



Criminal Appeal No.281 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.12.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Appeal No.281 of 2017

V.Ramesh

...Appellant/Single Accused

Vs.

The State rep. by the
Inspector of Police,
Gobichettipalayam Police Station,
Crime No.312 of 2014,
Erode District.

...Respondent/Complainant

Criminal Appeal filed u/s.374(2) of the Code of Criminal Procedure to set aside the conviction imposed in Judgment dated 26.04.2017 made in S.C.No.37 of 2016 on the file of the learned Additional Sessions Judge Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

For Appellant : M/s.N.Manokaran
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor



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JUDGMENT

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This Criminal Appeal has been filed by the accused challenging the conviction and sentence imposed upon him, for the offence under Sections 498 (A), 323 and 306 of IPC passed vide judgment dated 26.04.2017 in S.C.No.37 of 2016 on the file of the learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode.

2.The appellant was convicted and sentenced by the Trial Court as follows:-

<i>Conviction</i>	<i>Sentence</i>
Section 498 (A) of IPC	To undergo three years of Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for Six months.
Section 323 of IPC	To undergo one year of Rigorous Imprisonment and to pay a fine of Rs.1000/-, in default, to undergo Rigorous Imprisonment for three months.
Section 306 of IPC	To undergo ten years of Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for two years.
The sentences were ordered to run concurrently	

3. (i) The case of the prosecution is that the appellant and the deceased got married in the year 2004 and they had two daughters, who



were aged eight and five years respectively; that the appellant started demanding money and jewels from the deceased six months after the marriage; that there were frequent quarrels between the deceased and the appellant on account of the said dowry demand; that on 25.06.2014 and 30.06.2014, when the children were asleep, the appellant suspected the character of the deceased beat her and tortured her; that he also demanded the money on the same day; that unable to bear the torture given by the appellant, the deceased decided to kill herself; that on 03.07.2014, after the appellant who was a milk vendor left the house in the early morning, she committed suicide by hanging.

(ii). It is the further case of the prosecution that when the appellant returned home after delivering milk, he found the deceased hanging and took her to the Government Hospital at Gobi. P.W.10, who first saw the deceased issued Accident Register/Ex.P7 and Death Intimation/Ex.P8, in which he had recorded that the deceased was brought dead by the appellant. On the information given to P.W.4/the mother of the deceased, she went to the Police Station at about 10 A.M. and lodged the complaint/Ex.P5.



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(iii). On receipt of the complaint, P.W.9/the Sub Inspector of Police, registered the First Information Report/Ex.P6 in Crime No. 312 of 2014 for the offences under Sections 498 (A) and 306 of the Indian Penal Code. P.W.4/the mother of the deceased had stated in the complaint that her daughter/deceased, was subjected to harassment on account of dowry demand and that three days before the occurrence (i.e) on 01.07.2014, the appellant had tortured her and caused hurt; that she met the deceased who complained about the cruelty committed by the appellant.

(iv). P.W.11/the Inspector of Police, on receipt of the FIR, commenced the investigation. He went to the scene of occurrence and prepared Observation Mahazar/Ex.P9. Thereafter, he seized the saree used by the deceased for hanging suicide under Recovery Mahazar/Ex.P.11. The saree was marked as M.O.5. He conducted an inquest between 12.00 Noon and 2.00 P.M., on the same day in the presence of Panchayatharas and thereafter sent the body for post mortem. P.W.13/Doctor conducted



post-mortem and issued post mortem certificate/Ex.P.14. P.W.13 issued Final Opinion/Ex.P15, after obtaining Viscera Report. He had opined that the “deceased would appear to have died of Hanging”. P.W.11 arrested the appellant on the same day and examined a few witnesses. Thereafter, P.W.11 handed over the investigation to P.W.12. P.W.12 continued the investigation, examined further witnesses and filed a Final Report on 08.10.2014, for the offences under Sections 498(A) and 306 of the IPC before the learned Judicial Magistrate No. I, Gopichatipalayam.

4. After complying with the provisions of Section 207 Cr.P.C, the case was committed to the Court of Additional Sessions Magalir Neethi Mandran (Fast Track Mahila Court) Erode, Erode District. The Sessions Court framed three charges against the appellant for the offences under Sections 498 (A), 323 and 306 of the IPC.

5. To prove the case, the prosecution examined thirteen witnesses as P.W.1 to P.W.13 and marked fifteen documents as Exs.P1 to P15. M.O.1 to M.O.5 were marked as Material Objects on the side of the



prosecution. When the accused was questioned u/s. 313 Cr.P.C., on the incriminating circumstances appearing against him, he denied the same.

The appellant examined six witnesses as D.W.1 to D.W.6 and no document was marked on the side of the appellant. Exs.C1 to C5 were marked as Court documents.

6. On appreciation of oral and documentary evidence, the Trial Court found that the accused was guilty of all three charges against him and sentenced to imprisonment as stated earlier.

7. Challenging the conviction and sentence, the accused has preferred this Criminal Appeal.

8 (a). Mr.N.Manoharan, the learned counsel for the appellant submitted that the complaint given by P.W.4 is an afterthought; that the conduct of the accused would belie the prosecution case that the appellant committed cruelty on the deceased and thereby abetted the commission of suicide; that he had taken the victim to the hospital and it was P.W.4's



version that the Police was present at the hospital and had recorded a statement; that the said complaint ought to have been treated as First Information Report, which has been suppressed by the prosecution.

(b). The learned counsel further pointed out that P.W.4 and P.W.6/the mother and sister of the deceased, though have deposed regarding the alleged demand of dowry both their versions are highly improbable; that neither of them has given any details about the nature of the demand and the dates on which the alleged demand was made by the appellant; that the evidence would show that the appellant was well to do and was earning well in business and had sufficient properties to take care of himself and there is no necessity for demanding dowry.

(c). The learned counsel also pointed out the evidence of D.W.6/Mr.Sampathkumar and the suggestions made by the defence counsel to the prosecution witnesses to the effect that the deceased had developed illegal intimacy with one Karthick; that the appellant came to know of it and he had informed P.W.4/the mother of the deceased, who scolded the victim,



and that this led to the victim committing suicide.

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(d). The learned counsel further pointed out that P.W.6/sister of the deceased was working as a prosecutor and the entire complaint was filed at her instance since she had a grudge against the appellant as he prevented the deceased from interacting with P.W.6 who had married a person against the wish of the family.

(e). The learned counsel also pointed out to the complaint said to have been given by D.W.6 along with a few persons, in which they had stated that the deceased committed suicide because the family members came to know about her illicit relationship with the said Karthick; and that though P.W.11 and P.W.12 admit that they received the complaint, no investigation was done.

(f). The learned counsel also relied upon the Judgments of the Hon'ble Supreme Court in *Mariano Anto Bruno Vs. The Inspector of Police* reported in *AIR 2022 SC 4994* and *Gurcharan Singh Vs. State of Punjab* reported in *(2020) 10 SCC 200*, in support of his submission that to



prosecute a person for the offence under Section 306 of the IPC, there must be a positive act on the side of the accused to instigate or intentional aid the victim to commit suicide.

9 (a). Mr.A.Gokulakrishnan, the learned Additional Public Prosecutor, *per contra*, submitted that both P.W.4 and P.W.6 have stated that the deceased demanded dowry continuously; that the appellant and deceased hardly lived happily for six months; that the deceased committed suicide only on account of the said dowry demand and the defence case about the alleged illicit intimacy of the deceased with another person is unbelievable.

(b) He further pointed out that D.W.6 is a friend of the appellant and therefore, his evidence has no credibility; that the evidence of P.W.4 and P.W.6, inspire confidence and nothing has been elicited in the cross examination by the defence to disbelieve their evidence and therefore, the Trial Court rightly convicted the appellant for the offences charged against him and hence, submitted that the appeal is liable to be dismissed.



WEB COPY 10. Heard the learned counsel for the appellant and the learned Additional Public Prosecutor for the respondent/State.

11. On perusal of the records, this Court finds that out of thirteen witnesses examined by the prosecution, P.W.4 and P.W.6, the mother and sister of the deceased respectively have alone been examined to establish the demand of dowry said to have been made by the appellant. P.W.1 is a neighbour who had signed as a witness in the Observation Mahazar, turned hostile. P.W.2 is another witness to the Observation Mahazar who turned hostile. P.W.3 is a Constable who had assisted the Investigating Officer in the recovery of Material Objects, the saree and the other articles which were found on the body of the deceased. P.W.5 is the brother of P.W.4, who is said to have assisted P.W.4 in making the complaint to the respondent. P.W.7 and P.W.8 are brothers of the deceased who speak about going to the hospital on hearing that the deceased was unwell. P.W.9 is the Sub Inspector of Police, who registered the FIR. As stated earlier, P.W.10/Doctor, issued Accident Register and Death Intimation - Exs.P7 and P8.



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12. From the above narrative, it would be clear that the prosecution case rests on the evidence of P.W.4 and P.W.6. P.W.6/sister of the deceased would state that she had given one sovereign of gold to P.W.4/mother of the deceased, to hand it over to the deceased since she was subjected to harassment on account of demand for jewels and money. However, there is nothing in the evidence to suggest as to when she had handed over the said jewels. She also would admit in the cross examination that she did not get along well with the appellant as the appellant had opposed her marriage with a person who did not belong to the same caste. P.W.6's evidence does not suggest that the deceased ever complained to her directly about the alleged demand for dowry. Her version is based on what P.W.4 told her about the alleged cruelty meted out to the deceased by the appellant.

13. Therefore, ultimately it is only P.W.4 who had deposed about the demand of dowry and cruelty in connection with the same. P.W.4's evidence is that the appellant and the deceased were living happily only for six months and thereafter, the appellant harassed and asked her to bring jewels



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and money from her parent's house. It is the admitted case of P.W.4 that she was working as a cook in a Noon Meal Scheme centre. It is seen from the other evidence on record that the appellant owned properties and had his own business. It is the version of P.W.4 that on 25.06.2014, the appellant beat the deceased with hands and after receiving a phone call from the deceased, she went to the house of the appellant and met the deceased on 01.07.2014. Further, she would state that at that time, the deceased told P.W.4 that she was subjected to torture because the appellant suspected her character. Admittedly, on that day, there was no demand for any dowry or jewels. Except for vaguely stating that the appellant constantly asked for money and jewellery earlier, there is nothing to infer from the evidence of P.W.4 that the deceased was subjected to cruelty in connection with dowry demand.

14. The charge under Section 498 (A) of IPC reads as follows:

"ஆசாராணியிடம் அவருடைய தாயாரிடம் சென்று
நகையும், பணமும் வாங்கி வரும்படி அடிக்கடி சண்டையிட்டு
அவரை துன்புறுத்தி வந்துள்ளீர் என்றும், 25.06.2014 மற்றும்
30.06.2014 ஆகிய தேதிகளில் நீர் ஆசா(எ) ஆசாராணியை
நடத்தையின் மீது சந்தேகப்படும், பணம் வாங்கி வருமாறு



கேட்டு ஆசா(எ) ஆசாராணியை கையால் அடித்து சித்ரவதை
செய்து அதன் மூலம் எதிரியாகிய நீர் இ.த.ச.பிரிவு 498
(அ)ன் கீழ் தண்டிக்கத்தக்கதும் இந் நீதிமன்றத்தால்
விசாரிக்கத்தக்கதுமான குற்றத்தை நீர் புரிந்துள்ளதாகவும்.."

The above charge would indicate that the prosecution is not clear as to whether the cruelty was in connection with dowry demand or whether there was harassment because the appellant suspected the character of the deceased. P.W.4's version that the deceased told her that the appellant suspected the character of the deceased on 01.07.2014, confirms the fact that the alleged demand of dowry is an afterthought.

15. In this context, we may analyse the evidence of the defence witnesses examined on the side of the appellant. D.W.1 to D.W.4 are the Nodal Officers working in a cell phone company. They were examined by the defence to show that the deceased and one Karthick were talking to each other frequently. However, D.W.1 to D.W.4 have stated that they were unable to retrieve the records relating to the phone calls made in the two numbers since the CDRs (Call Detail Records) would be maintained only for one year. D.W.5 speaks about selling a SIM card to the deceased. D.W.6



is a neighbour of the appellant. He speaks about lodging a complaint/Ex.D1, before the respondent on 03.07.2014, wherein he had stated about the visit made by P.W.4 on 01.07.2014 and about her scolding and beating the deceased for having an illicit relationship with the third person. In the said complaint about thirty others have also signed. Both the Investigating Officers/P.W.11 and P.W.12 have admitted that they were aware of the complaint given by D.W.6 and others and the said complaint was available in the Police Station. Strangely both P.W.11 and P.W.12 have not investigated into the said complaint. It is not their case that D.W.6 had given a false complaint. Therefore, it is clear that the Investigating Officers have ignored the version in the said complaint and have not taken any effort to ascertain the truth.

16. This Court is of the view that since the allegation with regards to the dowry demand is vague, the fact that P.W.4 herself has admitted that there was a quarrel between the appellant and the deceased since the appellant suspected her character, the fact that D.W.6 and others have made a complaint which has been ignored by P.W.11 and P.W.12



probablises the defence case that there was no cruelty either on account of dowry demand or cruelty of such a nature which would drive a woman to commit suicide.

17. Since this Court is of the view that cruelty has not been established by the prosecution, the offence under Section 306 of the IPC is also not made out. There is no evidence to suggest that the conduct of the appellant was such that the deceased had no other option but to commit suicide. It would be useful to refer to the observations of the Hon'ble Supreme Court in ***Gurcharan Singh Vs. State of Punjab (cited supra)*** which is extracted hereunder:

13. Section 107 IPC defines “abetment” and in this case, the following part of the section will bear consideration:

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

First. — Instigates any person to do that thing; or

* * *

Thirdly. — Intentionally aids, by any act or illegal omission, the doing of that thing.”



14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the trial court as well as the High Court never examined whether the appellant had the mens rea for the crime he is held to have committed. The conviction of the appellant by the trial court as well as the High Court on the theory that the woman with two young kids might have committed suicide possibly because of the harassment faced by her in the matrimonial house is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.



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16. The necessary ingredients for the offence under Section 306 IPC were considered in S.S. Chheena v. Vijay Kumar Mahajan where explaining the concept of abetment, Dalveer Bhandari, J. wrote as under : (SCC p. 197, para 25)

“25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

17. While dealing with a case of abetment of suicide in Amalendu Pal v. State of W.B, Dr M.K. Sharma, J. writing for the Division Bench explained the parameters of Section 306 IPC in the following terms : (SCC p. 712, paras 12-13)

“12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and



harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable.

13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC.”

18. In Mangat Ram v. State of Haryana which again was a case of wife's unnatural death, speaking for the Division Bench, K.S.P. Radhakrishnan, J. rightly observed as under : (SCC p. 606, para 24)

“24. We find it difficult to comprehend the reasoning of the High Court [Mangat Ram v. State of Haryana, Criminal Appeal No. 592-SB of 1997, decided on 27-5-2008 (P&H)] that “no prudent man is to commit suicide unless abetted to do so”. A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties,



disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.”

18. Therefore, this Court is of the view that the prosecution has failed to establish the guilt of the appellant behind reasonable doubt and hence, the Judgment of conviction passed in S.C.No.37 of 2016, dated 26.04.2017 on the file of learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode is liable to be set aside.

19. As a result, this Criminal Appeal is allowed. The appellant is acquitted of all the charges framed against him and he is directed to be set at liberty forthwith unless his custody is required in connection with any other case. The fine amount, if any, paid by the appellant shall be refunded. The bail bond, if any, executed shall stand discharged.

07.12.2023

Index : Yes/No



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Neutral citation : Yes/No
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To

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



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SUNDER MOHAN, J.

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