



Crl.A.No.532 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on. 12.08.2022

Pronounced on. 23.08.2022

CORAM:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.A.No.532 of 2017

Inayadullah @ Inayath

... Appellant /1st accused

Vs.

State represented by
The Inspector of Police,
Elavanasurkottai Police Station,
Villupuram District.
Crime No.165 of 2014

... Respondent/Complainant

PRAYER : Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to set aside the conviction and sentence imposed on the appellant by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram in S.C.No.316 of 2016 dated 17.08.2017.

For Appellant : Mr. L. Mahendran

For Respondent : Mr. R. Kishore Kumar,
Government Advocate (Crl.Side)



Crl.A.No.532 of 2017

J U D G M E N T

WEB COPY

This Appeal is preferred against the judgment of conviction and sentence for offences under Sections 498(A) and 306 I.P.C, passed by the trial Court in S.C.No.316 of 2016 by the Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Villupuram.

2. The case of the prosecution is that the petitioner/1st accused married one Almas on 19.07.2009 as per Islamic customs. The expense for the marriage ceremony was done by the bride family. They also gave 10 sovereigns of gold jewels and Rs.15,000/- cash, to the accused. On 11.09.2014, Almas committed suicide by hanging herself due to the unbearable torture caused by her husband and his family members. Hence, the complaint by the brother of the deceased Almas, was lodged with the respondent police.

3. Based on the complaint, F.I.R in Crime No.165 of 2014 was registered initially under Section 174(3) Cr.P.C. Later, on completion of investigation, final report filed against 6 persons. The trial Court, on committal, framed charges for the offences under Sections 498(A) and 304(B) I.P.C.



4. To prove those charges, prosecution examined P.W.1 to P.W.17, and marked 18 exhibits. On the side of the defence, the requisition letter of the police to conduct post-mortem was marked as Ex.D.1 and burnt piece of shawl cloth marked as M.O.1.

5. The Trial Court, on appreciating the evidence, held that husband, who is the first accused is guilty of offence under Section 498 (A) I.P.C, sentenced him to undergo 3 years rigorous imprisonment and to pay fine of Rs.5,000/- in default, 3 months simple imprisonment. The Trial Court acquitted the accused 2 to 6 from both the charges.

6. As far as the charge under Section 304(B) I.P.C, the trial Court found that the prosecution has not proved the case beyond reasonable doubt and acquitted A1 for offence under Section 304(B) I.P.C but instead convicted him under Section 306 I.P.C. He was sentenced to undergo 10 years rigorous imprisonment and to pay fine of Rs.10,000/- in default, six months simple imprisonment. The said sentence and conviction is challenged by the first accused in this appeal.

7. The Learned Counsel appearing for the appellant primarily



contended that, the conviction of the appellant for offence under Section 306 I.P.C without framing a charge is an irregularity which cannot be cured. While, the appellant was tried for offence under Section 304(B) I.P.C, the trial Court having acquitted him for the said charge, cannot convict him without framing a charge under Section 306 I.P.C and giving an opportunity to the accused to defend himself.

8. Further, the Learned Counsel for the appellant submitted that the ingredients for offence under Section 304(B) I.P.C is entirely different for offence under Section 306 I.P.C, they are not cognate offences. Particularly, when there is a statutory presumption against the accused to face trial under Section 304(B) I.P.C and having found that the accused is not guilty for the said offence, the trial Court ought not to have convicted the accused for offence under Section 306 I.P.C without altering the charge and when there is no material to show the accused abetted or instigated the deceased to commit suicide.

9. Regarding the conviction under Section 498(A) I.P.C, the Learned Counsel appearing for the appellant submits that since the deceased died within 7 years of marriage, the RDO has conducted enquiry and he, in his report has categorically stated that there is no evidence to show that the deceased was



subjected to any dowry harassment/ cruelty. While so, conviction under Section 498-A of I.P.C is liable to be set aside.

10. Per contra, the Learned Government Advocate (Crl.Side) appearing for the respondent submitted that the substance of the charges which was read over to the accused before taking up the trial is that he married the deceased Almas on 19.07.2009 at Elavanasurkottai as per Islamic customs. The marriage function was held at the expenses of Almas family. Rs.15,000/- and 10 sovereigns jewels were given as dowry. After marriage, the 1st accused/appellant herein used to torture Almas demanding dowry and harass her at the instigation of his family members. On complaint to the Elavanarsurkottai Police, the accused gave an undertaking that he will not torture his wife and lead the family peacefully. However, on the instigation of the other accused, 1st accused use to come home in drunken state, abused Almas and torture her physically. Two months prior to the incident, on 03.07.2014, he attacked Almas and fractured her scalp. In this regard, there was mediation in the Jamath and on the assurance given by the appellant, Almas was sent along with him to lead marital life peacefully. However, he continued to torture her and demanded dowry along with his family members. Hence, he committed offence triable under Section 498 (A) of I.P.C. In continuation of the said charge, in view of sustainable



torture and cruelty, Almas took a decision to end her life and on 11.09.2014, at about 7.00 p.m. hanged herself using her duppatta and died. Since her death is within 7 years of the marriage and was due to cruelty caused by the appellant and his family members accused 2 to 6, they have committed offence triable under Section 304-B of I.P.C.

11. Having understood the charge against him, the accused has participated in the trial marked document Ex.D.1, cross examined the prosecution witnesses.

Section 216 of Cr.P.C., enables the Court to alter or add to any charge at an time before judgment is pronounced.

Section 216(1) of Cr.P.C., mandates that, every such alteration or addition shall be read and explain to the accused.

...Gives discretion to the Court to proceed further if such alteration does not prejudice the accused in the defence or the prosecution in the conduct of the case. If in the opinion of the Court, the alteration or addition of the charge will prejudice the accused or the prosecution then the Court may either direct a new trial or adjourn the



Crl.A.No.532 of 2017

trial for such period as may be necessary.

WEB COPY

12. Section 217 of Cr.P.C enables the prosecutor and the accused to recall or re-summon and examined any witnesses or call any further witnesses, whenever charge is altered or added by the Court after the commencement of the trial.

13. Section 304-B of I.P.C say any death of a women by burn or bodily injury within 7 years of her marriage presume to be a dowry death and husband or relative shall be deemed to have caused her death. Whereas, Section 306 I.P.C., deals with the offence of abetment and commission of suicide.

“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.”

14. The abetment referred in this Section has to be understood as defined under Section 107 of I.P.C.



107. Abetment of a thing.—A person abets the doing of a thing, who—

- (i). Instigates any person to do that thing; or*
- (ii). 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*
- (iii). Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.*

15. The trial Court relying upon Section 221 of Cr.P.C and the judgment rendered in ***K.Prema S.Rao and another -vs- State of Andhra Pradesh*** reported in ***AIR 2003 SC 11***, had convicted the accused for offence under Section 306 I.P.C even though the charge was framed against him was for offence under Section 304-B I.P.C.

Section 221 of Cr.P.C., reads as under:-

221. Where it is doubtful what offence has been



committed.

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub- section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations:-

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft.

It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be



convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.”

16. The judgment relied by the trial Court indicates that, alternate charge for offence under Section 304-B of I.P.C and 306 of I.P.C can be framed, being a cognate offence even without framing the charge under Section 306 of I.P.C, the accused tried for offence under Section 304-B of I.P.C., can be convicted under Section 306 of I.P.C.

17. The evidence as found in this case clearly proves that the deceased suffered, sustained torture and cruelty at the hands of the accused/appellant. The documentary evidence such as copy of the C.S.R.No.13 of 2014, dated 23.01.2014 and the undertaking letter given by the accused and his family members which are all form part of Ex.P.12, clearly indicate that, the victim was subjected to cruelty, which attracts Section 498-A of I.P.C.

18. Regarding the offence under Section 304-B of I.P.C., for which the accused was charged and tried but convicted for the offence under Section 306 of I.P.C. This Court finds that the conclusion of the trial Court to alter the charge is



proper and appropriate when the evidence sufficiently available to convict the appellant for offence under Section 306 of I.P.C.

19. The trial Court had rightly appreciated the evidence of post-mortem report and the opinion given by the Doctor regarding the death of the deceased Almas and had rightly convicted the accused for offence under Section 306 of I.P.C. The sentence prescribed for these two offences will indicate that both are major offences and term of imprisonment also does not vary very much. Relying upon Section 113-A of Indian Evidence Act, where the Court can draw presumption as to abetment of suicide by a married women. The trial Court has convict the appellant for the alternate offence under Section 306 of I.P.C.

20. The doctor response to the questionnaire which is found in Ex.P.6, will substantiate the said finding.

1. The injuries present on the body of the deceased are evidence of determined assault. But, they are insufficient as causes of immediate death.

2. The injuries on the body were probably inflicted using a blunt weapon like a stick and hands.

3. It is possible for more than one person to have



WEB COPY



Crl.A.No.532 of 2017

caused the injuries.

4. It is distinctly possible for one or more than one person to have caused hanging when the person had been rendered weak or unconscious after the injuries.

5. Already opined.

21. The injury found on the deceased are as below:-

- 1). Abrasion 2 x 2 cm below right ear redness surrounding.*
- 2) Abrasion right shoulder 1 x 1 cm each about 2 cm apart surrounding red.*
- 3) Abrasion right axilia 1 x 1 cm with surrounding redness.*
- 4) pressure are mark contusion 1 x 1 cm below right clavicle.*
- 5) A serious of small contusion, forming a semi circular mark 2 x 2" with peeling of skin in middle*
- 6) Abrasion 1 x 1/3 lateral chest wall.*
- 7). Two contusion each 1 x 1 cm with surrounding redness and small contusion - interior margin on right breast.*
- 8). 5 small contusion x-1x 1 cm, with surrounding dark colour in inferior margin of left breast placed in close*



proximity with each other.

9). Right knee-4-5 small contusion $\frac{1}{2} \times \frac{1}{2}$ cm each in front of right knee.

10). About 4 oblique contusions in front of right leg each 5-6" long about $1 \frac{1}{2}$ cm wide

with defined edges. Interspersed between them and over while of front of leg are numerous contusions $\frac{1}{4} - \frac{3}{4}$ cm diameter.

11) Back of left knee an area 3 x 3 inches filed in the dark red multiple small contusions.

12) oblique contusion 6-7 inches x 2" side back of left thigh.

Uterus - enlarged cavity contains 8-10 week fetus.

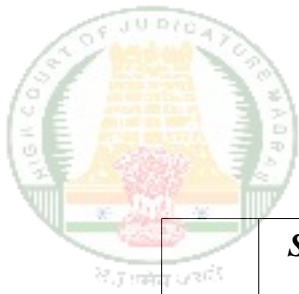
22. The evidence for prosecution squarely satisfy the ingredients required to attract Section 306 of I.P.C. Hence, this Court holds that the conviction of the appellant has to be confirmed. As far as, the conviction under Section 306 of I.P.C instead of Section 304-B of I.P.C, is not an error which will enure any benefit to the accused, in view of the Section 221 of Cr.P.C and the judgment of the Hon'ble Supreme Court to the facts of the case in hand.



Crl.A.No.532 of 2017

23. The Learned Counsel appearing for the appellant would submit that the accused/appellant has filed an affidavit stating that the accused was committed to prison after the judgment was not granted suspension of sentence and till date, he is in prison. He has also suffered 4 months imprisonment during the pre-trial period. Hence, seek for leniency in terms of imprisonment.

24. In this case, the punishment prescribed for offence under Section 306 of I.P.C is for a term which may extend to 10 years and shall also be liable to fine. The appellant herein has been convicted for 10 years R.I and to pay fine of Rs.10,000/-, in default, 6 months S.I. The punishment prescribed for offence under Section 304-B of I.P.C is for a term which shall not be less than 7 years but which may extend to imprisonment for life. In view of the said fact, this Court modifies the sentence from 10 years R.I and fine of Rs.10,000/-, in default, 6 months S.I to 7 years R.I.



Crl.A.No.532 of 2017

	<i>Sentence and Conviction passed by the Trial Court</i>	<i>Sentence and Conviction passed by the Trial Court is modified as below</i>
A1	For offence under section 498A I.P.C. to undergo, 3 years R.I and fine of Rs.5000/-, in default, 3 months S.I	For offence under section 498A I.P.C. to undergo, 3 years R.I and fine of Rs.5000/-, in default, 3 months S.I .
A1	For offence under section 306 I.P.C. to undergo, 10 years R.I and fine of Rs.10,000/-, in default, 6 months S.I	For offence under section 306 I.P.C. to undergo, 7 years R.I.

The period of substantive sentence shall run concurrently. Period of imprisonment already undergone shall be set off.

25. With the above modification, this ***Criminal Appeal is partly allowed.***

The period of incarceration shall be set off and if the appellant has earned any remission, same may be taken note. The appellant/accused shall undergo the remaining period of sentence.

23.08.2022

Index :Yes/No
Internet :Yes
Speaking / Non-speaking
AT/bsm



WEB COPY



Crl.A.No.532 of 2017

G.JAYACHANDRAN. J.

AT/bsm

To

- 1.The Sessions Judge,
Magalir Neethi Mandram (Fast Track Mahila Court),
Villupuram.
- 2.The Inspector of Police,
Elavanasurkottai Police Station,
Villupuram District.
- 3.The Public Prosecutor,
High Court of Madras.

Pre-Delivery Judgment made in
Crl.A.No.532 of 2017

23.08.2022