



Crl.A.(MD)No.299 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31.08.2023

CORAM

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl. A.(MD)No.299 of 2016

Santhoshkumar @ Kumar

.. Appellant

Vs.

State Rep. by,
The Inspector of Police,
Arumanai Police Station,
Kanyakumari District.
Crime No.42 of 2009

.. Respondent

Prayer : This Criminal Appeal is filed under Sections 374 of Cr.P.C., to set aside the order of conviction and sentence imposed on him by the Mahila Fast Track Court, Nagercoil, Kanyakumari District by means of judgment dated 11.08.2016 made in Session Case No.20 of 2012.

For Appellant	: Mr.S.Palani Velayutham
For Respondents	: Mr.M.Sakthi Kumar
	Government Advocate (Crl. Side)

JUDGMENT

This appeal has been filed by the appellant to set aside the judgment and conviction passed in S.C.No.20 of 2012 dated 11.08.2016, on the file of the learned



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Sessions Judge, Mahila Court, Nagercoil, Kanyakumari District, wherein the sole accused has been convicted for the offence under Section 306 of IPC to undergo 10 years rigorous imprisonment and imposed a fine of Rs.25,000/- in default to undergo one year rigorous imprisonment. Aggrieved by the said judgment, this present Criminal Appeal is filed.

2. According to the prosecution case, the deceased and the accused are husband and wife and they got 3½ years old male child. The accused being unemployed very often in a drunken mood, used to beat the deceased and then the deceased used to go to her parents house. After pacifying by the parents again, she used to come to the house of the accused. While so, when the deceased was conceived one month on 17.10.2008, the accused caused cruelty and assaulted her. Thereby, abortion was caused to the deceased. From 18.10.2008 to 24.10.2008, she was at CSI Medical College Hospital, Karakonam. In the month end of January 2019, one day the accused assaulted the deceased before one Christalbai and thereafter on 12.02.2009, at about 10.00 p.m., the accused harassed the deceased and thereby due to frustration, she consumed poison in the house of the accused and committed suicide. Thereafter, the complaint was given by the P.W.1. Based on the complaint, P.W.11 registered FIR Ex.P7 and then the case was investigated by P.W. 15 and he investigated the case and examined the witnesses and thereafter, filed final



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report as against the accused. After filing the final report, the copies of records relied on by the prosecution were furnished to the accused under Section 207 of Cr.P.C. After appearance of accused, the case was committed to the Principal Sessions Court in S.C.No.20 of 2012. The Principal Sessions Court made over the case to Mahila Court. The learned Judge, Mahila Court after hearing both sides, framed charges as against the appellant for the offence under Section 306 of IPC. After framing charges, the charges were read over and explained to the accused but the accused denied the charges.

3.The prosecution had examined P.W.1 to P.W.15 and marked Exs.P.1 to P.11. On the side of the accused, D.W.1 to D.W.3 were examined and no document was marked. After examination of prosecution witnesses, the accused was examined under Section 313(1)(b) of Cr.P.C., and he denied the evidences.

4.Upon perusing the oral and documentary evidences, the trial Court found the appellant guilty for the offence punishable under Section 306 of IPC. The appellant was convicted under Section 306 of IPC and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.25,000/- in default to undergo one year rigorous imprisonment, by a judgment, dated 14.06.2017.



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5. Aggrieved by the said judgment and conviction, the appellant has preferred this present appeal on the following grounds:-

The Court below failed to see that no evidence available on record to show that the husband of the deceased played any active role to take such an extreme decision by the deceased by committing suicide. None of the witness deposed soon before the death and the deceased was harassed or tortured by the accused. The Ex.P1 complaint does not whispered anything about the alleged harassment or torture met out by the deceased. They are major discrepancies between the evidence of P.W.1 and the FIR. Even according to the evidence of P.W.10, Revenue Divisional Officer, there is no demand of dowry and he added that there was harassment. The duty of the Revenue Divisional Officer is whether death was due to the demand of dowry, but beyond his jurisdiction he recorded about the harassment. P.W.14 Doctor, in his evidence stated that there is no allegation made by the deceased as against the accused with regard to any torture or assault made by the accused. Therefore, it is clear that no abortion occurred due to the assault made by the accused. The above said aspects has not been considered by the trial Court. The trial Court without properly analyzing the evidence, convicted the accused for the offence under Section 306 of IPC. Therefore, the judgment and conviction of the trial Court is liable to be set aside by allowing this appeal.



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6.The learned counsel appearing for the appellant would contend that the complaint Ex.P1 has not whispered anything about harassment made by the accused.

Per contra it reveals that there was frequent wordy quarrel between the deceased and the accused due to intoxication. FIR was registered under Section 174 of Cr.P.C. P.W.10, the Revenue Divisional Officer also filed a report that there is no demand of dowry. Only the accused very often beaten the deceased by intoxication, but there is no whisper about what kind of harassment made. The allegation is a vague one and there is no any specific allegation as against the accused. The charge framed against the accused is that due to the assault made by the accused and due to frustration, the deceased committed suicide. P.W.14 who examined the deceased in relation of abortion deposed that the abortion was incomplete and the same was cured through medicine and to that effect she has given Ex.P10. The date of Ex.P10 is 18.10.2008. The death was 12.02.2009. The aforesaid abortion no way connected with the occurrence. However, in the said abortion, in Ex.P10, there is no reference about any assault made by the accused. The Doctor also admitted in her cross examination that abortion was not done by her. It was done by another doctor. No any reference about the harassment made by the accused and further stated that there is no any nexus between aforesaid abortion and the death of the deceased. P.W.1 who is the complainant has not particularly stated about the harassment made by the accused. Thereby so many contradictions between the prosecution witnesses and the same was



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not considered by the trial Court.

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7.P.W.15 in his evidence admitted that the witnesses P.W.4, P.W.5 and P.W.6 during his enquiry, stated that on 12.02.2009 at about 10.00 p.m., to 12.00 p.m., the accused harassed the deceased and thereby, she taken poison in the house and consumed the same. But P.W.5 and P.W.4 have not witnessed about the same before the trial Court. Further the Investigation Officer has not examined the witnesses near to the place of occurrence. There is no evidence that on the date of occurrence, the accused induced the deceased to commit suicide. No any previous complaint was given either by the parents of the deceased or by the deceased and the post mortem Doctor P.W.9 also in his evidence stated that no injury was found in the body of the deceased. In fact the brother of the deceased borrowed a sum of Rs. 50,000/- from the deceased to go to foreign for the job purpose. Thereafter, he neither gone to foreign nor repaid the amount. Thereby, very often, there was wordy quarrel between the brother and the deceased. The aforesaid amount of Rs.50,000/- was borrowed from one Joseph and he demanded the said money and thereby, the deceased asked about the same from his brother. Since the family of the deceased are not in a position to arrange money, there was dispute arose between them. Due to that frustration on 13.02.2009, the deceased consumed poison and thereafter, at about 00.00 a.m., after hearing the breathe of the deceased, they saw foam on her



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mouth and thereafter, she taken to private hospital but the Doctor reported dead. In order to prove the money dispute between the deceased and her brother, the accused examined D.W.1 to D.W.3 and they deposed about the borrowal of money. The trial Court failed to consider the same and wrongly convicted the accused. Therefore, the accused has not committed any offence as alleged by the prosecution and the prosecution has failed to prove the charges levelled against accused under Section 306 of IPC.

8.The learned Government Advocate appearing for the respondent would contend that initially the case has been registered under Section 174 of Cr.P.C., and thereafter, altered into Section 306 of IPC. The deceased consumed poison due to the harassment made by the accused. P.W.1 is the defacto complainant. He categorically deposed about the harassment made by the accused and P.W.2 and P.W.3 are also categorically deposed about the harassment made by the accused. P.W.5 also deposed about the Panchayat convened by him and advised he both the accused and deceased. D.W.1 is not a pawn broker and his evidence is unacceptable.

9.P.W.14 also deposed about the abortion caused to the deceased in previous occurrence and the Revenue Divisional Officer report also revealed the harassment made by the accused. The trial Court also after taking into consideration



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of all the aspects correctly convicted the accused. Therefore, there is no infirmity found in the judgment and conviction imposed by the trial Court and the appeal is liable to be dismissed.

10. Upon hearing both sides and perusing the records and grounds, the points for determination in this appeal is whether the prosecution has proved the charge against the appellant under Section 306 of IPC beyond reasonable doubt and the judgment and conviction passed by the trial Court are sustainable in law and facts.

Point:-

11. The prosecution case is that the accused harassed the deceased and thereby, she committed suicide by consuming poison on 12.02.2009. In order to prove the case of prosecution, P.W.1 to P.W.15 and marked Ex.P1 to Ex.P12 and on the side of the defence, D.W.1 to D.W.3 examined and no document was marked.

12. In this case, P.W.1 is the brother of the deceased and the defacto complainant. The main charge against the appellant is that on 12.02.2009 at about 12.00 p.m., to 12.00 a.m., in his house, the accused harassed the deceased by beating her and due to frustration, the deceased committed suicide by consuming poison.



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13.P.W.1 in his evidence deposed that the marriage of the deceased and the accused was solemnized in the year 2005. At that time, they presented 25 sovereign of gold jewels and Rs.2,00,000/- cash and 10 cents rubber garden. After marriage, they lived happily for one year. Thereafter, the accused very often beaten the deceased in intoxication. The deceased used to go to her parents house and they after pacifying again came to the house of the accused. While so on 13.02.2009, at about 02.00 a.m., his father-in-law informed that his sister died. Thereafter, he gave a complaint Ex.P1 before the respondent police. Therefore, from the evidence of P.W. 1, it reveals that very often the accused made quarrel with his sister in drunken mood. While so, P.W.2 who is the mother of the deceased in her evidence deposed that the accused very often used to beat her by demanding money for consuming alcohol and also demanded money by selling the rubber estate. Thereafter, they pacified them, and again sent back to her husband's house. One day the accused beat her daughter by demanding money and also insisted to sell rubber estate and jewels. Thereafter, the Panchayat convened. In the meanwhile, on 13.02.2009 at about 02.00 p.m., the father of the accused informed over phone that her daughter died. Therefore, from the evidence of P.W.2 reveals that the accused very often assaulted the deceased by demanding money but the evidence of P.W.1 reveals that the accused very often assaulted the deceased in a drunken mood. Therefore, there is



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major contradiction between the evidence of P.W.1 and P.W.2 with regard to harassment made by the accused.

14.Further P.W.1 in his evidence stated that during his course of investigation, he stated before the police that there is no chance to consume poison by his sister and the accused only could administer the poison to her sister. Therefore, the evidence of P.W.1 shows his anger towards the accused and thereby, the evidence of P.W.1 creates serious doubt over the prosecution case.

15.P.W.2 in her evidence admitted that the jewels of the deceased are with her and she also filed civil case for transferring the rubber estate in favour of her grandson. It shows that there was some misunderstanding between the accused and P.W.2.

16.P.W.3 who is sister of deceased has also deposed that the deceased is a drink addict and very often they pacified the quarrel between the deceased and the accused. In one occasion, the accused kicked the deceased and she got abortion. Thereby, she was admitted in Karakonam hospital. Thereafter, she came to Karakonam. Only on 13.02.2009 she came to know that her sister died by consuming poison. Her sister consumed poison due to the harassment made by the accused.



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17.P.W.4 who is the father of the accused has deposed that his son had given a sum of Rs.50,000/- to P.W.1 to go to foreign for job purpose. There was no dispute between the deceased and his son and he was treated as hostile. However his evidence shows that there was no abortion caused to the deceased due to assault made by the accused.

18.As far as evidence of P.W.5 is concerned, he is third party and former Panchayat President and he deposed that in the year 2007, there was a family dispute between the deceased and the accused. He convened Panchayat and advised them to live together and the accused harassed by intoxication. He was also treated as hostile. P.W.6 who is the mother of the accused, she also stated that the accused gave a sum of Rs.50,000/- to the brother of the deceased i.e. P.W.1 and thereby, there was a dispute between the P.W.1 and accused. Thereby, the deceased consumed poison. P.W.6 also treated as hostile. The majority of witnesses also turned hostile.

19.P.W.9 who conducted autopsy of the deceased in his evidence stated that he along with one other Doctor Subramania Pillai conducted autopsy of the deceased and there was no any injuries found on the deceased. She died due to consuming poison namely Borate. Therefore, according to medical evidence, the



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deceased died due to consume of poison and there is no any injuries found in the body of the deceased.

20.P.W.10 has deposed about the inquest and he deposed that there was no any dispute for one year from the date of marriage and thereafter, there is a dispute with regard to selling of rubber estate and the accused in a drunken mood very often made quarrel with the deceased. But however he stated that the villagers have not stated anything about the quarrel between the deceased and the accused. Therefore, from the evidence of P.W.10 reveals that only close relatives I.e. Parents of the deceased stated before him that the accused caused cruelty but none of the relatives of accused and third parties have stated about the alleged cruelty caused by the accused.

21.According to the prosecution case, the deceased was harassed by the accused prior to the occurrence and one occasion in the year 2008, the accused kicked the deceased on her abdomen and thereby, got aborted 1½ month pregnancy. In this context, P.W.14 was examined and she deposed before the trial Court that on 18.10.2008, the deceased was admitted in the hospital and she was pregnant of 1½ month and she was treated as threatened abortion and on 20.10.2008, they took scan of the deceased and confirmed that there was complete abortion and then she was



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discharged from the hospital. The alleged date of abortion was 18.10.2008. But this occurrence happened on 13.02.2009, after four months. In the deposition of P.W.14, the date of scan is mistakenly mentioned as 22.02.2010 instead of 22.02.2008.

22.P.W.14 in her cross examination stated that there are so many reasons for cause of threatening abortion and there is no nexus between the said abortion and death of deceased. Further she stated that there is no any reference about the cruelty made by the husband at the time of admission in the admission sheet. If the abortion caused by the accused as alleged by the prosecution, the deceased would have stated before the Doctor about the assault made by the accused. But there is no any reference either in the report, Ex.P10 or in the evidence of P.W.14. Therefore, the theory of prosecution that the accused caused cruelty by way of assaulting the victim and due to which, she got abortion has not been proved.

23.Further P.W.15 who investigated the case in his evidence stated that in the FIR, there is no whisper about the demand of dowry and the report of the Revenue Divisional Officer reveals that the accused made quarrel with the deceased in drunken mood. Further he admitted that he did not examine any witnesses in and around, the house of the deceased. According to the prosecution, very often, the accused beaten the deceased with intoxication. But the neighbors of the deceased



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were not examined as witnesses and the same is also admitted by the Investigating Officer. Therefore, the prosecution evidences are not cogent and the evidence P.W.1 to P.W.4 are close relatives to the victim and their evidence also does not disclose that the deceased was subjected for cruelty prior to the occurrence and there is no evidence to show that the deceased was induced by the accused to commit suicide. Therefore, the available evidence is not sufficient to prove the guilt of Section 306 of IPC.

24.Further it is admitted fact that after the demise of deceased, there is civil dispute between both the parties. According to defence version, the P.W.1 i.e. the brother of the deceased borrowed a sum of Rs.50,000/- from the accused and the accused arranged money from D.W.2. The said amount was demanded by the accused and due to that, there was misunderstanding between them. When the accused demanded to repay the money from P.W.1, they refused and thereby the deceased also asked P.W.1 to repay the money and the same was not repaid. Hence, the deceased consumed poison. In order to prove the money transaction on behalf of the accused, he examined D.W.1 and D.W.2. As per evidence of D.W.1, he gave money to accused and the accused in turn given it to P.W.1 and then he demanded to repay the said amount. The P.W.1 and his parents also admitted that the brother of the deceased P.W.1 prepared to go foreign, prior to the death of deceased and



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thereafter, he went to foreign. P.W.6 and P.W.7 who are parents of the accused also deposed before the trial Court that the brother of the deceased borrowed money from the accused. Thereby, there is a misunderstanding between them. Therefore, the theory of defence is probalised. Therefore, the evidences are not sufficient to sustain the conviction and the prosecution has failed to prove the case beyond reasonable doubt. But the trial Court believed the prosecution witnesses and mainly focused on the abortion caused to the deceased. But the evidence of Doctor P.W.14 and Ex.P10 revealed that the abortion was caused to the deceased in the month of October 2008. There is no evidence to prove that the abortion was caused by the deceased. Further after the death of deceased, the son of the deceased was also with the accused and after the death of deceased, there was misunderstanding between the parties with regard transfer of land in favour of the minor child and previous enmity between them. Therefore, the prosecution witness exaggerated the occurrence and the trial Court failed to consider the same and thereby, the judgment and conviction passed by the trial Court is unsustainable and the same is liable to be set aside. The accused is entitled for acquittal by giving benefit of doubt.

25.The trial Court also failed to note that there is no any direct evidence and eye witness to the occurrence and the case is only on circumstantial evidence and the chain of circumstantial evidence without breaking of chain the prosecution



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witness have not adduced evidence. Further the main reason to commit suicide by the deceased is that the accused very often quarrelled with the deceased in intoxication.

But according to the prosecution case, the marriage took place in the year 2005 and thereafter, they lived happily for one year and thereafter, the accused used to harass the deceased. While so the occurrence happened in the year 2009, i.e. after three years. In the meantime, there were panchayat convened for 2 to 3 times, after advise, they lived happily. There is no evidence that soon before the death of deceased, there was quarrel between the deceased and the accused, the alleged happenings stated by the prosecution witnesses are much earlier to the date of death and no dates mentioned with regard to convening of Panchayat. While so, it is the duty of the prosecution to establish that there was inducement made by the accused to commit suicide prior to her death and that inducement relates to the death of the deceased. The allegations and alleged Panchayat are general and no specific allegations against the accused for the particular offence.

26. With the above said general allegations, the accused cannot be convicted for the offences under Section 306 of IPC. There must be some material to show that the accused actively participated in the occurrence.

27. At this juncture, this Court relied upon the judgment of the Hon'ble



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Supreme Court in the case of *Amalendu Pal @ Jhantu v. State of West Bengal*

reported in *(2010) 1 SCC 707*, wherein the Hon'ble Supreme Court in para nos.15

and 16 reads as follows:-

“15. 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 their 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.

16. In order to bring a case within the purview of [Section 306](#) of 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.”

28.This Court relied upon the judgment of this Court in the case of



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P.Venkadesan v. State reported in ***Crl.A.No.68 of 2019***, wherein this Court in para

nos.11 and 12 reads as follows:-

“11.Admittedly there is civil dispute pending between the appellant and deceased and her husband P.W.1. From the oral and documentary evidence produced by the prosecution, this Court finds that except the fact that the appellant filed a suit against the deceased, no mens rea on the part of the appellant. To convict a person for the offence under Section 306 IPC, prosecution has to prove the fact that as no other option, the deceased has driven to take away her life and in this case, it is seen that the appellant filed the suit against the deceased and given some trouble regarding the disputed property. If at all the appellant has given trouble to the deceased, she has to face the same in the manner known to law before the Civil Court in the civil proceedings pending between them and for this reason, one should not go to the extreme level taking away the life. Evidence of P.W.1 itself clear that he advised the deceased to manage the trouble alleged to have given by the appellant.

12.This Court finds that prosecution has failed to prove the ingredient of Section 306 against the appellant. The deceased, instead of resolving her dispute before the Civil Court, given weight to her frustration and hence it will be difficult to penalize the appellant under Section 306 of IPC. Hence, this Court is of the considered view that the appellant is entitled to acquittal extending the benefits of doubt.”

29.On careful reading of the above judgments, it is clear that in order to



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attract the offence under Section 306 of IPC, there must be positive action proximate to time of occurrence on the part of the accused which led or compelled the person to commit suicide. Further the prosecution has to prove the fact as no other option, the deceased has driven to take away her life. In the case on hand, there is no evidence that the accused abetted the deceased to commit suicide. The said case laws are squarely applicable to the present facts of the case. In view of the above judgments and as discussed supra, the prosecution failed to prove charge under Section 306 of IPC as against the accused and he is entitled for acquittal.

30. In the result, the Criminal Appeal is allowed and the judgment and the conviction passed as against the appellant in S.C.No.20 of 2012 dated 11.08.2016 by the learned Sessions Judge, Mahila Fast Track Court, Nagercoil, Kanyakumari District is set aside and the appellant is acquitted from the charge under Section 306 of IPC and he be set at liberty subject to other cases if any. The bail bond if any executed by the appellant shall stand cancelled. The fine amount if any paid by the appellant to be returned to him.

31.08.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Mrn



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P.DHANABAL, J.

Mrn

To

- 1.The Session Judge, Mahila Fast Track Court, Nagercoil.
- 2.The Inspector of Police,
Arumanai Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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