



Crl.A.No.96 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2023

CORAM:

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

Criminal Appeal No.96 of 2020

G.Udaya Kumar

.. Appellant

/versus/

1.State Rep.by
The Inspector of Police,
Madipakkam Police Station,
Chennai.
Crime No.2327 of 2015

2.Tharasankar
Respondents

..

Criminal Appeal has been filed under Section 378(4) of Criminal Procedure Code praying to set aside the judgment dated 27.05.2019 in S.C.No.77 of 2016 on the file of the Sessions Judge Mahila Court, Chengalpattu, acquitting the 2nd respondent/accused for the alleged offence under Section 306 I.P.C., and consequently to punish the accused with the maximum sentence for the offence under Section 306 I.P.C.

For Appellant : Mr.T.Saikrishnan

For R1 : Mr.Kishore Kumar
Government Advocate (Crl.Side)



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For R2

: M/s.Rohini Ravikumar

JUDGMENT

The Criminal Appeal against the acquittal preferred by PW.6, who is none other than the brother of the deceased, who committed suicide allegedly due to cruelty met out at the hands of her husband.

2.The brief facts of the case leading to this appeal are as below:-

Tharasankar/the accused herein and Kavitha, deceased are married some years ago and had two children, one by name Vandanasivani and the other Yuvanshankar. The accused herein before the occurrence has lost his job and he has no reasonable income on his own and his deceased wife, who was working as an Assistant Professor in a college. After the marriage, she resigned the job and was a home maker. This has led to misunderstanding between them and frequent quarrel including verbal and physical abuse. On 12.09.2015 at about 18.00 hours, the deceased asked the accused to purchase some plastic cover for disposing wastes. Unfortunately, the accused has not purchased



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the plastic cover of bigger size, there was a verbal abuse, this was witnessed by their children. Later the entire family retired to sleep. The accused/husband and their two children went to sleep in their bed room, whereas the deceased wife slept in the hall. On the next day i.e., on 13.09.2015 at about 7.00 a.m., the deceased was not found and the computer room of the house was locked inside. Thereafter, the doors of the computer room broke opened and the deceased was found hanging from the ceiling fan. At about 11.30 a.m., a complaint was given by the neighbour by name Chandrasekar about the suspicious death of Kavitha. The case was registered in Crime No.2327 of 2015 under Section 173 Cr.P.C., and taken up for investigation.

3. Later in the course of investigation, the Investigating Officer sworn that Kavitha probably committed suicide due to physical and verbal cruelty caused by her husband and the husband has induced his wife Kavitha to commit suicide. Hence the charge sheet was altered from 173 Cr.P.C. to 306 I.P.C., and report has been forwarded to the learned Judicial Magistrate, Alandur and the accused was arrested on



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14.09.2015. On completion of investigation, a Final Report was filed in P.R.C.No.23 of 2016 before the learned Judicial Magistrate, Alandur. Copies were furnished to the accused and the accused was committed to the learned Principal District and Sessions Judge, Chengalpattu. Being tried exclusively by the Court of Sessions, the matter was made out to the Mahila Court, Chengalpattu and tried in S.C.No.77 of 2016 and charge under Section 306 I.P.C., was framed against the accused. The accused denied the charge and sought for trial.

4. To prove the charge, the prosecution has examined seventeen (17) witnesses and marked nine (9) exhibits. The iron crowbar used for breaking the door and Dhupatta, in which, the deceased hung herself were marked as M.O.Nos.1 and 2.

5. Before the Trial Court, the *de facto* complainant/PW.1 had spoken about the complaint given by him to the police, which has been marked as Ex.P1. The facts what he heard from the accused and what he has seen after visiting the house of the accused was deposed by him and



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another neighbour by name Sudharai both reside in the same apartment.

The key witnesses for the prosecution were the children of the accused PW.4, Yuvanshankar aged about 11 years at the time of deposing and PW.5, Vandanasivani aged about 8 years at the time of occurrence had spoken about the incompatibility between the parents and the incident of harassment abused both verbal and physical particularly PW.4, Yuvansankar son aged 11 years had deposed that on the date of occurrence when his mother questioned the father for buying a smaller size plastic cover, his father threw the cover on the face of his mother and abused her with filthy language and also assaulted her. Thereafter, they all retired to bed. PW.5 Vanthanashivani, daughter, who was aged about 8 years at the time of deposing, has supported and corroborated the version of PW.4. PW.6 to PW.9 who are the brother and two cousins of the deceased.

6. The Trial Court, on appreciating the evidence, particularly the evidence of PW.4 and PW.5 in support of the occurrence witnesses of the alleged cruelty and abetment to commit suicide, their previous



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statement which has been contradicted in the cross examination besides the post-mortem report, which does not disclose any external injury that there was no evidence to hold abetment or inducement on the part of the accused, who forced the deceased to commit suicide. The ingredient for the offence under Section 306 I.P.C., namely abetment found not proved through the prosecution witnesses, acquitted the accused holding that the prosecution has failed to prove the case beyond all reasonable doubt. The Trial Court, while holding that the prosecution has failed to prove the case beyond reasonable doubt, has also made certain observation about the temperament of the said Kavitha and has held that she had been suffering from some sort of weak mind due to domestic economic problem and unable to get over and took an extreme decision to end her life.

7. The learned counsel appearing for the appellant submitted that inspite of strong evidence of sustaining cruelty committed by the husband, which has forced the deceased to commit suicide, satisfies the required ingredient to punish the person under Section 306 I.P.C. The



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Trial Court erred in acquitting the accused on the ground that the prosecution has failed to prove the case beyond reasonable doubt. The evidence of PW.4 and PW.5 son and daughter of the deceased and the accused, is natural and wholly reliable. Minor contradiction in their testimony or omission to state certain facts not said in the course of investigation cannot be the ground to disbelieve the case in toto. Similarly PW.6 to PW.9 are the relatives of the deceased. Undoubtedly, they are most competent witnesses to speak about cruelty met by the deceased and they have deposed about the conduct of the accused even during pregnancy period of the deceased.

8. Particularly, the learned counsel for the appellant would refer the evidence of PW.4, who had spoken about the incident of taking her minor son to the mental hospital though he had no mental illness and the doctor who examined in the hospital and said so. PW.4 had deposed that his father (accused) had behaved violently and locked him in the bathroom. According to the learned counsel, this conduct of the accused is singularly enough to indicate that he has aberration to cause cruelty



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which has forced the deceased to take the extreme step to end her life leaving her minor children, who are now under the custody of the appellant/PW.6. The learned counsel has also relied upon the following judgments to buttress his arguments.

- (1) Pattipati Venkaiah (1985) 4 SCC 80*
- (2) Tara Singh & Ors Vs. State of Punjab 1991 Supp(1) SCC 536*
- (3) Balram Singh & Anr Vs. State of Punjab (2003) 11 SCC 286*
- (4) Sahebrao & Anr Vs. State of Maharashtra (2006) 9 SCC 794*
- (5) Ude Singh & Ors Vs. State of Haryana (2019) 17 SCC 301*
- (6) Mahendra K.C. Vs. State of Karnataka & Anr (2022) 2 SCC 129*
- (7) Vajresh Venkatray Anvekar Vs. State of Karnataka (2013) 3 SCC 462*
- (8) Appabhai & Anr Vs. State of Gujarat 1988 (Supp) SCC 241*
- (9) Sohrab & Anr Vs. State of Madhya Pradesh (1972) 3 SCC 751*
- (10) Suryanarayana Vs. State of Karnataka (2001) 9 SCC 129*
- (11) Arjun & Ors Vs. State of Rajasthan 1994 Supp (3) SCC 189*
- (12) Golla Jalla reddy & Ors Vs. State of A.P (1996) 8 SCC 565*

9. The learned counsel for the 2nd respondent/accused would submit that the complaint of unnatural death altered the offence under Section 306 I.P.C., belatedly at the instance of PW.6. The alteration



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report forwarded to the Magistrate belatedly and the witnesses had exaggerated embellished their own statements given during the course of investigation, which is on the whole had made the prosecution case doubtful. Since the Trial Court after appreciating the evidence has acquitted the accused for not establishing the charge beyond all reasonable doubts. The double benefit inured on the accused need not be upset.

10. This Court has given anxious consideration to the facts of the case that was spoken by the witnesses and the dictum laid down by the Hon'ble Supreme Court which are relied upon by the learned counsel for the appellant in ***Pattipati Venkaiah***, the case cited supra, the Hon'ble Supreme Court in paragraph 9 has held that delay in the First Information Report being sent to the Magistrate cannot be a vital factor to disbelieve the case of the prosecution and particularly, case of this nature where the person interested in the welfare of the deceased was not present at the scene of occurrence and living elsewhere and reached the place of occurrence information about the unnatural death will take its own time for himself and give a complaint, since the complaint had already



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formerly given regarding unnatural death lodged by the neighbours, the Investigating Officer, who collected information, have altered the charge and forwarded the alteration report the very next day and same should be reached to the Magistrate and marked as Ex.P.6, which is suffice to show that the Magistrate had received the altered F.I.R., on 14.09.2015 [Ex.P7] along with alteration report [Ex.P.9]. No doubt the delay in F.I.R., being sent to the Magistrate may not be the crucial factor to decide the culpability of the person in this case.

11. The incident has been reported by the police on 13.09.2015 at about 11.30 hours. PW.16 has taken up the investigation arranged for inquest and the inquest got completed at 16.00 hours on 13.09.2015, at that time PW.6 had reached the place of occurrence, but there is no indication of cruelty or abetment to commit suicide due to cruelty being whispered by Panchayatars. It is only the day next the alteration report been has sent and as pointed out by the learned trial Judge. Statements of PW.4 and PW.5 under Section 161 Cr.P.C., who are the most probable witnesses to speak about cruelty and abetment in this case have not said



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anything implicating the accused that soon before the occurrence, there was a provocation for the deceased to take the extreme steps of ending her life. It is not just disbelieved the case of child witnesses, but though they are natural and probable witnesses to speak about the facts of the case. The Trial Court has taken note of the fact that after two years of the occurrence and they have become elder and wiser and under the custody of PW.6 been amenable to his influence.

12. Hence this Court, on holistic appreciation of witnesses the allegation of sustain cruelty which has led to Kavitha committing suicide not been established by the prosecution, the incident which are stated to be the cause for her to take the decision are substantially normal domestic fissures and they cannot be construed as cruelty abetting a person to commit suicide. Therefore, the accused who has already got the order of acquittal by the Trial Court based on the merits of the case, need not be disturbed. Since there is no perversity in the finding of the Trial Court and no merit in the appeal to interfere in the judgment of acquittal given by the Trial Court.



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13. Hence, this Criminal Appeal is dismissed accordingly.

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Index : yes/no

Internet:yes/no

Speaking order/ Non speaking order
rpl

To

1.The Sessions Judge Mahila Court, Chengalpattu.

2.The Inspector of Police,
Madipakkam Police Station,
Chennai.

3.The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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