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BAIL SLIP

The Appellant/Accused Namely, Arusami M/Age 35 years S/o.Palaniyappan was directed to be released on bail vide in CrI.MP.No.14537/2019 in CrI.A.No.344 of 2019 dated 08.11.2019.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CrI. A. No. 344 of 2019

Arusami M/Age 35 years ...Appellant/Sole Accused

Versus

State Rep. by
Deputy Superintendent of Police,
Thevoor Police Station,
Salem District.
(*Crime No.95/2013)
(Amended as per order in CrI.MP.No.986/2020
CrI.No.344 of 2019 dated 28.01.2020)

...Respondent

Prayer: Criminal Appeal filed under Section 374(2) of CrI.P.C to set aside the Judgement dated 27.40.2019 passed in S.C.No.461 of 2016 on the file of the Learned Sessions Judge, Mahilar Needimandram, Salem.

For Appellant : Mr.T.Muruganantham

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

JUDGMENT

On 04.06.2013, when P.W.8/Thilagavathy/Sub-Inspector of Police, was on duty in Thevoor Police Station, P.W.1/Kuppuswamy appeared before her and lodged a complaint to the effect that five years before the said occurrence, he arranged the marriage of his daughter/Vennila to the Appellant/accused and she was nine months pregnant. One month before the incident the Appellant/accused was not permitting the deceased/victim to go over to her parent's house or any relatives' house. While so on



that day i.e., 04.06.2013 at about 1'o clock, he was informed by his relative that his daughter committed suicide by hanging. Therefore, he lodged the complaint to take action in respect of the unnatural death of his daughter.

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2. Based on the complaint, initially, the First Information Report was registered as per the provisions under Section 174 of Cr.P.C, in Crime No.95 of 2013. Subsequently, on receipt of Ex.P-8/report from the Revenue Divisional Officer, the case was altered into one under Section 498 A and 306 of IPC. The investigation was completed by P.W.10/Investigation Officer and he laid a charge sheet proposing the appellant guilty of the said offenses. The Learned Judicial Magistrate No.1, Sangagiri, took up the case in P.R.C. No.9 of 2014 and upon the appearance of the accused, furnished the copies of documents as per Section 207 of Cr.P.C, and thereafter, committed the case to the Learned District and Sessions Judge, Salem. The learned Sessions Judge, thereupon, took the case on file in S.C.No.461 of 2016. Subsequently, it was made over to the Trial Court namely Mahila Court, Salem. Upon considering the materials on records, the Trial Court framed charges for the offenses under Section 498 A and 306 of IPC. The Appellant/accused denied the charges and stood for trial.

3. The prosecution examined Kuppuswamy, who is the first informant and father of the deceased/Vennila as P.W.1; The Village Administrative Officer, who was the witness to the confession statement as P.W.2; One Palaniammal, the mother of the victim as P.W.3; One Seerangan, brother of the victim as P.W.4; One Thulasimani, Sister of the victim as P.W.5; One Palanisamy, relative of P.W.1 as P.W.6 and One Doctor/Sangeetha, who conducted the Post-Mortem as P.W.7; One Thilagavathy, the Sub-Inspector of Police, who registered the First Information Report as P.W.8; One Rathinasamy, the RDO, who conducted inquiry as P.W.9 and One Ramasamy the Investigation Officer as P.W.10.

4. On behalf of the prosecution, the complaint lodged by P.W.1 was marked as Ex.P-1; Seizure mahazar as Ex.P-2; Observation mahazar as Ex.P-3; Post-mortem was marked as Ex.P-4; the chemical analysis report is Ex.P-5; Final opinion of the Doctor is Ex.P-6; the First Information Report is Ex.P-7; the RDO report is Ex.P-8; Rough sketch is Ex.P-9; Form 91 as Ex.P-10; the Alteration Report is Ex.P-11; and the request letter to keep the body in the Mortuary as Ex.P-12. On behalf of the prosecution, a piece of Saree used for the hanging was produced as M.O-1 and the remaining piece of Saree was produced as M.O-2.



5. Upon being questioned about the evidence on record and incriminating circumstances against the accused, he denied the same.

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6. Thereafter, One Mani was examined as D.W.1, on behalf of the defense. The Trial Court thereafter proceeded to hear the learned Additional Public Prosecutor, on behalf of the prosecution and the learned Counsel for the accused and by Judgment dated 27.04.2019 found the appellant/accused guilty of the offence under Section 498 A and sentenced him to undergo imprisonment for a period of three years and fine of Rs.1,000/-, in default of payment of fine, to undergo six months Simple Imprisonment. The Trial court also found the appellant/accused guilty of the offence under Section 306 of IPC, and sentenced him to undergo 10 years of Rigorous Imprisonment and a fine of Rs.2,000/- and in default to pay the amount to undergo a further period of six months Simple Imprisonment. Aggrieved by the conviction and sentence, the present appeal is laid before this Court.

7. Heard Mr.T.Muruganantham, learned counsel for the appellant/accused and Mr.S.Vinoth Kumar, learned Government Advocate (Criminal side) appearing for the respondent.

8. Learned Counsel appearing for the appellant/accused taking this Court, firstly, through the First Information Report would submit that in this case, at the time of lodging the complaint, except to state that the appellant/accused did not permit the victim/deceased to go to the relative house, no other allegations was made. The complaint was lodged at an earlier point of time and did not indicate that the victim was subjected to matrimonial cruelty. Further, during the course of examination, the relatives of the victim girl namely her father, mother, sister and brother, have made their version as if the appellant had murdered the victim. However, in respect of the death of the victim, the medical evidence clearly states that it was suicide by hanging. Therefore, the evidence of the prosecution is blemished and it should not be believed by this Court.

9. It is his further submission that the defense has clearly taken a plea by examining D.W.1 that on the date of occurrence, there was a quarrel between the husband and wife, whereby the husband insisted the wife to attend one of his relative's function. But, at the same time, telephonically, P.W.1/father and P.W.3/mother namely the parents of the victim have insisted



her not to attend the said function. They have also stated that if she attends the function, she will not be permitted to come back to their house. Therefore, she was in extreme distress that she was not able to do anything as per her wish. In this regard, the learned Counsel would further submit that in the cross-examination of the Investigation Officer, he has admitted that the same was not properly examined by the Investigation Officer.

10.This apart P.W.3, mother was questioned and she denied having spoken to the deceased/victim over the telephone for the past one month, and she does not know what happened between the husband/accused and the deceased/victim for the past one month. This piece of evidence has to be read with the answer of P.W.5, another daughter of P.W.3. P.W.5 had stated in the cross examination to a specific question as to whether the mother had conversed with the victim on the day of incident, she has answered that she did not know the nature of conversation. Therefore, it is clear that the reasons assigned for committing suicide is not attributable to that of the appellant.

11.The learned Counsel further submitted that even as per the evidence of P.W.1, P.W.3, P.W.4, P.W.5. it can be seen that on account of the appellant being strict with the victim not to go to her relatives house etc., she took the extreme step. But there is no evidence on record to show in what manner he abetted and aided the victim to commit suicide. If, by such conduct of the accused, the victim had taken such extreme steps of committing suicide, then the appellant/accused cannot be convicted for the offense under Section 306 of IPC. He further submitted that during the RDO enquiry, there was no evidence made available to show that the victim was subjected to harassment or dowry demand by the parents of the accused.

12.On the top of it, from the cross-examination of P.W.1, it is clear that P.W.1 had got the jewels of the victim/deceased for the purpose of raising money and he pledged four sovereigns of the jewels of the deceased/victim presented for the marriage, for his son's expenses but he could not redeem the same, in spite of repeated demands made by the victim. Therefore, only in order to overcome the self-pity, and on account of the grief over the death of daughter, by way of embellishment they have made these allegations against the husband/appellant. The appellant/husband and the victim were living cordially together and there is no other evidence brought in to show the conduct of the appellant/accused, so as to be found guilty for the offence under Section 498 A of IPC. Therefore, he would submit that the Trial Court should have acquitted the appellant on both charges. Further, he submitted that the appellant/accused is also taking care of his only son aged about five years till this date.



13. Per contra, the learned Government Advocate (Criminal side) appearing for the respondent would submit that this is the case where the victim who was nine months pregnant at the time, committed suicide by hanging herself. The medical evidence on record proves that she committed suicide. From the evidence of P.W.1, P.W.3, P.W.4 and P.W.5, it would be clear that there has been continuous harassment by the appellant/accused by asking her not to go to the relative's house and restraining her from talking even with the neighbours. On the day of occurrence, the accused, without considering the fact that the wife was pregnant, picked up quarrel and therefore, the victim committed the suicide. Therefore, the accused was found guilty of both the offences under Section 306 & 498A of IPC by the Trial Court on the basis of the material evidence brought forth on record. Therefore he would pray this Court to uphold the conviction and sentence imposed by the Trial Court.

14. I have considered the rival submissions and made on behalf of the either side and perused the materials evidence on record.

15. Before appreciating the evidence on record and considering the findings of the Trial Court and submissions made on behalf of the appellant /accused, it is necessary to consider the requirements and the legal position in respect of the offence under Section 306 of IPC. Firstly, it has to be borne in my mind that this is the case where the husband is alleged to have instigated the wife to commit suicide. The alleged suicide was committed within seven years from the date of marriage. Therefore, it has to be determined 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 Chandigarh¹, 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 considered the exemption and the other circumstances of the case and held that the same 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



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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. 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, has 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 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. In the said background and a cumulative reading and assessment of the evidence available in this case, it is clear that there has been a quarrel between the victim/deceased and the appellant/husband, in the matter of visiting her parents and attending functions of the relatives. The appellant/husband seems to be discarding the wishes of the victim and misogynistically pressurizing her to follow his order. But, there was no harassment by demanding dowry and as a matter of fact, even four sovereigns of gold of the victim, which were given in connection with the marriage, has been borrowed and pledged by the father of the victim girl, for the purpose of meeting the expenses of his son and the same was not redeemed and returned to the victim/deceased, till the date of her death.

20. On the date of commission of suicide, in the morning, there has been a quarrel between the husband and wife, whereby, the husband had requested and pressurized the victim to attend a particular function of one of his relatives. After the quarrel, the victim was sitting near the Temple and was crying and she had told D.W.1 that her parents were against her visiting the said relative's function and they have threatened her not to come to their house, in case she chooses to attend the relative's function.

21. Though the Learned Government Advocate (Crl.side) would attempt to discredit of evidence of D.W.1, a complete reading of the evidence of D.W.1 would make it clear that he had stated that he did not know about the quarrel directly or the cause of the death and he only deposed before the Court as to what was told to him by the deceased. Therefore, this witness inspires the confidence of this Court.

22. In this regard, when the defense had cross-examined P.W.3/mother, as to whether she has spoken to the victim over the phone on the morning of the occurrence, she denies speaking to her even for a period of one month and stated that she did



not know what happened between the husband and wife for the past one month. On the contrary, P.W.5, in his cross-examination has admitted that P.W.3 used to talk to her sister i.e., the victim, from her mobile and whether his mother spoke to her sister, on the date of occurrence, she evaded direct answer and says that she does not know.

23.This apart a careful perusal of the evidence of P.W.1 and P.W.3, the parents of the victim, it can be seen that the accused had been harassing the victim, by asking her not to talk to the neighbours, and not to permit her to visit the parents or the relative's house, as per her choice. It is pertinent to state that even taking their evidence as such, it does not demonstrate any intention of the accused/appellant to incite the victim directly or indirectly to commit suicide. Secondly, on closer scrutiny of the background of the parties, the alleged act of cruelty, it is clear that this is not a case where the deceased had no other option than to commit suicide or whether her self-esteem is so affected that committing suicide seems to be the course of action on account of cruelty.

24.On the other hand, it seems to be an act of extreme sensitivity and frustration that she was overtaken by the circumstances of pressure from both sides and decided to take the extreme step. Therefore, in this case, firstly, the prosecution failed to establish the intention and secondly, the instigation by any act of the appellant by goading and thirdly, the defense side by examining of D.W.1 and by cross-examination of prosecution witnesses has established a reasonable doubt in the case projected by the prosecution, as to whether the extreme step taken by the victim girl is only on account of quarrel with the husband/appellant or on account of pressure from the parents side, also. Therefore, considering all the materials on record, I am of the view that the offence under Section 306 of IPC, is not established beyond doubt with all the ingredients as stated by the Hon'ble Supreme Court of India. From the Judgments referred above, it is clear that no materials are not brought on record by the prosecution even to press home the rebuttable presumption under Section 113-A of the Indian Evidence Act. The finding of the Trial Court was based on the fact that the accused was convicted for the offense under Section 498A of IPC, therefore, the Trial Court relied on the presumption under Section 113-A and convicted the accused, which finding is unsustainable, in view of the above conclusion of this Court.



25.As far as the offense under Section 498A of IPC, is concerned, it has been held that even mental cruelty would amount to cruelty, within the meaning of Section 498A of IPC. Now, in this case, from the evidence of P.W.1, P.W.3, P.W.4, P.W.5, it is clear that the appellant, after the marriage, he had been dominating, dictating the victim and reprimanded her even for talking to the neighbours. It is also alleged on earlier occasion, he has physically assaulted the victim/deceased wife. Even pressurizing the victim for attending a particular function when the same is too much for the wife to handle, the demand would amount to mental cruelty. Whether a particular act amounts to mental cruelty and it differs from person to person and the victim is unable to handle the acts which are per se unreasonable by the husband. Taking into account of the educational and socio economic background of the wife, the actions of the husband amounts to cruelty and therefore, I am of the view that the Trial Court has rightly convicted the appellant/accused for the offence under Section 498A of IPC.

26.Now considering the sentence of three years imprisonment imposed by the Trial Court for the offence under Section 498A of IPC, the learned Counsel for the appellant pleaded the mitigating circumstances that the accused and the victim had lived for about six years from their marriage date without any quarrel. Further, the child born to them was taken care by the appellant/accused and that child is now five years old.

27.The learned counsel would submit that the allegation of cruelty are not of grave in nature. P.W.1, P.W.3 and other relatives of the victim had actually accused him of murder and he has to endure the said allegations and suffered a lot. Therefore, he would pray that in the interest of the minor child and considering the above factors along with the facts that the accused was 30 years of age, at the time of occurrence, in the year 2013 and he is now being 39 years old would pray that this Court to reduce the said sentence of three years imprisonment.

28.Considering the nature of allegations, mitigating factors and seriousness of offense, I am inclined to modify the sentence imposed by the Trial Court for the offense under Section 498A of IPC, to two years rigorous imprisonment.

29.In the result, the Criminal Appeal is partly allowed as follows:-



(i) The conviction and sentence imposed on the accused by the Learned Mahila Court, Salem by Judgment dated 27.04.2019 in S.C.No.461 of 2016, in respect of the offence under Section 306 of IPC, is set aside;

(ii) The conviction of the accused by the same Judgment for the offence under Section 498A of IPC is confirmed but the sentence alone is reduced and the accused is sentenced to undergo two years rigorous imprisonment and fine of Rs.1,000/- ;

(iii) And in default of payment of fine, to undergo simple imprisonment for further period of a six months.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Sessions Judge, Mahilar Needimandram, Salem.
- 2.The Judicial Magistrate I,Sankari.
- 3.The Deputy Superintendent of Police,
Thevoor Police Station,
Salem District.
- 4.The Superintendent,
Central Prison, Coimbatore.
- 5.The Public Prosecutor,
Madras High Court.

Copy to:
The Section Officer,
Criminal Section,
High Court,Madras

CrI.A.No.344 of 2019

ssd(CO)
A.SK(07/07/2022)