



Crl.A.No.105 of 2016

In the High Court of Judicature at Madras

Reserved on : 27.2.2023	Delivered on : 01.3.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Appeal No.105 of 2016

R.Manikandan

Vs

...Appellant

State by the Deputy Superintendent
of Police, Coonoor Sub-Division,
Kotagiri Police Station, Nilgiri District.

...Respondent

APPEAL under Section 374 of the Criminal Procedure Code
against the conviction and sentence imposed in the judgment
dated 25.11.2015 made in S.C.No.4 of 2014 on the file of the
Sessions Judge, Magalir Neethimandram (FTMC), Ooty.

For Appellant :	Mr.K.V.Sridharan
For Respondent :	Mr.L.Baskaran, GA (Crl.Side)

JUDGMENT

This criminal appeal has been filed against the judgment
rendered by the Sessions Judge, Mahalir Neethimandram (FTMC),



Crl.A.No.105 of 2016

Ooty in S.C.No.4 of 2014, dated 25.11.2015, convicting the appellant for the offence under Section 306 of the Indian Penal Code (hereinafter called the Code) and sentencing him to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/- and in default, to undergo six months simple imprisonment.

2. The case of the prosecution is as hereunder :

(i) The deceased one Mrs.Rubini is the daughter of P.W.1. P.W.2 and P.W.3 are her brothers. P.W.4 is the sister of the deceased. The appellant completed his 12th Standard and he was working in the business establishment of one Ashraf of Kothagiri. The appellant hails from Kerala and the deceased Rubini hails from Baduga community. The appellant and the deceased Rubini fell in love with each other and at that point of time, the deceased was studying B.E.course at Vellalar Engineering College at Erode. They waited till the deceased completed her course and became a major and on 13.12.2007, the appellant married the deceased Rubini at a temple. Thereafter, they started living in the house of the appellant at Kothagiri.

(ii) The appellant started demanding dowry from the



deceased Rubini and she was subjected to cruelty in this regard. Ultimately, the deceased Rubini, not able to take it any more, decided to end her life and accordingly, on 17.3.2008 at about 11 AM, she committed suicide by hanging in the house of the appellant.

(iii) PW1, who is the father of the deceased, was informed about the death of his daughter and he visited the deceased in the hospital at Kothagiri. Since P.W.1 entertained a doubt as to the nature of death of his daughter, he gave a complaint (Ex.P.1) to P.W.12, who was the then Sub-Inspector of Police at Kothagiri Police Station. Based on the same, a first information report (Ex.P.7) came to be registered on 17.3.2008 at about 2.30 PM in Cr.No.94 of 2008 for the offence under Section 304-B of the Code.

(iv) The investigation was taken up by one Ravindran. He received the first information report at about 3.45 PM on 17.3.2008 and went to the scene of crime at about 4 PM. He prepared the observation mahazar (Ex.P.2) and the rough sketch (Ex.P.17) in the presence of witnesses. The Investigation Officer also recovered M.O.9 to M.O.11 in the presence of the very same witnesses under recovery mahazar marked as Ex.P.3.



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(v) Since the death had taken place within seven years from the marriage, a requisition was sent to the Revenue Divisional Officer (P.W.15) to conduct an inquiry. The Revenue Divisional Officer proceeded to the Government Hospital and he conducted an inquest over the body in the presence of panchayatdars and the inquest report has been marked as Ex.P.14. Further, the post mortem was conducted by P.W.13. Since the parents and the relatives of the deceased insisted for a re-post mortem, the same was done by P.W.14 by forming a team. The original post mortem report has been marked as Ex.P.10 and the re-post mortem report has been marked as Ex.P.12.

(vi) For proper appreciation, the injuries recorded in Ex.P.12 are extracted as hereunder :

"External injuries : (1) Ligature mark extending from level of left mastoid across anterior midline of neck ending 4 (four) cm below right mastoid bone length about 20 cm breadth about 2 cm. (2) Abrasion 0.5 X 0.5 cm outer aspect of left upper eyelid. (3) 50 cm sutured incision in anterior midline extending from sub mental region to 3 cm above pubis. (4) 33 cm sutured



WEB COPY



Crl.A.No.105 of 2016

incision in anterior hairline extending from left to right earlobe.

Tongue inside mouth. Teeth intact and complete. Hyoid bone intact."

(vii) The final opinion was given by the doctor and the same was marked as Ex.P.13 wherein it was stated that the deceased would appear to have died of asphyxia due to hanging.

(viii) The Revenue Divisional Officer (P.W.15), after recording the statements of the witnesses and conducting the inquiry, prepared a report, which was marked as Ex.P.15 and he came to the conclusion that the demand for dowry was not the reason behind the death of Rubini. This report was also handed over to the Investigation Officer and it became a part of the case file.

(ix) The Investigation Officer arrested the appellant on 19.3.2008 at about 7 PM and the appellant was produced before the Judicial Magistrate concerned and he was remanded to judicial custody.

(x) The Investigation Officer – Ravindran handed over the investigation to one Mr.Sidha Raj. He continued with the investigation by recording the statements of witnesses under Section 161(3) of the Criminal Procedure Code (for short, the



Cr.P.C.). He also collected all the necessary scientific reports.

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(xi) Originally, one Ashraf was also shown as an accused in the first information report. In the course of investigation, it was ascertained that the said Ashraf had nothing to do with the death of Rubini and hence, his name was removed and the necessary report was placed before the concerned Court. Since the demand for dowry was not the cause for the demise of Rubini, an alteration report was filed and the same was marked as Ex.P.20 and the offence was altered to Sections 498-A and 306 of the Code. Ultimately, the investigation was completed and the final report was filed before the Judicial Magistrate, Kothagiri.

(xii) The learned Magistrate served the copies on the appellant under Section 207 of the Cr.P.C. The case was committed under Section 209 of the Cr.P.C., and was made over to the Court below.

(xiii) The Court below framed charges against the appellant for the offences under Sections 498A and 306 of the Code. The prosecution examined P.W.1 to P.W.17 and marked Ex.P.1 to Ex.P.20 and identified and marked M.O.1 to M.O.11.

(xiv) The incriminating materials gathered during the course



Crl.A.No.105 of 2016

of investigation were put to the appellant when he was questioned under Section 313(1)(b) of the Cr.P.C., and he denied the same as false. The Court below, on considering the facts and circumstances and after appreciating the oral and documentary evidence, came to the conclusion that the prosecution has proved the case beyond reasonable doubts against the appellant for the offence under Section 306 of the Code and accordingly convicted and sentenced the appellant. The appellant was acquitted from the charge under Section 498-A of the Code. Aggrieved by the same, the above criminal appeal has been filed before this Court.

3. I have heard the learned counsel appearing for the appellant and the learned Government Advocate (Criminal Side) appearing for the respondent.

4. The main ground that was urged by the learned counsel appearing for the appellant is that the report of the Revenue Divisional Officer, which was marked as Ex.P.15, clearly established that there was no dowry demand and that the appellant and the deceased led a happy married life. According to



Crl.A.No.105 of 2016

the learned counsel, this report was not properly appreciated by the Court below. The learned counsel further submitted that P.W.1 to P.W.5, who were examined on the side of the prosecution, were all relatives and interested witnesses and that there were a lot of contradictions in their evidence. That apart, it was pointed out that P.W.2 and P.W.3 were not even examined by the Police during investigation and that they were straightaway examined in the court as witnesses. The learned counsel also submitted that the Court below, having acquitted the appellant for the offence under Section 498-A of the Code, proceeded further on a presumption that the suicide was committed by the deceased only due to the cruelty meted out by the appellant and to substantiate the same, there was absolutely no evidence that was available before the Court below.

5. The learned counsel for the appellant, in order to strengthen his arguments, relied upon the following judgments :

"(a) *Ramesh Kumar Vs. State of Chhattisgarh* [reported in 2002 SCC (Crl.) 1088];

(b) *State of Madhya Pradesh Vs.*



WEB COPY



Crl.A.No.105 of 2016

Shriram [reported in (2020) 1 SCC (Crl.) 379];

(c) Duraiswamy & Others Vs. State by Inspector of Police, Kondalampatti Police Station, Salem [reported in 2020 (1) L.W. (Crl.) 371]; and

(d) Mariano Anto Bruno Vs. Inspector of Police [rendered by the Hon'ble Supreme Court in Crl.Appeal No. 1628 of 2022 dated 12.10.2022]."

6. Per contra, the learned Government Advocate (Criminal Side) appearing on behalf of the State submitted that there was a clear suspicion behind the death of Rubini and that the appellant failed to explain as to what happened in their relationship. According to him, it is clear from the post mortem report that the hyoid bone was intact and if really the death had taken place due to hanging, in all probabilities, the hyoid bone would break.

7. The learned Government Advocate further submitted that the appellant had given a statement to the Revenue Divisional Officer to the effect that on the fateful day, he had left the house



Crl.A.No.105 of 2016

at about 8 AM and while leaving, he locked the house from outside; thereafter, he came home at about 10.30 to 11 AM and he knocked the door; the same could not be opened; and thereafter, the door was broken open and he entered inside the house and found the deceased hanging.

8. The learned Government Advocate, by pointing out to the observation mahazar, submitted that the latch in the door was intact and that there was no scope for breaking open the door as was sought to be projected by the appellant. The learned Government Advocate concluded his argument by submitting that the Court below had properly appreciated the evidence and come to a correct conclusion and therefore, there is no scope for any interference by this Court.

9. This Court has carefully considered the submissions made on either side and the materials available on record.



Crl.A.No.105 of 2016

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10. A careful reading of the evidence of P.W.1 to P.W.5, who are the father, brothers, sister and uncle of the deceased Rubini, shows that the entire family was opposed to the deceased Rubini marrying the appellant. The deceased was virtually kept away from the family and they did not even meet her when she was alive. These relatives have initially suspected the reason for the death of Rubini. It is at their insistence, a re-post mortem was done and it came to light that the deceased died of asphyxia due to hanging.

11. The above witnesses, in their evidence, have projected as if there was dowry demand from the appellant and the same used to be complained by the deceased to them. P.W.1, while giving statement to the Police, has informed as if he used to receive call in his mobile number. However, in the evidence, he has stated that he used to receive calls from the telephone booth. P.W.6, who was examined by the prosecution, has stated that the deceased Rubini used to make calls to her phone booth and she used to pass on the information to P.W.1 and thereafter, P.W.1 would talk to the deceased. If really any serious complaint was



Crl.A.No.105 of 2016

made by the deceased against the appellant, as close relatives, some action would have been taken by them. However, nobody was really concerned about the interest of the deceased since she married outside their caste and they seemed to have told the deceased to take care of her life.

12. The Revenue Divisional Officer, who conducted the inquiry, after recording the statements of the witnesses, also came to the clear conclusion that there was no demand for dowry and the same is evident from the report – Ex.P.15. It is for the very same reason, the Court below had acquitted the appellant from the charge under Section 498-A of the Code. Hence, demand for dowry was not the reason behind the suicide committed by Rubini.

13. The next issue to be gone into is as to whether there was any cruelty on the part of the appellant, which led to commission of suicide by Rubini.

14. It is seen from the evidence of P.W.11 that the problem for the appellant and the deceased Rubini actually emanated from



Crl.A.No.105 of 2016

the family members of Rubini. The appellant had given a complaint to P.W.11 in this regard on 14.12.2007 and this complaint was marked as Ex.P.5. This complaint was enquired into and the parents belonging to both sides were summoned and they were informed/instructed not to cause any disturbance to both the appellant and the deceased Rubini since both of them got married. The father of the appellant gave a statement in writing to the effect that he would take both the appellant and Rubini to his place and take care of them. However, the parents of the deceased Rubini refused to give anything in writing and recording the same, the complaint was closed. Ultimately, the appellant and the deceased Rubini started living in the house of the appellant.

15. The neighbours, who were examined by the Revenue Divisional Officer, have, in one voice, stated that the appellant and the deceased Rubini were living happily and that they were not able to see any conflict between both of them. The appellant, while giving the statement to the Revenue Divisional Officer, has stated that on 16.3.2008, there was a small misunderstanding between the appellant and the deceased Rubini while they were having



Crl.A.No.105 of 2016

food. There was some quarrel between each other. The next day, the appellant left the home and admittedly, the incident took place when the appellant was not in the house. The appellant has attributed this incident to the hyper sensitivity of the deceased Rubini and her over reaction for an innocuous incident.

16. The appellant did not run away nor absconded after the incident and he, in fact, cut the shawl, in which, the deceased was hanging, brought down the deceased, attempted to sprinkle water in her face and informed the neighbours. Thereafter, he also called KMF hospital and the deceased was taken to the hospital. From there, they were directed to go to the Government Hospital at Kothagiri where the deceased was declared 'brought dead' at about 11.45 AM. Hence, the appellant was very much available with the deceased after the incident and the conduct of the appellant does not show anything unnatural or point to any suspicion against the appellant.

17. The appellant has been convicted for the offence under Section 306 of the Code. To establish this offence, the prosecution



Crl.A.No.105 of 2016

must prove that the suicide was committed in consequence of abetment as contemplated under Section 107 of the Code. It is now too well settled that abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing.

18. Courts must be extremely careful in assessing the facts and circumstances of each case to find out if the accused had played an active role by committing cruelty, which induced the deceased to end her life by committing suicide. If it transpires to the Court that a victim committing suicide was hyper sensitive to ordinary petulance and discord or differences in domestic life, which are quite common to the suicide, the same will not satisfy the charge of abetment of the offence of suicide.

19. The deceased committing suicide in the matrimonial home, by itself, will not lead to a presumption under Section 113-A of the Indian Evidence Act that the deceased was subjected to cruelty. Prima facie, the burden lies on the prosecution to establish this fact and it should not be left to the presumption of the Court.



Crl.A.No.105 of 2016

WEB COPY

20. In the instant case, the evidence of P.W.1 to P.W.5 does not establish any cruelty meted out by the appellant to the deceased Rubini. On the other hand, almost all the neighbours, who gave their statements to the Revenue Divisional Officer, have stated that the appellant and the deceased were living happily. The appellant had also cited an incident that took place the previous day, which, by no stretch of imagination, can be considered as an abetment for committing suicide and at the best, it can only be held to be hyper sensitiveness on the part of the deceased. This is on the presumption that it is this incident, which led to the commission of suicide by the deceased Rubini.

21. It must be borne in mind that the deceased Rubini never got any support from her family and it is not known as to whether there was any serious misgiving between the deceased Rubini and her family members and whether the same was also one of the contributing factors, which ultimately led to the commission of suicide by Rubini.



WEB COPY



Crl.A.No.105 of 2016



Crl.A.No.105 of 2016

WEB COPY

22. The Court below has virtually proceeded on an assumption that the appellant was the reason behind the suicide committed by Rubini. It is now too well settled that how so ever high the suspicion is, the same cannot replace the test of proving the case beyond reasonable doubts by the prosecution.

23. In the light of the above discussions, this Court has absolutely no hesitation to interfere with the judgment rendered by the Sessions Judge, Magalir Neethimandram (FTMC), Ooty in S.C.No.4 of 2014, dated 25.11.2015 and accordingly, the same is hereby set aside. The above criminal appeal is allowed. The appellant was enlarged on bail by this Court by an order dated 21.3.2016 vide Crl.M.P.No.1504 of 2016. In this judgment, since the appellant is acquitted from the charge under Section 306 of the Code, the bail bonds executed shall stand canceled and the fine amount, if any, paid by the appellant shall be refunded to him.

01.3.2023

Index: No
Neutral Citation : Yes



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Crl.A.No.105 of 2016

N.ANAND VENKATESH

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To

- 1.The Deputy Superintendent of Police, Coonoor Sub-Division,
Kotagiri Police Station, Nilgiri District.
- 2.The Sessions Judge, Magalir Neethimandram (FTMC), Ooty.
- 3.The Judicial Magistrate, Kothagiri.
- 4.The Public Prosecutor, High Court, Madras.

Crl.A.No.105 of 2016

01.3.2023