

BAIL SLIP

The Appellant/Accused 1 & 2 Namely, 1. Abbu Sikkanthar, M/A46 Years S/o. Jayaraman, 2. Punitha Priya F/A35 Years D/o. Francis raja were released on bail by the order of this Court dated 22.04.2014 and made in CrI.MP.No.1/2014 in Criminal Appeal No.215 of 2014.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.06.2022

Pronounced on : 04.07.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Criminal Appeal No.215 of 2014

1. Abbu Sikkanthar
2. Punitha Priya

.. Appellants/Accused 1 & 2

/versus/

State represented by
The Inspector of Police,
Avadi Police Station,
Crime No.246 of 2003,
Chennai Police.

.. Respondent/Complainant

Prayer: Criminal Appeal filed under Section 374 of the Criminal Procedure Code praying to set aside the conviction and sentence imposed on the appellants by a judgment dated 09.04.2014 in S.C.No.26 of 2013 on the file of the Sessions Judge, Magalir Neethimanram (Fast Track Mahila Court), Thiruvallur and acquit the appellants by allowing this appeal.

For Appellants : Mrs.V.Srimathi

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

J U D G M E N T

Two appellants before this Court are the first and second accused in S.C.No.26/2013 (on the file of Magalir Neethimandram, (Fast Track Mahila Court), Tiruvallur. Being aggrieved over the judgment passed on 09/04/2014, this Criminal Appeal is preferred.

2. On 01/07/2003 Shagaya Iruthaya Mary, W/o Abbu Sikkanthar was found dead, in the open space her house near the bath room. The body was observed charred in kneeling forward position. Near her body, a 5 litre plastic can with one litre kerosene and a wet match box were found. The First Information Report registered, based on the complaint given by the father of the deceased Shagaya Iruthaya Mary at about 3.00 a.m on 02/07/2003. The investigation was conducted and final report filed with the averments that, the deceased loved the first accused and married him against the advice and wishes of her parents on 31/05/1996. Through the wedlock a female child born to them. Later, A-1 developed intimacy with A-2 and brought her into the matrimonial fold and started torturing the deceased. Unable to bear the cruelty, she committed suicide on the mid night of 01st - 2nd July 2003 by dousing herself with kerosene.

3. The trial Court framed charges under Section 498(A) IPC against Abbu Sikkanthar (the first accused) for causing cruelty to his wife Shagaya Iruthaya Mary and charge under Section 306 IPC against Abbu Sikkanthar (A-1) and Punitha Priya (A-2) for abetting Shagaya Iruthaya Mary to commit suicide.

4. The prosecution to prove the charges examined 7 witnesses. 9 documents marked as exhibits. 3 material objects were marked. In defence, one document was marked as Ex.D-1.

5. Before the trial Court the accused persons took a defence that PW-4 [Nagabooshanam] the maternal grandmother of A1 gave a police complaint against A-1 regarding 3 cents land earlier bequeathed to A-1 through her Will, in which A-1 has put up a construction. Later, she cancelled the will. In this connection, she has also filed a civil suit and the same is pending. While so, from 25.06.2003 to 28.06.2003 A-1 and the deceased were brought to the police station for enquiry about the complaint given by Nagabooshanam (PW-4). During enquiry, the police pressurised A-1 to return the land and building to PW-4. Unbearable of this pressure, wife of A-1(the deceased) committed suicide.

6. The trial Court held that the witnesses to prosecution are reliable and the charges are proved beyond doubt. The theory put forth by the defence was negated. The trial Court held that the first appellant (Abbu Sikkanthar/A1) guilty of offences under Section 498 (A) IPC and the first and second appellants (Abbu Sikkanthar and Punitha Priya) both guilty of offence under Section 306 IPC. They were sentenced as under:-

A-1 (AbbuSikkanthar):

(i) Section 498(A) IPC: To undergo 2 years Rigorous Imprisonment and to pay a fine of Rs.1000/- in default, to undergo Rigorous Imprisonment for three months.

(ii) Section 306 IPC: To undergo 6 years Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default, to undergo Rigorous Imprisonment for 6 months. The period of substantial sentence to run concurrently.

A- 2 (Punitha Priya):

Section 306 IPC: To undergo 6 years Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to undergo six months Rigorous Imprisonment.

7. In the Appeal, the learned counsel for the Appellants submitted that the entire prosecution case spins around the statement of the minor daughter of the deceased alleged to have made to her maternal grand father (PW-1) that soon before the incident, her mother saw A-1 and A-2 inside the room in compromising position. Wordy quarrel erupted and thereafter, her mother committed suicide. However, PW-7 [Ms. Jenifer Buelah] has not corroborated her previous statement made to PW-1. In fact, she has specifically stated that A-2 never been with A-1 either before or after the occurrence. She was studying first standard at the time of occurrence and could not recollect what happened on that day. Hence it is contented that the trial Court erred in holding the appellants guilty of the charges, under Section 306 IPC or 498A IPC, in the absence of evidence about cruelty or before the abetment to commit death.

8. That apart, the learned counsel for the appellants submitted that it is admitted by PW-1 [Mr. Mariya Joseph] that he was not in talking terms with A-1. It is proved through Ex.D-1 and from the own admission of PW-4 [Tmt. Nagabooshanam] in the cross examination that she gave complaint to the police against A-1 regarding 3 cents of land and the house constructed over it in which the deceased and A-1 were residing at the time of occurrence. The evidence of PW-3 [Tmt. Girija], that she saw the deceased burning inside the compound and she informed it to the mother of A-1, is un natural of any human conduct and unbelievable. PW-3 is close relative of A-1. The deceased is the wife of A-1. Any human being, on seeing a known person on fire will rush to rescue her and not inform some one else and keep quit. Therefore, contented that the trial Court ought not to have relied upon PW-1, who had grudge over A-1 for marrying his daughter against his wish. PW-3 whose evidence is un natural and

against any human conduct and PW-4 a motivated witness who was litigating with A-1 in respect of 3 cents of land.

9. Relying on the Judgment of the Supreme Court in M.Mohan - vs- State reported in [AIR 2011 SC 1238], where the Apex Court in a matter arising from the petition to quash under Section 482 Cr.P.C has reproduced the observation of the Hon'ble Supreme Court made in Bhajan lal case that, "where a criminal proceedings is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge", the learned counsel for the appellants submitted that this is a case which arose out of ulterior motive for wreaking vengeance.

10. The Learned counsel for the appellants further submitted that, PW-7 the child witness had not supported the case of the prosecution. She is the key witness to the prosecution, who alleged to have seen A-1 and A-2 moving intimately. She was supposed to depose about quarrel arose between A-1 and the deceased on the fateful day and the presence of A-2 in the house. However, none of these facts are spoken by PW-7 in her evidence. The trial Court erred in relying on the uncorroborated statement of a witness recorded by the police during the investigation which is against the provisions of Section 145 of the Indian Evidence Act, 1872.

11. The Learned Government Advocate (Crl.Side) for the State, in response to the submissions made by the appellants' counsel submitted that, the place of occurrence is the residence of A-1. The cause of death is proved to be self-immolation by the deceased. A-1, A-2, PW-7 (minor daughter of A1) and the deceased alone were present in the house at the time of the occurrence. The presence of A-2 along with A1 is proved through the evidence of PW-3. This witness is related to A-1. There is no element of motive or ill-will to be attributed to the witness to implicate A-2. The plea of the appellants' counsel that PW-3 evidence that on seeing a known person burning she informed the mother of the A1 is unnatural does not carry any merit because she saw the body burning inside the compound of the deceased house. It was midnight, raining and the power supply was off. Under such circumstances, she has called the mother of A-1 which is wholly reliable.

12. Regarding the child witness [PW-7], the learned Government Advocate (Crl.Side) submitted that, this witness was

nearly 5 years old when the incident occurred. She was called to give evidence, when she was 16 years old. She had been brought up by A-1 and his mother. Having lost her mother and being grown under the care and custody of her father A-1, it cannot be expected from her to depose against her father under whose custody she was. Further pointing her evidence, the learned Government Advocate (Crl.Side) submitted that PW-7 only say that she could not recollect the events and blame it to her loss of memory. She has not said anything which will discredit the evidence of other prosecution evidence. This point has been dealt with by the trial Court and held that the defence of A1 is that A-2 was engaged by him (A1) to take care of his daughter (PW-7). When the accused questioned under Section 313 of Cr.P.C, no plausible explanation from them was given. Therefore, the evidence of PW-3 about the presence of A-2 in A-1's house at the time of occurrence stands unimpeached.

13. Regarding the alleged civil suit and complaint by PW-4, the learned Government Advocate (Crl.Side) submitted that Ex.D-1 and the facts related to Ex.D-1 have no relevance to the case under trial. The prosecution through evidence has proved that soon before the death of Shagaya Irudhaya Mary, there was quarrel. This was heard and seen by PW-3 and PW-4. Later, Shagaya Irudaya Mary committed suicide by self immolation inside the compound of her house. The defence could not able to give any plausible explanation for her suicide except the complaint Ex.D-1, which is an event admittedly happened between A1 and PW-4 not soon before the death but long before the death. Hence, prayed to confirm the trial Court judgment.

14. Heard the learned counsel appearing for the appellant and the learned Government Advocate (Crl.Side) appearing for the respondent.

15. The point to be determined is whether the reasoning of the trial Court to convict the accused pass through the test of Rule of Evidence.

16. The Charge against the accused are for the offences under Sections 498A and 306 of IPC.

Section 498A IPC reads as below:-

"498-A:Husband or relative of husband of a woman subjecting her to cruelty:- Whoever, being the husband or the releative 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.

17. Under Section 113(A) of the Indian Evidence Act, 1872, the Court may presume that the suicide committed by a woman had been abetted by her husband or by such relative of her husband. If it is shown that she had committed suicide within a period of 7 years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty.

18. In this case, the deceased married A1 on 31.05.1996. Her charred dead body was found on 01.07.2003. Thus, in this case, the suicide had been committed by the married woman one month after completion of seven years period. Therefore, the presumption under Section 113(A) of the Indian Evidence Act, 1872, cannot be drawn. Therefore, the burden of proving cruelty as well as abetment is on the prosecution.

19. PW-1 the father of the deceased had categorically stated that the marriage of his daughter was a love marriage against wishes of her parents. He has given a complaint that when his daughter questioned A1 for being intimate with A2, both A1 and A2 joint together assaulted his daughter and poured kerosene and set her on fire. This information he has given to the police, based on the information, he heard from his grand daughter, who was present along with the accused and deceased in the house at the time of occurrence. But, this version has not been corroborated by the daughter of the deceased, who was examined as PW-7 on 03.10.2010 by the prosecution. At that time, she was 16 years old and she was asked to recollect the incident, which she saw on 01.07.2003. She could not recollect anything about the incident or how her mother died, except to say that she saw her mother body kept in her grand mother's house and she has been with her father all these years and he is taking care of her.

20. In the said circumstances, it is not prudent to expect a child aged 16 years to recollect the incident happened 10 years

ago, moreso when she has been taken care by one of the accused for all these years. PW-3 is the maternal aunt of the first accused. Her residence is next to the accused house. She had deposed that on 01.07.2003 at about 12 'o clock mid night, she heard the noise from the house of the first accused and saw Sagaya Irudhaya Mary burning in the open space inside the compound of the accused house. She saw the first and second accused in the house. On seeing her, both the accused ran away. She informed the mother of the first accused but she did not come out from the house. The police came thereafter and investigated.

21. First Information Report is dated 02.07.2003 registered at 3.00 hours. The First Information Report is given by PW-1. He has stated about the illegal intimacy between A1 and A2, which caused mental agony to the deceased. PW-4 (Nagabooshanam) also endorsed and corroborated the version of PW-3 regarding the commotion in the house of the accused on that night of 01.07.2003. She deposed that on hearing the commotion in the house of the first accused, she advised the first accused and his wife and went to bed. The first accused is none other than the grandson of PW-1 born to her daughter.

22. The learned counsel appearing for the appellants contended that the prosecution has failed to prove that A1 had intimacy with A2 or A1 and A2 instigated the deceased to commit suicide. He further contended that there is no evidence to show that the deceased was subjected to cruelty in any manner at any point of time.

23. To buttress his submissions, the learned counsel appearing for the appellants relied on the following judgments:

(i) In Gangula Mohan Reddy v. State of Andhra Pradesh reported in [(2010) 1 SCC 750], the Hon'ble Supreme Court reiterated its earlier view in Gangula Mohan Reddy (cited supra) and has observed that

"15. In order to properly comprehend the scope and ambit of Section 306 IPC, it is important to carefully examine the basic ingredients of Section 306 IPC. The said section is reproduced 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."

16. The word "suicide" in itself is nowhere defined in the Penal Code, however its

meaning and import is well known and requires no explanation. "Sui" means "self" and "cide" means "killing", thus implying an act of self-killing. In short, a person committing suicide must commit it by himself, irrespective of the means employed by him in achieving his object of killing himself.

19. In our country, while suicide in itself is not an offence, considering that the successful offender is beyond the reach of law, attempt to suicide is an offence under Section 309 IPC.

20. "Abetment" has been defined under Section 107 of the Code. We deem it appropriate to reproduce Section 107, which 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."

Explanation 2 which has been inserted along with Section 107 reads as under:

"Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.""

(ii) In *Ramesh Kumar v. State of Chhattisgarh* reported in [(2001) 9 SCC 618], the Hon'ble Supreme Court held that:

"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. 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.

22. Sections 498-A and 306 IPC are independent and constitute different offences. Though, depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned."

(iii) In *S.S. Chheena v. Vijay Kumar Mahajan* and another reported in [(2010) 12 SCC 190], the Hon'ble Supreme Court held that:

"28. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing 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 this Court 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 that act must have been intended to push the deceased into such a position that he committed suicide."

24. The trial Court, taking note of the fact that the deceased married A1 against the wish of her parents. It being a love marriage when the deceased found that her husband A1 has developed intimacy with A2, she out of depression had committed suicide. The mental cruelty caused due to the illicit intimacy has led to commit suicide. To hold so, the trial Court has relied on PW-3 evidence, who had deposed that she saw A1 and A2

together in the house, when the deceased was burning and they were running out from the house on seeing her. However, PW-3 has not said anything about the instigation or intentional aid or illegal motion by A1 or A2 aiding the deceased to commit suicide. Though the prosecution has proved that at the time when the deceased committing suicide, A1 and A2 were present in the house, there is no evidence to show that A1 and A2 abetted by instigation or intentionally aided the deceased to commit suicide. Section 306 IPC for abetting suicide has to be held not proved for the reason that the prosecution has not proved that there was any instigation on the part of the accused to force the deceased to commit suicide. The extra marital affair of A1 had caused depression to the deceased, which has led to commit suicide. This extra marital affair causing mental cruelty itself is not sufficient to satisfy the ingredient of Section 306 IPC in the absence of instigation or aiding.

25. Abetment as defined under Section 107 IPC should satisfy, any one of the three requirements namely, instigating to do an act; engaging one or more persons in any conspiracy of doing an act; intentionally aid to do an act or illegal omission. Hence, this Court holds that conviction and sentence of the appellants (A1 and A2) for the offence under Section 306 IPC has to be set aside for want of proof beyond doubt.

26. Regarding the charge under Section 498(A) of IPC against A1, the prosecution could able to establish that A1 had intimacy with A2. The intimacy has caused mental cruelty to the deceased and that has led to fight between A1 and the deceased on the fateful night. This has been witnessed by PW-3 and PW-4, who are not only neighbouring residence, but also close relatives of A1. Though it is contended by the learned counsel appearing for the appellants that the witnesses are motivated witnesses, this Court finds that their evidence is naturally and not borne out of any ill-motive or malice. They have deposed that what occurred in the house of A1 on the date of occurrence. Because, PW-7 the minor witness had not able to recollect the event which took place 10 years ago, that cannot be a reason to hold that for unknown reason the said Sagaya Irudhaya Mary committed suicide. While the evidence is clear about the fight between A1 and the deceased, immediately before the deceased committing suicide, it is sufficient enough to show that the presence of A2 along A1 on the night in the house had caused the immediate provocation for the deceased to commit suicide. The presence of A1 and A2 as spoken by PW-3 though has not been corroborated, her presence in the house at the time of occurrence to be held as proved in the light of the evidence of PW-3, which is an unimpeachable.

27. As far as cruelty, it is not necessary, it should be physical cruelty, it may even be mental cruelty as found under Section 498 A of IPC. The presence of other lady (A2) in the house of A1 during the night sharing her husband is nothing but mental cruelty to the wife and this has been expressed by the quarrel broken out on the night, which is witnessed by PW-3 and PW-4. Soon thereafter, the deceased had committed suicide. Therefore, this Court holds that A1 and A2 had fled from the house offence under Section 498A of IPC is made out against A1.

28. This Court, on considering the evidence and submissions made by the learned counsel appearing for the appellants, allow the appeal partly and acquit the appellants for the offence under Section 306 of IPC and confirm the conviction and sentence to the first accused under Section 498 A of IPC. The sentence of two years Rigorous Imprisonment and fine of Rs.1000/- in default to undergo RI for three months is confirmed. The respondent police is directed to secure the first appellant (A1) and remand him into the prison to undergo the remaining period of sentence imposed by the trial Court.

29. In the result, this Criminal Appeal is partly allowed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1.The Judicial Magistrate No.II,Poonamallee.

2.Do through the Chief Judicial Magistrate,Tiruvallur.(for information)

3.The Magalir Neethimanram(Fast Track Mahila Court),Thiruvallur.

4.The Superintendent,Central Prison,Puzhal,Chennai.

5.The Superintendent,Central Prison for woman,Puzhal,Chennai.

6.The Inspector of Police,
Avadi Police Station, Chennai.

7.The Public Prosecutor, High Court, Madras.

+1 cc to Mr.V.Ragavachari, Advocate Sr.NO. 42167

Crl.A.No.215 of 2014

GPL(CO)

A.SK(11/07/2022)