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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 21.06.2022

JUDGMENT PRONOUNCED ON : 29.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.A.NO.314 OF 2019

Satishkumar

... Appellant/Accused

Versus

The State represented by
The Inspector of Police,
Azhagapuram Police Station,
Salem.
(Crime No.500 of 2011)

... Respondent/Complainant

PRAYER:-

Criminal Appeal is filed under Section 374 of Cr.P.C., to set aside the judgment of conviction and sentence passed against the appellant under Sections 498A and 306 of I.P.C, dated 02.02.2019 in S.C.No.214 of 2013 by the learned Sessions Judge, Mahila Court, Salem and acquit the appellant.

For Appellant : Mr.P.S.Parthasarathi

For Respondent : Mr.S.Vinoth Kumar
Government Advocate
(Criminal Side)

JUDGMENT

The appellant stood trial before the Mahila Court, Salem in S.C.No.214 of 2013 for two charges, that is, under Sections 498A and 306 of the Indian Penal Code. The first charge against the petitioner is that the appellant got married to the deceased Kavita on 16.04.2008 with dowry of 110 sovereigns of jewels, Rs.4,00,000/- of money for purchase of Car, Rs.60,000/- towards making jewels and after marriage, when the appellant and the deceased Kavita were residing at Door No.2/167, E.C.G.Nagar, Periyaputhur, within the limits of Azhagapuram Police Station,



the appellant, on account of his illicit relationship with one Padma, even before the marriage and even after 1 1/4 years of birth of a child Mithun, the appellant/accused again had relationship with said Padma and when the said Kavita questioned about the same, the appellant/accused hit Kavita as well as the child, Mithun and broke the hands of Kavita and abused her by stating that there is no use of Kavita being alive and better die or if the said Kavita is alive, he would end her and in the same manner, repeatedly committed cruelty and therefore, committed an offence under Section 498A of the Indian Penal Code.

2. In continuation thereof, on 27.04.2011, unable to bear the torture of the accused, the said Kavita committed suicide by hanging herself and died on account thereof and therefore, since the cruelty of harassment is the reason instigating her to commit suicide, the accused is punishable under Section 306 of the Indian Penal Code.

3. The above charges came to be framed because on 27.04.2011, when, P.W.13, Manokaran, the Inspector of Police was on duty at Azhagapuram Police Station, P.W.1, namely Chidambaram, came to the Police Station and lodged a complaint to the effect that he got her daughter married to the appellant/accused on 16.04.2008 with the jewelry and money, as mentioned in the charge above and the child, Mithun, was born on 06.04.2009 and the appellant/accused had illicit relationship with several women and he had developed close relationship with one Padma working with him in the college and eight months before, in an inebriated mood, he had hit her daughter resulting in fracture of her arm and she had to be admitted in London Ortho Hospital and operated upon and on 27.04.2011, when he came on the request of the mother of the appellant/accused to Ponnampet temple festival, he first came to her daughter's house at about 3.00 P.M and at that time, his daughter complained him that on the previous day, the appellant/accused had hit her and tortured her and broke her Cellphone and stating so, she cried and she gave letter containing a few pages, which he put it in his pocket without reading it and with his grandson he proceeded to the mother's place of the appellant/accused for the temple festival and again when he came back at about 4.15 P.M, the door was open. When he saw inside the computer room, his daughter was seen hanging in the fan and he immediately raised alarm and all the neighbours came. He saw an injury in the leg of his daughter and therefore, he suspects that his son-in-law would have beat her to death and requested to take action on the appellant/accused.

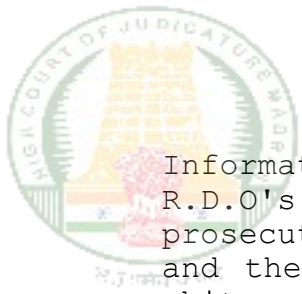
4. On the said complaint, the First Information Report was registered in a Crime No.500 of 2011 initially under the provisions of Section 174 of the Code of Criminal Procedure.



Thereafter, upon receipt of the report of the Revenue Divisional Officer, the case was altered into one under Section 306 of the Indian Penal Code and P.W.14 took up the case for investigation and completed the investigation and laid a charge-sheet, proposing the appellant/accused guilty for the offences under Section 498A and 306 of the Indian Penal Code. The said case was taken on file as P.R.C.No.12 of 2013 by the learned Judicial Magistrate, Additional Mahila Court, Salem and after appearance of the accused and furnishing of the copies as per Section 207 of the Code of Criminal Procedure, committed the case to the District and Sessions Court, Salem as per Section 209 of the Code of Criminal Procedure. The same was taken on file as S.C.No.214 of 2013 and thereafter, made over to the Mahila Court, Salem which framed the charges as mentioned supra. Upon being questioned, the appellant/accused denied the charges and stood trial.

5. The prosecution examined one Chidambaram, the father of the deceased Kavita, as P.W.1, who was also the de-facto complainant; one Eswari, the mother of the deceased Kavita, as P.W.2; one Senthil Kumar, the brother of the deceased, as P.W.3; one Dr.Panneersellam, who conducted post-mortem and issued final opinion, as P.W.4; one Sasikumar, who is also the brother of the deceased, as P.W.5; one Selvaraj, who was the witness to the observation mahazar, as P.W.6; one Bhupathi, who is the brother of P.W.1, as P.W.7; one Samiappan, Head Constable, who handled the body and kept it in the mortuary, as P.W.8; one Geetha, the forensic expert, who rendered the Viscera Report, as P.W.9; one Florence Devasoodamani, the expert who compared the signature in the suicide note along with the admitted signatures and gave opinion, as P.W.10; one R.Mohan, the Investigating Officer who commenced investigation in the case, as P.W.11; one Prasanna Ramasamy, the Revenue Divisional Officer, who conducted the enquiry and submitted his report, as P.W.12; one Manokaran, who registered the case and conducted part investigation, as P.W.13; one Kapilan, the Investigating Officer, who completed the investigation and filed charge-sheet, as P.W.14 and one Kavita, whose name was contained in one of the documents compared for the handwriting, as P.W.15.

6. On behalf of the prosecution, the complaint was marked as Ex.P-1; the suicide note, containing 10 pages, was marked as Ex.P-2; one notebook with the cover containing picture of actress Laila, as Ex.P-3; the zoological practical notebook of Kavita, as Ex.P-4; the Form 91, as Ex.P-5; the request letter, given by the Revenue Divisional Officer for post-mortem, as Ex.P-6; the post-mortem report, as Ex.P-7; the Viscera Report, as Ex.P-8; the final report of the Doctor about the reason for death, as Ex.P-9; the observation mahazar, as Ex.P-10; the Form 91, as Ex.P-11 and the other documents including First



Information Report, Alteration Report, Inquest Report, the R.D.O's report etc., upto Ex.P-32 were marked on behalf of the prosecution. The saree, used for hanging, was produced as M.O.1 and the torn red colour skirt, torn purple colour jacket, torn white colour brace and torn light green colour underwear, were produced as M.Os.2 to 5.

7. Upon being questioned about the evidence on record and incriminating circumstances, the appellant/accused denied the same as false. Thereafter, on behalf of the appellant/accused, one S.Kumaresan, as D.W.1 and one Gopal, as D.W.2, were examined. The Trial Court thereafter proceeded to consider the evidence on record and after hearing the learned Additional Public Prosecutor on behalf of the State and the learned Counsel for the accused/appellant and by a judgment, dated 02.02.2019, found the accused guilty for the offence under Section 498A of the Indian Penal Code and sentenced to undergo three years Rigorous Imprisonment and a fine of Rs.50,000/- and in default, to undergo six months Simple Imprisonment and for the offence under Section 306 of the Indian Penal Code, to undergo ten years Rigorous Imprisonment and a fine of Rs.50,000/- and in default, to undergo six months Simple Imprisonment.

8. Heard Mr.P.S.Parthasarathi, learned Counsel for the appellant and Mr.S.Vinoth Kumar, learned Government Advocate (Crl. Side) for the respondent.

9. The learned Counsel for the appellant would submit that a perusal of the entire evidence on record, it would be clear that there is no specific evidence to prove any of the ingredients under Section 306 of the Indian Penal Code and there is no act whatsoever which is alleged by which the accused instigated the deceased to commit suicide and therefore, the conviction of the accused per se is unsustainable. He would submit that the whole exercise of comparing the suicide note with the admitted signature is flawed inasmuch as the expert initially opined the suicide note has to be compared with any recent document and the only recent document which is sent was a letter written to the University by some other Kavita and therefore, the entire evidence relating to the comparing of the suicide note was goof-up by the prosecution and therefore, is bad.

10. He would further submit that the entire case of the prosecution as if on the day of the occurrence, P.W.1 came to the house of the deceased and the deceased gave the suicide notes and he kept them in his pocket without even reading it or asking what it is, is, on the face of it, unbelievable and illogical. He would further submit that the prosecution has not in any manner proved the motive and as a matter of fact, unable to bear the death of their daughter, P.Ws.1 and 2 had levelled



unscrupulous allegation of murder as against the appellant/accused and therefore, there is no reliable evidence on record to contend that the appellant/accused had a motive to make the deceased to commit suicide.

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11. He would further submit that even assuming that the suicide note is real, on a complete reading of the same, it would be clear that the victim had mentioned in the letter to her mother that she is worshipping god and therefore, a good thing is happening to her and that is the death. In her letter to the husband, she says that her death should not be seen as if she commits suicide and request him to dispose off the body as if she died of chest pain. In a detail note to her father, while requesting him to bring up her child, she says that her father should not scold her mother as if she is only the reason for all that happened and in the said 8 page note, she has detailed about the various dissatisfactions of her. She has written in the note that she had decided to commit suicide, even before the alleged proximate incident. Therefore, a clear reading of the said note as well as the M.Os produced by the prosecution, whereby, she always used to wear torn clothes and remained unkempt and was in depressed state of mind, it would be clear that she committed suicide by taking the extreme decision on account of her own depressed state of mind and the appellant/husband was in no way responsible for the same.

12. He would further submit that even in respect of the offence under Section 498A of the Indian Penal Code, there was no complaint till the incident and the deceased herself, in the suicide note, has written that after she spoke to the said Padma, the relationship came to an end and thereafter, they started living together happily. Therefore, he would submit that there is no clear evidence to convict the appellant even for the offence under Section 498A of the Indian Penal Code. He would further submit that in this case, the Revenue Divisional Officer did not send the original report to the Court and only a photo copy of the second report alone was sent and therefore, that is also not a believable piece of evidence. In view of all the circumstances, the learned Counsel for the appellant would pray that this Court should acquit the accused.

13. The learned Counsel for the appellant also relied upon the judgment of the Hon'ble Supreme Court of India in Ramesh Kumar Vs. State of Chhattisgarh¹ in support of the proposition that there is no instigation by the appellant/accused in the instant case and therefore, he cannot be convicted for the offence under Section 306 of the Indian Penal Code.

¹ (2001) 9 SCC 618



14. Per contra, Mr.S.Vinoth Kumar, learned Government Advocate (Crl. Side) would contest that the prosecution has duly proved the suicide note. A perusal of the suicide note, it would be clear that there was a complaint of harassment and cruelty, initially owing to the relationship with said Padma and thereafter, since the deceased had separated the appellant/accused with the said Padma, on account of the anger, he kept on torturing her. Therefore, he would submit that the deceased committed suicide, having no other go, on account of the continuous torture and harassment and therefore, as per Section 306 of the Indian Penal Code, there is ample evidence on record and in the suicide note as well as by the evidence of P.Ws.1 and 2, the parents of the victim. Inasmuch as it is clearly proved that the accused had committed both mental and physical cruelty on the deceased, the offence under Section 498A of the Indian Penal Code also stood proved and therefore, he would submit that there is no ground to interfere in this appeal.

15. I have considered the rival submissions made on either side and perused the material records of the case. Before proceeding to analyse the evidence on record, it may be seen that this is a case where the husband is the accused and the death of the victim is within seven years and therefore, this Court has to decide whether the presumption under Section 113-A of the Indian Evidence Act applies.

16. The three bench Judgment of the Hon'ble Supreme Court of India, in Ramesh Kumar Vs. State of Chandigarh (cited supra), considered the question of presumption and the meaning of 'instigation' and in paragraph No.12 of the said Judgment, held that firstly, the presumption is not mandatory, as the employment of expression "may presume" suggests. Secondly, it also held that 'the other circumstances of the case' has to be taken into account for the purpose of raising the presumption. Finally, it has been held that presumption is a rebuttable one and the circumstances otherwise available on record may be taken into account for rebutting the presumption.

17. Further, in paragraph No.20 of the said judgment, the meaning of the word "instigation" was laid down and it is useful to extract the paragraph No.20 of the said Judgment as follows:-

"20.Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out.



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The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."

18. The Hon'ble Supreme Court of India, in the recent Judgment relating to the case of allegation against the husband for having abetted the wife to commit suicide within seven years, had, in the matter of Gurjith Singh Vs. State of Punjab², re-stated the entire law on the subject and also followed the law laid down in Ramesh Kumar (stated supra) and ultimately held in the paragraph No.35 as follows:-

"35. Applying the aforesaid principles to the present case, we find that though the prosecution is successful in proving the case under Section 498-A IPC, we are of the view that the prosecution has failed to prove that the cruelty was of such a nature which left no choice to the deceased than to commit suicide. The prosecution has not been in a position to place on record any evidence to establish beyond reasonable doubt that any act or omission of the accused instigated the deceased to commit suicide. There is no material on record to show that immediately prior to the deceased committing suicide there was cruelty meted out to the deceased by the accused due to which the deceased had no other option than to commit suicide. We are of the view, that there is no material placed on record to reach a cause and effect relationship between the cruelty and the suicide for the purpose of raising presumption. "

Thus, it may be seen that even to raise the presumption, the prosecution has to establish that the accused had intention to incite suicide and the act of the accused should be in such a nature, so as to have goaded and enticed the victim to commit suicide. The harassment should have been to such an extent that the victim had no other option than to commit suicide.

19. Now, applying the above principles to the present case, on a detailed, cumulative and careful perusal of the suicide note, written by the deceased herself, it may be seen that she thinks that this is the best thing that could happen to her that

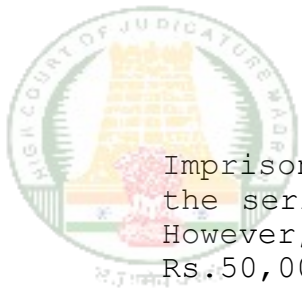


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too in view of her being pious and God-fearing, and she requests the husband to hand over the child to her father and not to reveal her suicide to the world and in the suicide note, it can be seen that while narrating the cruelty committed by the husband by developing an illicit affair with one Padma and thereafter otherwise, finally before even ending the note, she says that she had decided to commit suicide. Thereafter, she narrates the incident which happened on the previous day, whereunder, she says that the appellant hit her on account of which, she wanted to give complaint and the appellant/accused took her upto the Police Station, but, however, brought her back and threatened that he will harm his father and broke the phone. Thereafter also, the appellant did not do anything in the next day and upon seeing the father, she had handed over the suicide notes and when the father had gone away to the temple along with the child, she committed suicide. Therefore, in this case, even though there is ample evidence of cruelty, the said cruelty by itself does not suggest that the appellant had an intention to make the deceased commit suicide or that the deceased had no other option than to commit suicide. However, unfortunately, the deceased had taken the extreme step which she describes in detail. Therefore, the prosecution, in this case, has not proved the instigation as held by the Hon'ble Supreme Court of India in the case of Ramesh Kumar Vs. State of Chhattisgarh (cited supra). Therefore, I hold that on a perusal of the suicide note and the background of the respondent and the manner in which she was living and the timing of suicide that too after meeting her father and sending the child, it is an extreme and unwarranted step taken by the deceased when she is from an upper middle class background and had the choice of going along with her father and therefore, I am of the view that the findings of the Trial Court that the appellant is guilty of the offence under Section 306 of the Indian Penal Code is unsustainable.

20. However, from the suicide note, both physical and mental cruelty, committed on various occasions, has been demonstrated. The same is also corroborated by the evidence of P.Ws.1 and 2. The statement of the mother of the accused in the R.D.O enquiry also confirms that on previous occasion, P.W.1, father of the deceased, had complained to her about the cruelty and the mother of the accused herself had stated that the father can complain to the Police in such a case. Therefore, these evidence cumulatively prove that the appellant/accused committed cruelty on the victim both physically and mentally and therefore, I uphold the conviction under Section 498A of the Indian Penal Code.

21. Regarding the sentence, the Trial Court has imposed three years Rigorous Imprisonment and a fine of Rs.50,000/-. I am not inclined to modify the sentence of three years Rigorous



Imprisonment as the same is warranted and is commensurate with the seriousness of the crime committed by the appellant/accused. However, I am inclined to increase the fine amount of Rs.50,000/- to Rs.1,00,000/- in respect of the said offence.

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22. In the result, the Criminal Appeal is partly allowed on the following terms:-

(i) The conviction of the appellant/accused for the offence under Section 306 of the Indian Penal Code, by the judgment, dated 02.02.2019 in S.C.No.214 of 2013 by the learned Sessions Judge, Mahila Court, Salem is set aside;

(ii) The conviction under Section 498A of the Indian Penal Code is confirmed and the appellant/accused is sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.1,00,000/- and in default, to undergo Simple Imprisonment for a period of two months;

(iii) The appellant/accused is entitled to adjust the fine amount already paid by him in respect of the other offence under Section 306 of the Indian Penal Code in respect of which he is acquitted by this judgment;

(iv) The appellant/accused is entitled to set off the period, if any, already undergone by him;

(v) Consequently, Crl.M.P.No.689 of 2020 is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Sessions Judge,
Mahila Court,
Salem.
2. The Superintendent,
Central Prison,
Coimbatore.



3. The Inspector of Police,
Azhagapuram Police Station,
Salem.

4. The Public Prosecutor,
High Court of Madras.

Copy To:-

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

+1cc to Mr.P.S.Parthasarathi, Advocate, S.R.No.41066

CRL.A.NO.314 OF 2019

GPL(CO)
PBS/05/07/2022