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Criminal Appeal No.768 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:03.03.2023

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THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

Criminal Appeal No.768 of 2016

Ganesh

... Appellant/Accused

Vs.

The State by
Inspector of Police,
All Women Police Station (Central),
Coimbatore City.
(Crime No.21 of 2012)
Coimbatore District.

...Respondent/Complainant

Prayer : Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure is filed to call for the records relating to the judgement dated 02.11.2016 made in S.C.No.153 of 2013 on the file of the Learned Sessions Judge, Magalir Neethi Mandram (Mahila Court), Coimbatore, and set aside the same by allowing this criminal appeal.

For Appellant : Mr.M.Ganesh

For Respondent : M/s.R.Kishore Kumar
Government Advocate (Crl.Side)



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JUDGMENT

On 05.06.2012, when PW.7 Mrs.Prabadevi, Sub inspector of Police, was on duty at Kovai Central, All Women Police Station, one Sindhu, the mother of the deceased, came to the Police station and lodged a complaint to the effect that her daughter, who is the victim in this case, fell in love with the accused, eloped with him and got married during June 2011

2. Thereafter, the accused started misbehaving with his wife/ the victim by coming back home in an inebriated condition and picking up quarrel, and torturing her. Thereafter, when the problems between them escalated, then a complaint was given to the Saibaba Colony Police Station and thereafter, the victim in this case, came home and lived with her mother. Unable to be with her husband, the victim lived with her mother for a period of about two months. On 14.4.2012, when the victim left to the temple, she did not come back home, and at about 7pm on the same day, the accused telephoned the mother of the victim that he had again taken his wife back. Thereafter, the



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mother had no contact with her daughter. However, on 05.06.2012, the mother was telephonically informed that her daughter committed suicide by hanging. Since she knew that her daughter committed suicide only because of the harassment made to her by the accused, she prayed for taking action against the accused. On the strength of the said complaint, Criminal Case No.21 of 2012, under Section 498-A and 306 of Indian Penal Code was registered against the accused.

3.PW8 took up the case for investigation, completed the investigation and laid the charge-sheet proposing the accused as guilty of the offences under Sections 498-A and 306 of IPC, and the same was taken on file in PRC No.2 of 2013 by the learned Judicial Magistrate, Additional Mahila Court, Coimbatore (Central). Upon furnishing copies of the offence of the accused under Section 207 of Code of Criminal Procedure, the case was thereafter committed to the Principle District Court and Sessions Judge, Coimbatore, whereupon, the case was taken up on the file in S.C. No.163 of 2013 and handed over to the Trial Court.



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4.The Trial Court, upon hearing both sides, framed charges under Section 498-A and 306 of the Indian Penal Code. Upon being questioned, the accused denied the charges and stood trial. In order to bring home the charges, the prosecution examined one Krishnamoorthy as P.W.1, who was the landlord of the house in which the deceased wife and the accused were living, and one Nagaraj as PW.2, who was the neighbour, and the wife of PW.2 as PW.3. The RDO, who conducted the inquiry, were examined as PW.4 and the Assistant Civil Surgeon, who conducted the postmortem, was examined as PW.5. One G.K. Rani, the Investigating Officer, who inquired into the previous complaint regarding the accused and the victim wife, was examined as PW6. One Prabha Devi, who registered the first information report on the strength of the complaint, was examined as PW.7, the Investigating Officer was examined as PW.8.

5.On behalf of the prosecution, the Observation Mahazar and the Seizure Mahazar were marked as Ex.P1 and Ex.P2, respectively. Signature of the accused in his confession statement was marked as Ex.P3. The RDO



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Report, which includes the inquest report and the statement of witnesses, was marked as Ex.P4. The post-mortem report was marked as Ex.P5. The Viscera report was marked as Ex.P6. The Final Medical Opinion as to the cause of death was marked as Ex.P7. The Photocopy of the CSR in respect of the earlier complaint was marked as Ex.P8. The complaint given by the said Sindhu was marked as Ex.P9 and the printed FIR based on the same was marked as Ex.P10. The rough sketch was marked as Ex.P11 and the photographs taken were marked as Ex.P12 (S) and the form 95 was marked as P13. The Saree which was used by the victim for hanging herself was produced as M.O.1.

6. Upon the questioning about the material evidences and circumstances on records, as per Section 313 of the Code of Civil Procedure, the accused denied the same as false. Thereafter, no evidence was taken on beyond the defence and the Trial Court, therefore, proceeded to hear the learned public prosecutor for the same and the learned counsel for the accused by a judgment dated 2.11.2016, found that the prosecution did not establish that the accused found that the evidence let in by the prosecution was not enough to prove that



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the conduct of the accused had resulted in the abatement for the victim to commit suicide, and as such, gave the benefit of doubt to the accused for the offence under Section 306 of Indian Penal Code. However, based on the evidence on record, found that the accused was guilty of the offence under Section 498-A of the Indian Penal Code and sentenced him to undergo three years of rigorous imprisonment and pay fine of Rs.2,000/-, and in default, to undergo three months of simple imprisonment. Aggrieved by the same, the present appeal is laid before this Court.

7.The learned counsel appearing on behalf of the appellant, took this Court through the evidence of PW.1 to PW.4 and the other material evidences on record, would submit that in this case, there is absolutely no evidence regarding the cruelty made out to the victim. As a matter of fact the defacto complainant/the mother of the deceased was not at all examined as the witness in this case. Even though, PW 1, 2, 3 & 4 have merely stated that the accused and the victim used to quarrel on account of the accused coming home in an inebriated condition, in the RDO inquiry, upon further questioning, they have



admitted that the victim never complained to them in any manner, whatsoever.

Therefore, except to speak about the quarrel, there is no categorical evidence about any harassment or cruelty to the victim.

8. As a matter of fact, the accused has given a categorical statement at the earliest point of time in the RDO enquiry that they were living happily and suddenly a week before the incident, she started suspecting the fidelity of the accused and by unnecessarily connecting him to a neighbour lady and therefore, on account of her own misbelief, she committed suicide. Therefore, the Trial Court also had acquitted the appellant for the offence under Section 306. When the Trial Court had found that the conduct of the accused was not in any manner so as to drive the victim for committing suicide, then the very same conduct cannot form a basis for conviction under Section 498-A in the Indian Penal Code. In this regard, the learned counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in ***Wasim vs. State (NCT of Delhi) (2019) 7 SCC 435***. More specifically, relying upon paragraphs 11 to 14 of the Judgment, he persuaded the point that when the offence under



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Section 306 stands disproved, the High Court without there being proper evidence on record, cannot lightly convict the accused for the offence under Section 498-A. Concluding the submissions, once again drawing the attention to the only version of the PW.1 to 4, the statement that they were only quarreling, the learned counsel would submit that, by itself would not make out an offence under Section 498-A and thereafter, he pleaded that the appeal should be allowed.

9.Per contra, Mr.Kishore Kumar, the learned Government Advocate, would submit that in this case, PW 1, 2, 3 & 4 are all independent witnesses. They are the landlord, neighbour and his wife, who have seen the accused torturing her by picking up quarrels, coming home after consuming alcohol. As a matter of fact, the said facts are not an after thought but was mentioned in the complaint itself at the earliest point of time. The inquest report / RDO inquiry also bears testimony to the said facts. This apart, on an earlier occasion, unable to bear the cruelty made out to her, the victim came to her home and since she was eloped from her matrimonial home, she could not go to her mother's place



but went to her relative's place. Only after the inquiry in the earlier complaint, she went with her mother. Thereafter also, once again the accused had contacted her and taken her again to her matrimonial home, again tortured her, driving her to commit suicide. Even though the Trial Court did not find any proximate or immediate cause, and found that it was an extreme step taken in distress by the victim, the cruelty unleashed by the petitioner is brought on record. Therefore, he would submit that the prosecution has proved the offence to him and would pray for the dismissal of the appeal.

10.I have considered the rival submissions made by both the sides and perused the materials on record of this case. Even though the learned counsel for the appellant would contend that except for the neighbours and the landlord, who actually did not know or hear anything from the victim girl, have only deposed what they have seen, and the fact that the defacto complainant/the mother of the victim was not examined, still the evidence of PW-1 to 4 can be taken into account for the limited purpose that they have seen the accused and the victim quarrel frequently and they have seen the accused



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coming home in an inebriated condition. The statement of the accused himself during the RDO inquiry and the statement of the other witnesses in the RDO inquiry proves the fact that there had been quarrels between the husband and the wife on account of the accused coming home in an inebriated condition and not going for work property. As a matter of fact, even though the accused had stated that all was well between him and his wife until one week before the date of the incident and that they were living happily. The records, namely the CSR Records marked through PW.5, the investigating officer, in the earlier complaint prove otherwise. In the said proceedings, the accused himself had given a letter after giving a complaint that he understood that his wife had moved out of the matrimonial home on account of his own torture and when the said evidence is on record, coupled with the fact that the mother of the accused has also spoken in the RDO inquiry about the fact that her daughter-in-law had went back to her mother's home and joined them very recently.

11.It can be seen that there was harassment and cruelty made out to the victim which was unbearable to the victim. Going by paragraphs 11 and 12 of



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the judgment cited by the learned counsel for the appellant himself, all that has to be seen for the offence under Section 498-A is that whether a particular conduct of the accused had resulted to drive the women to commit suicide. In this case, it is not only likely to drive but the woman has actually committed suicide. Even though the said conduct would not amount abatement but would certainly amount to the cruelty punishable under Section 498-A of Indian Penal Code.

12. Therefore, I am unable to accept the contention of the learned counsel for the accused and I am of the view that the Trial Court has rightly taken into consideration the evidence of PW1 to 4 and collaborative material in the form of the RDO inquiry report and the statements recorded during the earlier complaint and its inquiry thereof, and the evidence of the inquiry officer namely PW.6 in the earlier complaint. In this view thereon, no exception can be taken for the findings of the guilt by the Trial Court.



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13.Now coming to the sentence, the learned counsel would pray that the accused is only 32 years old and even the Trial Court had considered releasing him on the Probation Offenders Act and ultimately, disclaim the same. But however, the punishment should be proportionate to the seriousness of the offence. At the same time, taking into account, the time lag and also the age of the accused, I am of the view that the sentence imposed by the Trial Court as rigorous imprisonment for a period of three years can be reduced to that of two years. While the other part of the sentence regarding the fine shall remain unaltered.

14.In the result the Criminal Appeal No.768 of 2016 is partly **allowed** with the following conditions:

(i)the condition of the appellant for the offence under Section 498-A by the judgment dated 02.11.2016 of the Learned Sessions Judge, Magalir Neethi Mandram (Mahila Court), Coimbatore, in S.C.No.153 of 2013 is confirmed,



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(ii)the sentence imposed on the substantive sentence of rigorous imprisonment for a period of three years, imposed on the appellant, is reduced to that of two years rigorous imprisonment and in the other respects, the sentence shall remain unaltered.

03.03.2023

Index : Yes
Speaking Order / Non Speaking Order
Neutral Citation: Yes/No
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To

1. Sessions Judge, Magalir Neethi Mandram
(Mahila Court), Coimbatore.
2. The State by
Inspector of Police,
All Women Police Station (Central),
Coimbatore City.
(Crime No.21 of 2012)
Coimbatore District.
3. The Public Prosecutor,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J

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