



Crl.A.No.252 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM:

THE HONOURABLE Dr.JUSTICE **G.JAYACHANDRAN**

Criminal Appeal No.252 of 2020

Murugesan

.. Appellant

/versus/

1.State Rep.by
The Inspector of Police,
Tiruchengodu Police Station,
Namakkal District
Crime No.257 of 2008

.. Respondent

Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code praying to call for the entire records in connection with the S.C.No.102 of 2012 on the file of the learned Sessions (Fast Track Mahila) Judge, Namakkal and set aside the conviction and sentence imposed by the learned Sessions (Fast Track Mahila) Judge, Namakkal in S.C.No.102 of 2012 dated 19.03.2020.

For Appellant : Mr.V.Parthiban

For Respondent : Mr.N.Manoharan
Assisted by
Mr.Kishore Kumar
Government Advocate (Crl.Side)



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JUDGMENT

This Criminal Appeal is filed against the judgment of conviction and sentence imposed on the appellant for committing the offence punishable under Section 306 I.P.C.

2. The Trial Court, which has framed charges under Sections 498 A and 306 I.P.C., after appreciating the evidence, has held that the prosecution has failed to prove the charge under Section 498 A I.P.C., however, proved the charge under Section 306 I.P.C. and convicted the appellant to undergo 7 years Rigorous Imprisonment and imposed a fine of Rs.2,000/-, in default 6 months Simple Imprisonment. The said judgment dated 19.03.2020 is under challenge in this Criminal Appeal.

3. The brief facts of the case as put forth by the prosecution witnesses:-

On 09.07.2005, Sathya, the deceased and Murugesan, the appellant herein got married. The couple had a male child about 1 year and 9 months old at the time when Sathya committed suicide by hanging.



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According to her family members, who were the prosecution witnesses, she was subjected to cruelty both physically and mentally by her husband, the accused and there was also demand of additional dowry. Two days prior to the occurrence when the minor child fell sick, the accused as a father of the child neither took care of the child nor arranged for any money for his treatment. Hence the deceased herself had taken the child to the hospital for treatment. After the treatment, she called her parents and left the minor child with her parents and returned home. There was quarrel between the husband and wife for not bringing the child. On 20.03.2008 night, she called her parents over phone and informed them that her husband torturing her and also assaulted her for not bringing the child along with her. The very next day morning, Sathya found hanging in the ceiling fan. The neighbours informed her parents and they reached the house of her daughter and saw external injuries on the body of Sathya. During the R.D.O. enquiry initially, they informed the R.D.O. that they suspected the death of their daughter since they have noticed several external injuries. Later they have changed their mind to avoid post-mortem of their daughter's body and said that their daughter



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died due to stomach pain and therefore her body need not be subjected to autopsy. However, the R.D.O. on seeing the external injuries found that there was some foul play and sent the body to post-mortem. The Post-mortem doctor has found four injuries over the body, apart from the ligature mark on the neck, which caused due to hanging. The parents and relatives of the deceased few days later had again given contra statement to the R.D.O. stating that out of fear that the accused may cause harm to their grand child, they were forced to say good about the accused. They retract their earlier statement and wanted to make their statement and narrated that the incident occurred prior to the death of Sathya.

4. Earlier, the police immediately after receiving the information about the unnatural death of Sathya had registered F.I.R., in Crime No.257 of 2008 on 21.03.2008 at about 13.30 hours under Section 174 Cr.P.C. Subsequent to the completion of investigation, they had filed Final Report in P.R.C.No.27 of 2012 before the learned Judicial Magistrate, Tiruchengode against the accused under Sections 498 A and 306 I.P.C. Copies were furnished to the accused and the accused was



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committed to the District and Sessions Court, Namakkal, the case being triable exclusively by the Court of Sessions. The District Sessions Judge made out to the Sessions (Fast Track Mahila) Judge, Namakkal and tried in S.C.No.102 of 2012. Wherein, the charge under Sections 498 A and 306 I.P.C., was framed against the accused. The accused denied the charges and sought to be tried.

5. The prosecution to prove the charges stated above examined thirteen (13) witnesses and marked fifteen (15) exhibits. The accused has chosen to remain silent and he has not adduced any evidence on his side except cross examination of prosecution witnesses and projecting his defence.

6. The case of the prosecution has been unravelled by PW.1 Velumani, the father of the deceased. He is the informant who has set criminal law into motion. Ex.P8 is the printed F.I.R, which was registered at 13.30 hours on 21.03.2008 based on his complaint Ex.P1. F.I.R., was forwarded to Judicial Magistrate on the same day and received by the



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learned Judicial Magistrate on 15.45 hours. Before the Court PW.1 had deposed about the Sreedhana given to his daughter and the incident took place two days prior to the death of his daughter and her complaint over phone previous day about torture by the accused. His evidence is substantially corroborated by PW.2, the mother of the victim. PW.3 is the brother of the victim. PW.4 is the relative of PW.2. She had deposed about the Sreedhana given during marriage and on hearing the death of Sathya, she had rushed to her house and saw injuries on her left leg. This witness has been treated hostile by the prosecution since she has not stated anything about the incident occurred two days prior to the death of Sathya. However, the Trial Court on taking note of the evidence of these four witnesses apart from the evidence of PW.5, Appusamy, who is the house owner, where the deceased and accused residing, held that the prosecution has not proved the demand of dowry and cruelty demanding dowry, however, found that the deceased Sathya was subjected to physical torture based on the injuries found on her body as spoken by PW.9, the post-mortem doctor and the certificate Ex.P4, which has noted the following four external injuries:-



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“External Injuries:

- (1) Contussion ½ x ½ cm., below the back of the left little finger*
- (2) Contussion 2 cm x 1 cm at the middle of the forearm*
- (3) Blackish discolouration mark each 1 cm dictrotic 4 in no in the ½ cm gaphorized*
- (4) Contussion 6 x 4 cm in the dorsum of the left foot below the ankle joint.”*

The Trial Court held that the prosecution has proved the accused has abetted his wife Sathya to commit suicide, hence under Section 306 I.P.C. liable to be punished. Accordingly, sentenced him to undergo 7 years R.I., with fine.

7. The learned counsel for the appellant submitted that the Trial Court has failed to appreciate the contradiction in the two reports of the R.D.O. which are marked as Ex.P6 dated 21.03.2008 and Ex.P7 dated 28.03.2008. The Panchayatars have not spoken anything about the cruelty caused by the accused to the deceased and in fact they have informed that the deceased Sathya was suffering from stomach pain and



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went to the hospital for treatment. The interested witnesses PW.1, PW.2 & PW.3 also admit that Sathya was suffering from stomach pain and she was taking treatment. They have not spoken anything about abetment by the accused. The presumption under Section 113 A of Indian Evidence Act ought not to have been drawn by the Trial Court in the absence of material evidence indicating there was abetment in any force to commit suicide.

8. Regarding the external injuries that was found by the witnesses and noted in the post-mortem certificate, the learned counsel for the appellant submitted that those injuries might have caused while carrying on her day to day work or by other means. When there was no evidence to show that the injuries were caused by the accused, the injuries cannot be the factor to infer the Sathya was subjected to physical cruelty.

9. The learned Government Advocate (Crl. Side) for the State submitted that the marriage took place on 09.07.2005 and hardly within



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2 ½ years of their marriage, Sathya committed suicide leaving behind 1 year 9 months old child. On the date of occurrence, he was in the house, where Sathya found dead by hanging. PW.1 and PW.2 are the parents of Sathya. The cause for quarrel between the accused and the deceased explained by the prosecution through witnesses. When the child was left with the parents of the deceased, the accused got infuriated and attacked the deceased causing injuries noted in the Post-mortem Report [Ex.P4].

10. PW.1, the father of the deceased PW.2, mother of the deceased, PW.3, the brother of the deceased have categorically deposed before the Court that when the child had fallen sick, the accused had not taken any care for his treatment. Hence the deceased Sathya on her own took her child for treatment to the hospital and for better care, she has left her son with her parents and came back to her matrimonial home. On 20.03.2008, the previous day of occurrence, she and the accused were alone in the house. She has called her parents and informed them about the physical torture caused by the accused for not bringing the child along with her. They have pacified her and assured that they will bring the child



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the next day, but on the next day, they received the information that their daughter Sathya has committed suicide by hanging.

11. Therefore, the learned Government Advocate (Crl.Side) submitted that the ocular evidence of PW.1, PW.2 and PW.3 regarding the phone call received from Sathya and complaint about physical torture by the accused a day before the death and the injury found on her body as listed in Ex.P4 would clearly prove that she was subjected to physical cruelty and the suicide committed by Sathya to be presumed due to the abetment of the accused in the light of Section 113 A of Indian Evidence Act.

12. On behalf of the *de facto* complainant, Mr.N.Manoharan, the learned counsel had entered appearance as an intervenor and placed before the Court the relevant oral evidence and the documents which points that the accused abetted his wife Sathya to commit suicide.

13. This Court, while appreciating the rival submissions and the documents, finds that the complaint Ex.P1 was given by PW.1 to the



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police at 13.30 hours, wherein, the suspicion about the cruelty as a cause for Sathya's death been explicitly mentioned. In Ex.P6, submitted by PW.10, Karpagam, the R.D.O. on 21.03.2008, it indicates that she has visited the spot after getting information from the police. At the spot having found that the situation is tensed and the external injuries found on the body of Sathya was pointed out by her father of the deceased (PW.1). She ordered to remove the body to the hospital. However, there was some understanding between the accused and the family members of Sathya to avoid post-mortem, they have projected that Sathya has committed suicide due to stomach pain. The R.D.O., on seeing the conduct of the parties and the injuries found on the body of Sathya has suspected that Sathya could not have committed suicide for her stomach pain, but she might have been subjected to a sort of torture. She had recorded her opinion in Ex.P6 and requested the police to investigate and find out the culprit.

14. Few days later, her suspicion has become true, when PW.1, PW.2 and PW.3 and one Kalaiselvi relative of the deceased had appeared



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before the R.D.O., on 28.03.2008 and explained about the reason for not disclosing the entire facts during the previous enquiry. Recording their statement, the second report dated 28.03.2008 was submitted by R.D.O., and same was marked as Ex.P7. The R.D.O., while in the witness box, when she was cross examined extensively regarding submission of two reports viz. Ex.P6 and Ex.P7, she has explained that in spite of external injuries found on the body of Sathya while she conducted enquiry on 21.03.2008, the Panchayatars and relatives were insisting that Sathya has committed suicide due to stomach pain and requested her not to send the body for autopsy. Her evidence has been attempted to impeach by putting suggestion that the original statement of Panchayatars has not been produced before the Court and CD has not been placed before the Court and she has given two contradictory reports regarding the death of Sathya.

15. This Court after examining the Ex.P6 and Ex.P7 does not find any fundamental contradiction in these two reports. Consistently the R.D.O., examining the body of the deceased Sathya has recorded that she



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found several external injuries on her body and that could have been caused due to some physical assault. The inquest report has to be considered as a corroborative piece of evidence, but not substantial evidence. While the post-mortem report reinforces the fact that the deceased Sathya had four external injuries and the same has been recorded, the accused who had been with the deceased in the previous night under the same room is bound to explain how she has sustained injuries. On perusing the cross examination of PW.9, the post-mortem doctor, there is not even a suggestion regarding these four injuries nor the accused has come forward to rebut the presumption against him under Section 113 A of Indian Evidence Act. He failed to adduce positive evidence and prove those injuries were not caused by him and he did not abet Sathya to commit suicide.

16. Section 306 I.P.C., says about the ingredients required to attract offence of abetting suicide and Section 113 A of the Indian Evidence Act, says definition under Section 498 A I.P.C., for cruelty to be considered and taken for Section 113 A of Indian Evidence Act.



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17. In this case, the physical injuries found on the body of the deceased, the statement of PW.1, PW.2 and PW.3 regarding the phone call received from Sathya on the previous day of her death, stating that the accused had tortured her for not bringing his son along with her after treatment is admissible in evidence as previous statement of a dead person about the cause of her death. Further, the evidence that the son of Sathya was left at her parents house because the accused did not take care of her son, being spoken by PW.1 to PW.3 and the conduct of the accused lend credence to the said accusation put together cumulatively proves that the accused has caused physical cruelty which has abetted Sathya to commit suicide.

18. Therefore, this Court finds no error in the judgment of the Trial Court and no merit in the grounds of the appeal. Hence, the order of conviction rendered by the Trial Court is hereby confirmed.



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19. Regarding the sentence, the learned counsel for the appellant submitted that having found not guilty for the offence under Section 498 A I.P.C. for the charge of offence under Section 306 I.P.C., the punishment of 7 years R.I., is harsh for a man of 29 years old. Therefore seeks for some leniency to be shown to the accused.

20. The learned counsel for the *de facto* complainant/intervenor submitted that the accused after abetting his wife, has not been taken care of his minor boy and the boy is under the care of his grand parents and maternal uncle who are PW.1, PW.2 and PW.3. Taking note of the facts and considering that the sole incident which took place two days prior to the occurrence and the torture the day before her death induced by the accused. The Court finds from the evidence narrated by the prosecution witnesses PW.1, PW.2 and PW.3, there was no other previous incident, which could attribute to any sustain cruelty caused by the appellant. Therefore, the period of imprisonment of 7 years R.I., is modified and reduced to 5 years R.I with a fine of Rs.2,000/-, in default 6 months Simple Imprisonment. The period of imprisonment already undergone to



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be set off under Section 428 Cr.P.C. The accused be secured and committed to the prison to undergo the balance period of imprisonment.

21. In the result, this Criminal Appeal is partly allowed accordingly.

14.03.2023

Index : yes/no

Internet:yes/no

Speaking order/ Non speaking order
rpl

To

1.The Sessions (Fast Track Mahila) Judge, Namakkal.

2.The Inspector of Police,
Tiruchengodu Police Station,
Namakkal District

3.The Public Prosecutor,
High Court, Madras.

Dr.G.JAYACHANDRAN,J.



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