



Crl.A.Nos.534 & 564 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.Nos.534 & 564 of 2018

Crl.A.No.534 of 2018

1.Babu @ Gopalakrishnan
2.Umadevi
3.Kavitha

... Appellants/accused 1 to 3

Vs.

State represented by
Deputy Superintendent of Police,
Udhagamandalam,
Ooty Town G1 Police Station
Crime No.105 of 2013

... Respondent

PRAYER:

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to set aside the judgment of conviction, compensation and sentences dated 21.08.2018 passed under Sections 498A r/w 34 of IPC and 306 of IPC r/w 34 of IPC in SC.No.16 of 2015 on the file of the learned Sessions Judge of



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Magalir Needhi Mandram (FTMC), Udhagamandalam at Nilgiris and to acquit

them.

For Appellants : Mr.K.V.Sridharan

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

Crl.A.No.564 of 2018

Sangeetha

... Appellant/accused

Vs.

State represented by
Deputy Superintendent of Police,
Udhagamandalam,
Ooty Town G1 Police Station
Crime No.105 of 2013

... Respondent

PRAYER:

Criminal Appeal filed under Section 374 (2) of Code of Criminal Procedure, to allow this appeal and to set aside the conviction and sentence as against this appellant passed by the learned Sessions Judge of Magalir Needhi Mandram (FTMC), Udhagamandalam at Nilgiris in SC.No.16 of 2015 dated 21.08.2018



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For Appellant : Mr.J.Franklin

For Respondent : Mr.A.Gopinath,
Government Advocate(crl.side)

COMMON JUDGMENT

These criminal appeals are directed as against the judgment passed in SC.No.16 of 2015 dated 21.08.2018 on the file of the learned Sessions Judge of Magalir Neethimandram (FTMC), Udthagamandalam at Nilgiris in SC.No.16 of 2015, thereby convicted the appellants for the offence punishable under Sections 498(A) r/w 34 of IPC and 306 r/w 34 of IPC.

2. The case of the prosecution is that the first accused got married the deceased on 09.03.2009. During their marriage, the defacto complainant presented 350 grams of gold jewels, ½ kg silver and cash of Rs.1,00,000/- as 'sreedhana'. One year after birth of a male child between them, the first accused and the second accused demanded money from the deceased for construction of their house. They also had beaten her and tortured to the core. Therefore, her father gave a sum of Rs.4,00,000/- to the first accused. Even then, the house construction was not completed and as such, all the accused persons jointly with common intention to extract money from the deceased and to complete the



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construction of their house, had tortured mentally in several ways and also had beaten her. On 21.05.2013, she was beaten by all the accused persons by chappal and thereafter, she was physically and mentally tortured by the accused persons. While being so, on 23.06.2013, she committed suicide by hanging herself in the house of the first accused. Hence, the complaint. On receipt of the the said complaint, initially the respondent registered FIR in crime No.105 of 2013 under Section 174 of Cr.P.C. After investigation, the respondent filed alteration report thereby altering the offence into Sections 498(A) r/w 34 and 306 r/w Section 34 of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial court.

3. In order to bring the charges to home, the prosecution had examined PW1 to PW12 and marked Ex.P1 to Ex.P19. The prosecution also produced two material objects i.e. MO.1 and MO.2. On the side of the accused, no one was examined and no documents were marked on their behalf. On perusal of oral and documentary evidence, the trial court found them guilty for the offence punishable under Sections 498(A) r/w 34 and 306 r/w 34 of IPC and they were sentenced to undergo one year rigorous imprisonment for the offence punishable under Section 498(A) r/w 34 of IPC and to pay a fine of Rs.5,000/- (each), in default to undergo two months simple imprisonment. They were



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sentenced to undergo three years rigorous imprisonment for the offence under Section 306 r/w 34 of IPC and to pay a fine of Rs.15,000/-(each), in default to undergo four months simple imprisonment. Aggrieved by the same, the present criminal appeals have been filed.

4. The learned counsel for the appellants would submit that the prosecution failed to prove any charge as against the appellants. The first accused is the husband of the deceased, the second accused is the mother in law of the deceased and the third accused is a sister in law of the deceased. The fourth accused is also a sister in law of the deceased. However, the fourth accused is living separately and she is no way connected with the first accused. The first accused got married the deceased and initially they were living in a rented house along with A2 and A3. One year after birth of their son, A1 took the deceased and their son to his house in Ooty. They further submitted that the complaint which was marked as Ex.P1 and it revealed that there was no allegation as against the accused in respect of cruelty and no offence is made out as per the complaint. However, by the alteration report, the respondent altered the offence into Sections 498(A) r/w 34 and 306 r/w 34 of IPC.

4.1 They further submitted that the trial court only based on the statement given by the Revenue Divisional Officer while conducting enquiry, all



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the accused persons were convicted by the trial court. In fact, there was no means to instigate the deceased to commit suicide soon before her death. Even according to the case of the prosecution, on 23.06.2013, she committed suicide and soon before her death, there was no instigation by the accused persons to commit suicide. On 22.06.2013, PW1 called the victim and enquired about her health. Thereafter, the victim told them that she was under cruelty and they are demanding dowry and if not, go and die. Whereas PW2 and PW3 deposed that the victim called them at the same time and informed about the cruelty committed by all the accused. However, she committed suicide only on 23.06.2013 at about 03.30 p.m. Therefore, the prosecution failed to prove the *mens rea* as well as instigation by the appellants. Insofar as the offence under Section 498(A) of IPC, there was no dowry demand by the accused persons. When enquiry was conducted by the Revenue Divisional Officer, the first accused deposed about the expenditure incurred while construction of house. However, the trial court had taken adverse interference and convicted only based on the statement given before the Revenue Divisional Officer for the offence under Sections 498(A) and 306 of IPC. Therefore, the entire conviction cannot be sustained as against the appellants.



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5. Per contra, the learned Government Advocate(crl.side) appearing for the respondent / police would submit that PW1 to PW4 categorically deposed that the deceased was physically and mentally harassed to the core by A1 to A4. Marriage was solemnised between the first accused and the victim only on 09.03.2009 and within a period of seven years i.e. 23.06.2013, the victim committed suicide. Therefore, there was presumption under Section 113-A of Indian Evidence Act. Hence, the accused persons ought to have rebutted the said presumption by let in oral and documentary evidence . In the case on hand, the appellants failed to examine any witness to rebut the presumption arising under Section 113-A of Indian Evidence Act. Therefore, the courts below rightly convicted the appellants and it does not warrant interference by this Court.

6. Heard, Mr.K.V.Sridharan, the learned counsel appearing for the appellants in Crl.A.No.534 of 2018, Mr.J.Franklin, the learned counsel appearing for the appellant in Crl.A.No.564 of 2018 and Mr.A.Gopinath, the learned Government Advocate(crl.side) appearing for the respondent / police in both the criminal appeals.



7. There are totally four accused. The first accused got married the

deceased on 09.03.2009. Due to their wedlock, they gave birth to a male child.

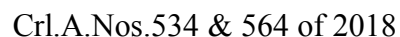
After birth of a male child, the first and second accused demanded dowry to construct a house. Therefore, PW1 who is the father of the victim, gave a sum of Rs.4,00,000/- to the first accused. In spite of that, again all the accused persons demanded huge dowry and also had beaten her. Further, on 21.05.2013, the victim was beaten by A2 and A3 by chappal by demanding dowry. However, there was no complaint by the deceased. All along, even till her death, there was no complaint with regards to dowry harassment or any cruelty committed by the accused persons. If at all the deceased was beaten by chappal and she was driven out to her parents' house, definitely she would have lodged complaint. After the occurrence, the Revenue Divisional Officer conducted enquiry. On the enquiry, he found that there was no dowry harassment committed by the accused persons. His report was marked as Ex.P15. The statements recorded by him were marked as Ex.P14 series. According to him, for the death of the deceased, the dowry harassment is not a reason. Therefore, he requested the Deputy Superintendent of Police to enquire about any other reason for her death.



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8. It is true that when a married woman committed suicide before completion of seven years, there is a presumption under Section 113-A of Indian Evidence Act. However, it does not mean that only for the reason that the deceased was harassed and due to dowry demand she committed suicide. Only after proving the same, the said presumption is shifted on the shoulder of the accused to rebut the same. In the case on hand, on the enquiry conducted by the Revenue Divisional Officer, who was examined as PW11, he found that there was no dowry harassment by the accused persons. The first accused gave statement before the Revenue Divisional Officer which was marked as Ex.P14 series, in which he stated that for construction of new house, he sold his bus for a sum of Rs.15,00,000/- and borrowed a sum of Rs.6,00,000/- from Syndicate Bank and borrowed a sum of Rs.5,50,000/- from Nahar Finance and constructed the house. He did not receive any money from his wife or her family members. Further, though PW1 stated that on demand he gave a sum of Rs.4,00,000/- for construction of house, except the oral evidence, there was no other iota of evidence to prove the same.

9. Insofar as the charge under Section 306 of IPC, the deceased committed suicide on 23.06.2013 at about 03.30 p.m. Even according to the case of the prosecution, on 21.05.2013, A2 and A3 had beaten up the deceased by chappal i.e. one month before the date of occurrence. That apart, PW1



10. Provision under Section 306 of IPC mandates that there must be instigation by the accused persons soon before the death of the deceased. In this case, there was absolutely no evidence to show that the accused persons instigated the deceased to commit suicide. 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



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suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. 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.

11. Further, abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by the Hon'ble Supreme Court of India is clear that in order to convict a person under [Section 306](#) IPC there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he committed suicide. Therefore, the prosecution failed to prove the charge under Section 306 of IPC beyond reasonable doubt. Further, the trial court convicted the appellants only for the reason that the first accused gave statement before the Revenue Divisional Officer with regards to borrowal



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of money from various sources to construct his house. Unfortunately, the trial court concluded that when there is no specific allegation in the complaint that the accused demanded money from the deceased for construction of house, what provoked him to give voluntarily statement about sources for construction of his own house is not at all explained by the defence. Therefore, the trial court had drawn adverse inference and concluded that the accused had demanded money from the deceased for construction of their house.

12. It is very unfortunate to state that though there was no allegation in the complaint, there was specific allegation that only due to dowry demand, the deceased died. Therefore, the first accused made statement before the Revenue Divisional Officer and there is absolutely no circumstances to draw adverse inference to the statement made by the first accused. Hence, the conviction imposed on the appellants for the offences under Sections 498(A) r/w 34 and 306 r/w 34 of IPC cannot be sustained as against the appellants and it is liable to be set aside.

13. Accordingly, both the Criminal Appeals are allowed and the judgment of conviction and sentence imposed by the learned Sessions Judge of Magalir Needhi Mandram (FTMC), Udhagamandalam at Nilgiris in SC.No.16



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of 2015 dated 21.08.2018 for the offence under Sections 498(A) r/w 34 and 306 r/w 34 of IPC is hereby set aside. The appellants are acquitted of all charges in SC.No.16 of 2015 on the file of the learned Sessions Judge of Magalir Needhi Mandram (FTMC), Udhagamandalam at Nilgiris. Fine amount, if any paid, shall be refunded to the appellants forthwith. Bail bonds, if any executed, shall stand cancelled.

23.11.2022

Speaking/non-speaking

Index : Yes/No

Internet : Yes

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G.K.ILANTHIRAIYAN, J.
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To

- 1.The learned Sessions Judge of Magailr Needhi Mandram (FTMC),
Udhagamandalam at Nilgiris
- 2.Deputy Superintendent of Police,
Udhagamandalam,
Ooty Town G1 Police Station
- 3.The Public Prosecutor,
High Court of Madras

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