



Crl.A.(MD)No.153 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 27.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A(MD)No.153 of 2016

1. Saravanan
2. Ramaiyan

... Appellants

vs.

The Deputy Superintendent of Police
Alangudi, Pudukottai District,
Regunathapuram P.S.,
Crime No. 25 of 2014

... Respondent

PRAYER : This Criminal Appeal has been filed under Section 374 of Cr.P.C., to set aside the judgment and conviction dated 12.04.2016 by the learned Sessions Judge, Mahila Court, Pudukottai in S.C. No.14 of 2015 and acquit the appellant.

For Appellant : M/s.Ganapathi Subramanian
(Legal Aid Counsel)
For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate



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JUDGMENT

This Criminal appeal has been filed against the judgment made in S.C. No.14 of 2015 on the file of the learned Sessions Judge, Mahila Court, Pudukottai dated 12.04.2016, thereby convicting the appellants for the offences under sections 498(A) and 306 of IPC.

2. The case of the prosecution is that the first accused is the husband of the deceased and the second accused is the father-in-law of the deceased. The house of the victim is situated opposite to the house of the first accused. The first accused and the deceased fell in love and got married, that too with out the consent of the parents of the deceased. Therefore, both the families were not in talking terms with each other. The deceased was being continuously insulted and verbally abused using filthy language by the accused persons. Therefore, on 05.05.2014 at about 5.00 p.m., the deceased committed suicide by hanging herself in the matrimonial home. After hearing the noise, the father of the deceased came out from home and had seen that the first accused taking the deceased to hospital. However, she was declared dead, hence the complaint.



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3. On receipt of the complaint, First Information Report came to be registered in Crime No.25 of 2014 under section 174(3) of Cr.P.C., and on 06.05.2014, the Revenue Divisional Officer conducted enquiry. The Revenue Divisional Officer's report reveals that the first accused had tortured the deceased to get property from her father. Therefore, unable to bear the harassment, she committed suicide. On receipt of the said report, the respondent police alter the offences under sections 498(A) and 306 of IPC.

4. In order to bring home the charges, the prosecution had examined P.W.1 to P.W.14 and marked documents Ex.P.1 to Ex.P.12 and one material object was marked as M.O.1. On the side of the accused, no oral or documentary evidence was marked.

5. After considering the oral and documentary evidence, the trial court convicted the appellants for the offences under sections 498(A) and 306 of IPC and sentenced the first accused to undergo three years rigorous imprisonment and imposed a fine of Rs.1000/- I/d to undergo



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six months imprisonment for the offence under section 498(A) of IPC and 10 years rigorous imprisonment and to pay a fine of Rs.1000/-I/d to undergo 6 months rigorous imprisonment for the offence under section 306 of IPC. Further second accused is convicted and sentenced to undergo two years rigorous imprisonment and to a pay a fine of Rs.1000/- I/d to undergo six months rigorous imprisonment for the offence under section 498(A) of IPC, three years rigorous imprisonment and a fine of Rs.1000/- i/d to undergo six months rigorous imprisonment for the offence under section 306 of IPC and both the sentences were directed run concurrently. Aggrieved by the same, the present appeal has been filed.

6. The learned counsel for the petitioners would submit that the first accused fell in love with the deceased and got married the victim on 03.06.12 without the consent of the parents. Therefore, both the families were not in talking terms with each other. Till her suicide, she never made any complaint before any police or her parents with regard to the harassment or any demand made by the first accused in respect of her share in the property owned by her parents. The father of the victim was



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examined as P.W.1. He deposed that his wife, who was examined as P.W. 2, while she was taking drinking water the deceased told her that the first accused demanded her share in the property owned by her parents. Therefore, PW.2 advised her that after giving birth to the child they would consider the demand and if during that time the property is partitioned in favour of the deceased, the first accused being a drunkard would sell the property for his liquor. Therefore, there is absolutely no evidence to show that only because of the abetment or instigation by the appellants the deceased had committed suicide. As per post mortem report, she died only due to humiliation. The Post Mortem Report also reveals that she did not suffer injuries on her body. In fact, except the relatives no one had spoken about the cruelty or any harassment committed by the appellants before the Revenue Divisional Officer. In fact, they deposed that the first appellant and the deceased were living together happily. To attract the offence under section 498(A) of IPC, there is absolutely no iota of evidence against the appellants. Even P.W 1 to P.W.3 had made allegations only against the first appellant and no one had spoken about the second appellant, who is the father of the first appellant. In fact, P.W.1 to P.W.3, who are the family members of the



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deceased, have not attended the funeral of the deceased since they were not allowed to do their last rites by the villagers. Immediately after the marriage between the first appellant and the deceased, they never visited the house of the deceased, though they were residing just opposite to the house of the first accused. If at all any demand or any cruelty was committed by the appellants, definitely the parents of the deceased, namely, P.W.1 and P.W.2 would have lodged a complaint as against the appellants. The trial court without considering the above, mechanically dismissed their case under section 113 of the Indian Evidence Act, 1872.

7. Per contra, the learned Additional Public Prosecutor appearing for the respondent would submit that in order to bring the charges to home, the prosecution had examined P.W.1 to P.W.14 and marked documents Ex.P.1 to Ex.P.12 and one material object was marked as M.O.1. On the side of the accused no oral or documentary evidence was produced. The mother of the victim was examined as P.W.2, sister of the victim was examined as P.W.3, another relative was examined as P.W.4. All of them cogently and categorically deposed that the appellants have tortured the deceased and also demanded property. Therefore, she got



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humiliated and only because of the abetment and instigation by the appellants she committed suicide by hanging herself.

8. Initially First Information Report was registered for the offence under section 174(3) of Cr.P.C and at request, the Revenue Divisional Officer conducted enquiry, since the deceased died within a period of seven years from the date of her marriage, and on the enquiry the relatives and Panchayat members have categorically deposed that only because of the torture and harassment made by the appellants, she committed suicide. Therefore, the Revenue Divisional Officer had opined that the deceased had committed suicide only because of the torture and harassment made by the appellants. Therefore, the Revenue Divisional Officer had opined that the deceased committed suicide only because of the cruelty committed by the appellants and on receipt of the said report the offences have been altered to sections 498(A) and 306 of IPC. Therefore, the trial Court had rightly convicted the appellants and it does not warrant any interference by this Court.

9. Heard both side and perused the materials available on record.



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10. The appellants are arrayed as A1 and A2. The first appellant fell in love with the deceased and got married her on 03.06.2012. The second appellant is the father-in-law of the deceased. The close family members of the deceased were examined as P.W.1 to P.W.3. P.W.2 is the mother of the deceased and when she was taking water in the street pipe the deceased told her that her husband in a drunken mood demanded to get her 1/3 share from her parents. It was informed to P.W.1 and P.W.3. Therefore, it was informed that after the birth of the child, the demand would be considered and the share of the deceased will be transferred in her favour. P.W.1 also deposed that after hearing the noise, he came to the house and had seen the deceased was taken by the first appellant herein to the hospital, therefore he came to under stand about the deceased committing suicide by herself.

11. The specific defence taken by the first appellant was that he had gone to play cricket in the after noon. Thereafter, when he visited the house, the deceased was found hanging herself. Her relatives had taken her from the rope and had taken to hospital. Therefore, at the time of the



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alleged occurrence, no one was there in the house and there is no evidence to substantiate the same that the appellants were in the house at the time of occurrence. Admittedly, P.W.1 to P.W.3 were not in talking terms with the appellants after marriage between the first appellant and the deceased, since they got married without the consent of P.W.1 to P.W.3. Even though P.W.2 heard about the demand made by the first appellant in the drunken mood, they did not lodge any complaint before any police and not even informed the same to the elders of the first appellant. The deceased also did not lodge any complaint till her suicide about the torture or cruelty committed by the appellants. Even according to the case of prosecution, the entire allegations are only as against the first appellant and no single allegation has been made as against the second appellant and he has been implicated as an accused, since he happened to be the father of the first appellant. In fact the prosecution even failed to prove that the second appellant was living with the first appellant. In order to prove the offence under section 306 of IPC, it mandates that there must be instigation by the accused persons soon before the death of the deceased. In the case on hand there is absolutely no evidence to show that the accused persons had instigated the deceased to commit suicide.



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Further instigation is to goad, urge forward, provoke, incite, or encourage to do 'an act'. To satisfy the requirement of instigation, though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. At this juncture, it is relevant to rely upon the provisions of section 107 of Cr.P.C., which reads as follows:

“(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity and is of opinion that there is insufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit

(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction”.

12. In the case on hand it is not a case where the appellants had by their act or omission or by a continued course of conduct created such



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circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. It is to be seen that whether the cruelty meted out to the deceased had in fact induced her to end life by committing suicide. It appears to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

13.In the case on hand the deceased was undoubtedly hypersensitive to ordinary petulance, discord and differences which happen in our day-to-day life. Human sensitivity of each individual differs from the other. Further, there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self-esteem and self respect. Therefore, it is impossible to lay



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down any straitjacket formula in dealing with such cases. That apart 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.

14. The Hon'ble Supreme Court and this Court have constantly taken a view that before holding the accused of the offence under section 306 of 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. It is true that married woman committed suicide before completion of seven



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years of marriage there is presumption under Section 113- A of Indian Evidence Act. However, it does not mean that only for the reason that the deceased was harassed and due to dowry demand she committed suicide. Only after proving the same, the said presumption is shifted on the shoulder of the accused to rebut the same. Further on a perusal of the report submitted by the Revenue Divisional Officer, it reveals that there was no dowry demand by the appellants. Except the mother of the deceased no one had spoken about any harassment or cruelty meted out by the appellants. In fact independent witnesses deposed before the Revenue Divisional Officer that the first appellant and the deceased were living happily and they never heard about any harassment or cruelty committed by the appellants. The evidence of P.W.2 cannot be sustained since admittedly after marriage the first appellant and the deceased were not in talking terms with each other. Therefore, the evidence as against the appellants cannot be sustained at any angle since the prosecution failed to prove its charges beyond any reasonable doubts.

15. In the result, the Criminal appeal stands allowed and the judgment and conviction dated 12.04.2016 by the learned Sessions



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Judge, Mahila Court, Pudukottai in S.C. No.14 of 2015 is hereby set aside and the appellants are acquitted from all charges. The bail bonds executed by the appellants also shall stand cancelled.

27.04.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No



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To

- 1.The Sessions Judge, Mahila Court, Pudukottai
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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