deceased and P.W-9, the Inspector of Police attached to All Woman Police Station, Palladam, no evidence to corroborate further.

17. The Learned counsel for the Appellant by relying upon the judgment of the Supreme Court in *Pinakin Mahipatray Rawal -vs- State of*



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Gujarat reported (2013)10 SCC 48 submitted that, the alleged illegal affair cannot be taken as a factor to drive the wife to commit suicide.

18. Further to buttress the submission, he refers the below passage of the Hon'ble Supreme Court judgment **State of West Bengal -vs- Orilal Jaiswal and another** reported in (1994) 1 SCC 73:-

“15. We are not oblivious that in a criminal trial the degree of proof is stricter than what is required in a civil proceedings. In a criminal trial however intriguing may be facts and circumstances of the case, the charges made against the accused must be proved beyond all reasonable doubts and the requirement of proof cannot lie in the realm of surmises and conjectures. The requirement of proof beyond reasonable doubt does not stand altered even after the introduction of Section 498-A IPC and Section 113-A of Indian Evidence Act. Although, the court's conscience must be satisfied that the accused is not held guilty when there are reasonable doubts about the complicity of the accused in respect of the offences alleged, it should be borne in mind that there is no absolute standard for proof in a criminal trial and the question whether the charges made



against the accused have been proved beyond all reasonable doubts must depend upon the facts and circumstances of the case and the quality of the evidences adduced in the case and the materials placed on record. Lord Denning in Bater v. Bater [(1950) 2 All ER 458, 459 : 66 TLR (Pt. 2) 589] has observed that the doubt must be of a reasonable man and the standard adopted must be a standard adopted by a reasonable and just man for coming to a conclusion considering the particular subject-matter.”

19. The Learned Amicus Curiae, relying upon the judgment of the Apex Court in ***M.Arjunan -vs- State of Tamil Nadu*** reported in **2019 (3) SCC 315** and ***Gurucharan Singh -vs- State of Punjab*** reported in **2020 (10) SCC 200**, submitted that, unless the ingredients of instigation/abetment to commit suicide are satisfied, accused cannot be convicted under Section 306 I.P.C. The act of commission and omission by the accused deposed by P.W-2, P.W-3, P.W-4 and P.W-7 for the first time before the Court and not form part of their previous statement, in addition, the omission to examine Vaishnavi, Radha, Neelaperumal and Shanthi coupled with delay in registering the F.I.R causes doubt about the prosecution version.

20. *Pinakin Mahipatray Rawal* case cited *supra* is in relation to



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suicide death of wife after leaving a note indicating the love of her husband with another lady and her decision to commit suicide to enable her husband to marry the lady whom he loves. In the said factual matrix, the Hon'ble Supreme Court has dealt about the Anglo-Saxon common law on 'alienation of affection' and impact of extra marital relationship in the Indian context. In the course of the discussion, the Hon'ble Supreme Court has observed,

“23. We are of the view that the mere fact that the husband has developed some intimacy with another, 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 498-A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498-A 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. We, on facts, found that the alleged extramarital relationship was not of such a nature



as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide.”

21. The Apex Court relying its earlier judgement in ***Gananath Pattnaik -vs- State of Orissa*** (2002) 2 SCC 619, had observed that, the term 'cruelty' under Section 498A I.P.C and its effect on Section 306 I.P.C varies from individual to individual. Also depending upon the social and economic status to which such person belongs. Even mental torture or abnormal behaviour may amount to cruelty or harassment in a given case.

22. It is also relevant and appreciate to refer paragraph 27 in *Pinakin Mahipatray Rawal* case cited supra, were the Hon'ble Supreme Court has observed as below:-

“27. Section 306 refers to abetment of suicide. 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



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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.”(Emphasis added)

23. In *Amalendu Pal -vs- State of West Bengal* reported in (2010) 1

SCC 707, the Hon'ble Supreme Court has observed that,

“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



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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.”

24. In *Chitresh Kumar Chopra -vs- State (Government of NCT of Delhi)* reported in (2009) 16 SCC 605, the Hon'ble Supreme Court has explained what is meant by 'instigation' and 'abetment' in cases of suicide.

“17. Thus, to constitute “instigation”, a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by “goading” or “urging forward”. The dictionary meaning of the word “goad” is “a



thing that stimulates someone into action; provoke to action or reaction” (see Concise Oxford English Dictionary); “to keep irritating or annoying somebody until he reacts” (see Oxford Advanced Learner's Dictionary, 7th Edn.).

18. Similarly, “urge” means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to “goad” or “urge forward” the latter with intention to provoke, incite or encourage the doing of an act by the latter.”

25. In the light of the judgments rendered by the Hon'ble Supreme Court in connection with Section 306 of I.P.C *vis-a-vis* mental cruelty qua extra marital affair as Justice *R.C.Lahoti* said in ***Ramesh Kumar -vs- State of Chhattisgarh [(2001) 9 SCC 618]***,

16.....Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an “instigation” may have to be inferred.



17....

18....

19..... *In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that:*

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

26. The facts of the case under consideration is that, the accused not been visiting the home and when he was questioned suspicion, he is staying away probably with his mistress, the accused instigated his wife to commit suicide. This has been spoken by P.W.7, the brother of the deceased which has been disclosed by the accused during the telephonic conversation, the day on which the deceased committed suicide. When the members of the deceased family shocked by sudden



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death of Mageshwari, it cannot be expected that, they can recollect all the dialogues and events to report before the police immediately. What the Court has to ensure while giving concession for their belated recollection of events, it should not give room to embellishments or distortion of facts.

27. In the instant case, no doubt certain facts were not found part of previous statement of the witnesses. However, when they have come to the Court and given the testimony on oath, and no major contradictions in their evidence about the events which took place at the residence of the accused and the cruelty met by her at the hands of the accused, their testimony become reliable.

28. As observed by the Hon'ble Supreme Court, extra marital affair of the husband may not singularly enough to hold the husband guilty of abetment on wife committing suicide. However, if his conduct instill a fear of future in the mind of the wife who has two young kids to bear, it is not only the deprivation of love of the husband but also the care and the protection which becomes a question, for a helpless woman. When husband justifies the illegal intimacy and force her to end her life so that he can live happily with his mistress, the wife is left with no other



alternate except to die.

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29. The facts of the case in *Pinakin Mahipatray Rawal* cited supra, relied by the Learned Counsel for the appellant is entirely different and diagonally opposite to the facts of the instant case in hand. In that case, the suicide note by the lady blaming herself had given a clean chit to her husband though she believed her husband have affair with an another lady. The self pity suicidal note of the deceased probably saved the husband in that case. Whereas, in this case, there is no such suicidal note but her complaint to her brother, P.W.7 soon before her death and she placing the phone soon after her husband arrival is an indication that the deceased was under constant fear and threat of the accused.

30. Therefore, this Court holds that the finding of the Court below is well supported by evidence and reasoning, which requires no interference. Hence, the ***Criminal Appeal is dismissed.*** The trial Court is directed to secure the appellant and commit him to Central Prison to undergo the remaining period of sentence. The period of imprisonment already undergo shall be set off under Section 428 of Cr.P.C. Bail Bond stands cancelled.



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Index :Yes.
Internet :Yes.
Speaking order/Non-speaking order
bsm

To,

1. The Magalir Neethimandram (Fast Track Mahile Court), Tiruppur.
2. The Inspector of Police, Mangalam Police Station, Tiruppur.
3. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Delivery judgment made in
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13.07.2022