



WEB COPY



Crl.A(MD) No.321 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 19.07.2023

Pronounced on: 04 .09.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

CRIMINAL APPEAL(MD)No.321 of 2016

S.Asaithambi

.. Appellant

Vs.

The Inspector of Police
Kottampatti Police Station,
Madurai District

...Respondent

PRAYER : Criminal Appeal is filed under Section 375(4) of Cr.P.C to call for the records in S.C.No.155 of 2007 dated 04.04.2016 on the file of the learned District Mahila Judge, Madurai, set aside the same and allow the criminal appeal.

For Appellant : Mr.R.Maheswaran

For Respondent : Mr.M.Sakthikumar
Government Advocate(Crl.Side)

JUDGMENT

This Criminal Appeal has been filed against the judgment and conviction passed in S.C. No.155 of 2007 dated 04.04.2016 on the file of the learned Sessions Judge, Mahila Court, Madurai and set aside the same and allow the criminal appeal.



2. The trial Court found the accused guilty for the commission of offences under Sections 306 and 498(A) of IPC and convicted the accused and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo six months simple imprisonment for the offence under section 498(A) of IPC and to undergo ten years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo six months simple imprisonment for the offence under Section 306 of IPC and the sentence shall run concurrently. The appellant was acquitted for the offence under Section 406 of IPC. As against the judgement and conviction of the trial court the present appeal has been filed by the appellant/accused.

3. The case of the prosecution is that the accused is the husband of the deceased. The defacto complainant is the brother of the deceased Muthupandiammal. The said Muthupandiammal married the accused as the second wife. At the time of marriage the parents of the said Muthupandiammal gave sridhana articles and presented stud, nose stud and one ring and also gave household articles. Upto six months they lived happily. Thereafter the accused used to assault the victim to bring money from her parents in a drunken mood and for that frequently the victim went to the house of the defacto complainant and thereafter they used to convene



panchayat and again deceased returned back to her home. Whileso the father of the deceased was doing mazon work and he died after six months from the marriage of the deceased. Since he was working as a mazon the Government has awarded a sum of Rs.10,000/- for the death of the father of the deceased. The accused insisted the deceased to get that Rs.10,000/- from the mother of the deceased and then the accused caused cruelty by beating the deceased to receive the above said Rs.10,000/-. Thereafter the deceased went to her parents home and again convened panchayat and again she returned back to her husband's house. On 20.03.20006 at about 9.30 there was a quarrel between the deceased and the accused and the accused assaulted her and then the deceased left from the home and the same was came to the knowledge of the daughter of the accused and she made phone call to her father and he also made search of the deceased but unable to trace out her. Thereafter on 21.03.2006 the body of the deceased was found in the well of the one Alagan at Ottakovilpatti and thereafter the same was informed to the defacto complainant and then he went to the place of occurrence and saw his sister died. Thereafter he gave a complaint/Ex.P.1 to the police and based on that complaint the First Information Report /Ex.P.10 was registered in Crime No.46 of 2006 under Section 174 of Cr.P.C and thereafter the Revenue Divisional Officer enquired the matter and on his enquiry it



was revealed that the deceased had committed suicide because of the cruelty made by the accused person. The investigating officer investigated the case, examined witnesses and thereafter filed final report by altering the sections from 174 of Cr.P.C into Sections 498(A), 306, 406 of IPC and Section 4 of TNPHW Act. Thereafter the case has been committed to the Principal District Court, Madurai and the same was then made over to the learned Sessions Judge, Mahila Court, Madurai in S.C.No.155 of 2007.

4. After receipt of case records the trial court framed charges for the offences under Sections 406, 498(A) and 306 of IPC as against the accused and the charges were read over and explained to the accused and the accused denied the charges and thereafter the prosecution had examined witnesses P.W.1 to P.W.16 and marked Exhibits Ex.1 to Ex.12 and also marked one material object (four photos). After completion of prosecution evidence the accused was questioned under Section 313(1) (b) of Cr.P.C and he denied the evidence and thereafter the trial Court passed judgment by convicting the accused for the offence Section 306 and 498(A) of IPC and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo six months simple imprisonment for the offence under section 498(A) of IPC and to



undergo ten years rigorous imprisonment and to pay a fine of Rs.5000/- in default to undergo six months simple imprisonment for the offence under Section 306 of IPC and the sentence shall run concurrently. The appellant was acquitted for the offence under Section 406 of IPC.

5. As against the judgment and conviction passed by the Mahila Court, Madurai the present appeal has been preferred by the appellant on the following grounds:

i) the judgement of the trial court is against law, weight of evidence and all probabilities of the case.

ii) the trial court ought to have seen that there is no incriminating circumstance pointing towards this accused with the crime so as to convict the appellant/accused.

iii) the trial court ought to have given the benefit of doubt in favour of the appellant/accused since the mahazhars prepared in the case and inquest report are contra to entire prosecution case and perusal of those documents would prove that the occurrence could not have happened as alleged by the prosecution.



WEB COPY

iv) the trial court failed to appreciate that there is no motive behind the accused to kill the deceased and no chain of evidence to connect the accused with out breaking particularly when the case is purely depends upon the circumstantial evidence as such conviction of the appellant is highly improper.

v) the trial court failed to consider the contradictory evidence of all PWs and P.W.12 about the saree and jacket of the deceased. All PWs stated deceased wore green colour saree and jacket where as PW.12 RDO stated deceased wore red colour saree.

vi) the trial court failed to consider the fact that ingredient of Section 306 of IPC was not found as per the prosecution case and no piece of evidence is therein from the prosecution witness to establish the alleged factum that this accused induced the deceased either by oral or by aid to do commit suicide

vii) the trial court failed to note that no witness is deposed that alleged demand of dowry by this accused.



WEB COPY

viii) the trial court failed to consider the fact that the contradictory statement and evidence of P.W.1 Murugesan that one week before the occurrence he gave a sum of Rs.5000/- to the accused from the compensation amount a sum of Rs.10000/- for the death of his father, whereas P.W.2 Mukkamal the mother of P.W.1 stated in her chief examination she spent all the compensation amount a sum of Rs.10000/- for conducting this case.

ix) The trial court failed to consider the fact that no earlier complaint was lodged about the alleged demand of dowry and no person have been examined on the side of prosecution from the village where the accused and deceased resided as couples.

6. The learned counsel appearing for the appellant would contend that the defacto complainant filed complaint before the respondent police and in the complaint there is no whisper about the alleged demand of Rs.10,000/- which was awarded by the Government for the death of the father of the deceased and no specific allegation with regard to the cruelty but thereafter witnesses at the time of deposing before the Court developed their version and stated about the alleged cruelty. The investigation done by the



investigation officer also creates serious doubts over the prosecution case. Mahazhar and inquest prepared are in total contra with the entire prosecution case. There is no motive behind the accused to instigate the deceased to commit suicide and there is no evidence to prove the guilt of the accused. The trial court failed to note major contradictions between the prosecution witness with regard to the manner of occurrence and earlier complaint was suppressed and the trial court failed to consider the contradictions of the prosecution witnesses and also failed to consider that all the witnesses are relatives of the deceased and no witnesses were examined where the deceased was residing. These are all the major discrepancies and the same have not been considered by the trial court and hence the appellant is entitled for acquittal and therefore the appeal is liable to be allowed and the judgment of the trial Court is to be set aside.

7. The learned Government Advocate(Crl.Side) appearing for the respondent would contend that in this case P.W.1 is the defacto complainant and he deposed about lodging of complaint and the cruelty caused by the accused and demand of Rs.10,000/-and also the panchayat convened through elders. P.W.2 is the mother of the deceased and had deposed about the manner of occurrence and the cruelty caused to the deceased and the panchayat convened for the



dispute between the accused and the deceased. P.W.3,6 and 7 are all independent witnesses and they deposed about the panchayat convened between the accused and the family of the deceased and P.W.4 has deposed about the quarrel between the deceased and the accused on the previous date of occurrence. P.W.5 had deposed about the dead body of the deceased found in the well and P.W.11 has deposed about the preparation of observation mahazhar and rough sketch. PW.8 and 12 have deposed about the post mortem conducted by them. P.W.14 has deposed about the inquest and filed the report. P.W.15 and 16 have deposed about the investigation. Therefore the prosecution has proved the case against the accused beyond reasonable doubts. The prosecution has also examined 16 witnesses and marked 12 documents and one material object. Therefore the prosecution proved the charges levelled against the accused beyond reasonable doubts and the trial court has also considered all these aspects and rightly convicted the accused and hence the appeal is liable to be dismissed.

8. Upon hearing both sides and perusing the judgement of the trial Court and ground of appeal the point for determination in this appeal are:



a) whether the prosecution proved the charges levelled against the accused for the offences under Sections 498(A) and 306 of IPC beyond any reasonable doubt or not ?

b) Whether the judgement and conviction passed by the trial court is sustainable in law and facts.

9. In this case the accused has been charged for the offences under Sections 498(A), 306 and 406 of IPC. The trial court has convicted the accused for the charge under Sections 306 and 498(A) of IPC and acquitted the accused for the offence under Section 406 of IPC. In this case charge under Section 498(A) is concerned the accused often beaten the deceased to get money from her parental home. Prior to one month to the date of occurrence on 20.03.2016 the accused demanded Rs.10,000/- which was given by the Government for the death of the father of the deceased. Thereafter panchayat was convened and then the victim was taken to the house of the deceased and again the accused assaulted the deceased in a drunken mood and tortured the deceased, thereby the deceased had committed suicide, hence he is liable to be punished under Section 498(A) of IPC. As far as charge under Section 306 of IPC is concerned the accused very often assaulted the deceased and



induced to commit suicide thereby on 20.03.2006 at about 9.30 when the accused was in his house and he made quarrel with his wife and assaulted , thereby she committed suicide on 21.03.2006 at 6.25 am., at Ottakovilpatti by jumping into the well of one Alagapan and she drowned in the well and died, hence he committed the offence punishable under Section 306 of IPC.

10. According to the prosecution case the main reason for committing suicide by the deceased is that the accused very often assaulted the victim to bring money from the parental home at last he demanded money of Rs.10,000/- which was given by the Government for the death of the father of the deceased but in the complaint /Ex.P.1 there is no whisper about the alleged demand of Rs.10,000/-. The averments made in the complaint are that :

“என் தங்கை முத்துபாண்டியம்மாள் கூட ஆசைதம்பி அடிக்கடி சண்டை போட்டு விரட்டி நகை மற்றும் பணம் வாங்கி வரச் சொல்லி தொந்தரவு செய்து வந்தாள்.”

11. Where as P.W.1 in his evidence stated that after the death of the father of the deceased the accused demanded solatium amount given to the father of the deceased and beaten her to get that amount. For that 6-7 times the deceased came to the house of



P.W.1 and thereafter convened panchayat and then she was taken back by the accused. One week prior to the date of death the accused the P.W.1 gone to the house of the deceased and at that time P.W.1 gave a sum of Rs.5000/- to the deceased. The P.W.1 is the author of the complaint and he never stated in the complaint about the alleged demand of Rs.10,000/- by the accused, but while deposing before the Court has stated that the accused demanded Rs.10,000/- and beaten the deceased. Therefore the evidence of P.W.1 with regard to the demand of Rs.10,000/- by the accused was developed after the complaint given by the petitioner. It is true that the First Information Report is not an encyclopedia, however the demand of the above said Rs.10,000/- is playing the vital role in this case and the same is missing in the complaint., thereby the evidence of P.W.1 is highly doubtful and the complaint is also doubtful. Further P.W.1 himself admitted that after the disappearance of the deceased, the accused made search and came to his house and asked about the deceased. When he asked about the deceased P.W.2 mother of the deceased told to go and search thoroughly and for that the accused replied that could he went to the well for search her and that this reply is also not found either in the First Information Report or in the 161(3) statement of the P.W.1. According to the complaint the accused demanded jewels and money but according to the charge sheet the accused



demanded Rs.10,000/-. Further P.W.1 in his cross examination has stated that:

“ நான் தான் புகார் கொடுத்தேன். புகாரை அழகர்சாமி தான் எழுதினார். புகார் நானும் எழுதுவதற்கான விவரங்களை நான் தான் சொன்னேன். புகாரில் நானும் என் அம்மாவும் கையொப்பம் செய்தோம் என்றால் சரிதான். புகாரில் சாட்சியாக நானும் என் அம்மாவும் கையொப்பம் செய்தோம் என்றால் சரிதான். புகாரில் சாட்சியாக வெள்ளைகன்னு, சேவுகன்பிச்சை ஆகியோர்கள் கையொப்பம் செய்தார்கள்□

12. Therefore according to the evidence of P.W.1 it reveals that he only gave the complaint and it is a written complaint and the same was written by one Alagarsamy and the contents in the complaint was also dictated by him and he along with his mother put signature in the complaint. In the complaint one Vellaikannu and Sevuganpitchai had also signed as witnesses but Ex.P.1 complaint does not contain signature of mother of P.W.1 ie., P.W.2 and attested signed witnesses of Sevuganpitchai and Vellaikannu. This raised serious doubt about the prosecution case. In this context, P.W.2 also in her evidence during cross examination stated that :

“நாங்கள் இருவரும் போலீஸ் புகார் கொடுத்தோம் என்னை போலீசார் விசாரித்தார்கள்.□

13. Therefore according to the evidence of P.W.1 and P.W.2



both had given complaint but Ex.P.1 reveals that P.W.1 alone had given complaint therefore lodging of complaint itself creates serious doubts over the prosecution case. P.W.2 who is the mother of the deceased in her evidence stated that the accused demanded money and very often her daughter come to her house and after panchayat she use to go back to her husband house. The deceased was murdered by the accused. Not only the accused murdered his first wife but he murdered his mother also. These words of P.W.2 show her frustration and the evidence of P.W.2 is highly doubtful.

14. The main witness in this case is P.W.4 who is the daughter of the deceased. According to the prosecution case she only present on the date of occurrence so the evidence of P.W. 4 plays the vital role in this case. According to the evidence of P.W.4 very often there was quarrel between her father and the deceased and immediately they used to re-union. On that day due to angry the accused assaulted the deceased. When the deceased went out from the house, at that time she dashed against the iron rod which was fitted in the door and she sustained injuries for which she poured powder . Thereafter they went for sleep, while so at about 11 to 11.30 pm., when she woke up the deceased was not present and immediately she called her father and searched her. Since very often



the deceased used to go to her mother's house, on the date also she thought that she would have gone to her mother's house. Therefore according to evidence of P.W.4 on the date of occurrence there was a quarrel between the deceased and the accused and apart from that P.W.4 has not stated anything about the occurrence . Further there was a wordy quarrel between the accused and the deceased and mere wordy quarrel is not sufficient to abet the deceased to commit suicide. Inorder to attract the provision under Section 306 of IPC the actual participation and positive action is essential in aiding or abetting to commit suicide.

15. The prosecution has examined P.W.3,6 and 7 and they stated that they convened panchayat between the family of the deceased and the accused prior to the occurrence.P.W3 in his evidence has stated that he had known the family of the accused as well the family of the deceased. After marriage there was a dispute between the parties and thereby he convened panchayat three times and he reunited them. At that time the deceased sustained injuries on her lips and there was blood strains in her saree but there is no specific date mentioned as to which date the deceased appeared for panchayat with injuries. Even P.W.1 and P.W.2 have not witnessed about the alleged blood injuries and the blood strains on the saree



during panchayat. But P.W.3 introduced the new theory of blood injuries during panchayat. This also creates serious doubts over the evidence of P.W.3 and it does not inspire confidence of the Court.

16. The next witness with regard to panchayat is P.W.6, and he in his evidence has stated that very often the deceased came to the house of her parents and 6-7 times he convened panchayat in some days she appeared with blood injuries and they also warned the accused. There is no reference in his evidence about the alleged demand of Rs.10000/- by the accused. The main prosecution case is that the accused caused cruelty for the amount of Rs.10,000/- which was given by the Government to the death of the father of the deceased but the above said witnesses P.W.3,6 and 7 have not witnessed about the above said demand of Rs.10,000/-. P.W 7 also in his evidence stated that three times he convened panchayat but he did not speak about the injuries sustained by her and he also did not state about the alleged demand of Rs,10000/- by the accused. Therefore the evidence of P.W.3,6 and 7 with regard to the convene of panchayat also creates serious doubts over the prosecution case. Even according to prosecution those three witnesses are villagers of P.W.1 but none of the villagers were examined from the village of the accused. Had the panchayat was held as alleged by the witness the villagers from the



accused also would have participated in the panchayat but none of the witnesses were examined from the village of the accused, thereby the alleged panchayat convened as alleged by the prosecution creates serious doubts. Further P.W.7 also in his cross examination stated that:

“சாதாரண குடும்ப பிரச்சனைக்கு கோவித்து கொண்டு வந்த முத்துபாண்டியம்மாள் நாங்கள் அறிவுரை கூறி அனுப்பி வைத்தோம் என்றால் சரிதான். வரதட்சணை கேட்டுக் கொடுமைப்படுத்தியதாக பிரச்சனை எதுவும் வரவில்லை□

17. In this case there is no controvention that the deceased died due to the drowning into the well, but there is no evidence that the said death was caused due to the abetment of the accused. There is no evidence to hold that the accused demanded money from the deceased and he caused cruelty to her. Further with regard to the alleged previous cruelty no complaint was given by the deceased or by the family members of the deceased. The First Information Report also registered under Section 174 of Cr.P.C and nowhere mentioned about the alleged demand of Rs.10,000/-.

18. P.W.16 in his cross examination admitted that there is one month delay in sending the First Information Report to the Court and no mention about the demand of Rs.10,000/- in the First



Information Report and in the complaint about the alleged assault with intoxication by demanding dowry. These are all major discrepancies in the prosecution case but the trial court convicted the accused by holding that the mainwitnesses have categorically deposed about the panchayat convened by them and P.W.1 also deposed about the demand of money made by the accused and P.W.4 also admitted that on the previous day there was quarrel between the deceased and the accused but the trial court failed to consider that the main charge is with regard to demand of Rs.10,000/- and caused cruelty. Further there is no evidence to prove that when the father of the deceased died and when the said amount was received by the family of the deceased . There is no evidence with regard to that and the investigation officer also failed to investigate in that aspect.

19. The prosecution had examined P.W.8, doctor who conducted post mortem and he deposed that the deceased died due to drowning in the water and no injuries except one injury on the forearm. Therefore there is no dispute with regard to the death and cause of death of the deceased. Now the question is whether the death was caused due to the cruelty caused by the accused. But no sufficient evidence adduced by the prosecution to prove the same. Further the Revenue Divisional Officer conducted post mortem and



witnesses stated that the deceased died due to the murder committed by the accused but the Revenue Divisional Officer filed report that there was demand of dowry. When the witnesses stated that deceased was murdered by the accused the investigation officer failed to investigate the case in that aspect. The above said conduct of witnesses show their intention to rope the accused in this crime.

20. Further the trial court failed to consider that there is no reference in the complaint and the First Information Report with regard to the alleged demand of Rs.10000/- and even according to the case of prosecution during the inquest they all stated that the accused murdered the deceased and he pushed down the deceased in the well and thereby committed murder and it shows the intention of the witnesses to rope the accused in a murder case, Those aspects have not been taken into consideration by the trial court and trial court relied upon the interested witnesses. The investigation officer failed to examine any witness from the place of occurrence i.e., where the deceased was residing. The main reason for causing cruelty is that the above said Rs.10,000/- but there is no evidence to prove that demand of the said money.

21. As per Ex.P.5 the investigation officer admitted that he



did not examine any witnesses from the village of the accused where the deceased was present on the date of occurrence. Further as per Ex.P.5 she knew swimming and the witnesses stated that the accused committed murder of the deceased. P.W.2 also in her evidence stated that the accused only murdered her daughter and the doctor who conducted post mortem in his evidence stated that no injuries found on the deceased except 2X1x1 cm lacerated wound on her left forearm. Therefore from the evidence of P.W.8 it reveals that the victim sustained simple injuries on her hand. P.W.4 also stated that there was injury sustained by the deceased due to dashing in the iron rod. Therefore the prosecution evidence are filled with doubts and with available materials it is unsafe to convict the accused for the offence under Section 498(A) and 306 of IPC.

22. As far as section 498(A) of IPC is concerned the main charge is with regard to the demand of Rs.10,000/- thereby the accused caused cruelty to get Rs.10,000/- but none of the witnesses have witnesses about the alleged demand of Rs.10,000/- and they stated that the accused assaulted the victim and convened panchayat and not stated for what reason panchayat was convened. Therefore the evidence of prosecution witnesses with regard to the alleged cruelty is not specific and are vague.



WEB COPY

23. So far as section 306 of IPC is concerned none of the witnesses have stated about the alleged abetment to commit suicide. In this case no direct evidence and the case is of circumstantial evidence and no chain of evidence without breaking. None of the witnesses have deposed about the demand of Rs.10,000/-, thereby the accused caused cruelty.

24. The learned counsel for the appellant has produced the following judgements in support of his contention:

a) ***The Deputy Superintendent of Police -vs- Natarajan reported in 2008(2)MLJ(cr.)1485***, wherein it is held that

“15. The Hon'ble Apex Court in Marudanal Augusti V. State of Kerala reported in AIR 1980 SC 636 has held that the entire fabric of the prosecution case would collapse if the First Information Report is held to be fabricated. Therefore, we are of the considered view that the learned trial Judge has rightly held that the First Information Report, Ex.P.1, is a fabricated document and as such the entire prosecution case would collapse on this sole ground.

16. The learned trial Judge has rightly rejected the evidence of P.Ws.1 to 4, the alleged eye-witnesses, on the other ground of material contradictions between their evidence. Yet another vital reason given by the learned trial Judge for rejecting the prosecution case is that the prosecution has suppressed the earlier reports recorded from P.Ws.1 and 2. It is seen from the evidence of P.Ws.1 and 2 that even before the deceased was brought to the hospital both of them have been



admitted in the hospital and they have been examined by P.W. 12, the Inspector of Police and it is the categorical version of P.Ws.1 and 2 that P.W.12 recorded their statements and obtained their signatures, but the fact remains that the prosecution has suppressed those reports recorded from P.W.1 and P.W.2 on the night of the date of occurrence, i.e. on 22.10.2002 as it is seen that Ex.P.1 was recorded by P.W.12 at 4.00 a.m. on 23.10.2002. This vital factor and serious infirmity in the prosecution case also throws considerable doubt about the veracity of the prosecution version and the learned trial Judge has also rightly rejected the prosecution case on the ground of suppression of earlier reports”.

25. On a careful reading of the above judgement it is clear that the entire fabric of the prosecution case would collapse if the First Information Report is held to be fabricated. In the case on hand also the prosecution witnesses says that P.W.1 and P.W.2 jointly gave complaint and put signatures and some of the witnesses also attested in the complaint but the said complaint has not been produced before the trial Court and the present complaint only contained the signature of P.W.1 and thereby the prosecution case is highly doubtful and the accused is entitled for benefit of doubt.

b. The judgment of the Hon'ble Apex Court in the case of ***Kashibai and others.vs. The State of Karnataka in Criminal AppealNo.... Of 2023(Arising out of SLP(Crl) No.8584/2022)***,



wherein it is held that

WEB COPY

9. In *M. Mohan Vs. State Represented by the Deputy Superintendent of Police*¹, this Court has elaborately dealt with the provisions contained in [Section 306](#) read with [Section 107](#) IPC, and after discussing various earlier decisions has observed as under: -

"41. This Court in SCC para 20 of Ramesh Kumar [(2001) 9 SCC 618 : 2002 SCC (Cri) 1088] has examined different shades of the meaning of "instigation".

Para 20 reads as under : (SCC p. 629) "20. 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. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation." In the said case this Court came to the conclusion that there is no evidence and material available on record wherefrom an inference of the appellant-accused having abetted commission of suicide by Seema (the appellant's 1 (2011) 3 SCC 626 wife therein) may necessarily be drawn.

42. In [State of W.B. v. Orilal Jaiswal](#) (1994) 1 SCC 73 : 1994 SCC (Cri) 107] this Court has cautioned that (SCC p. 90, para 17) the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference 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.

43. This Court in [Chitresh Kumar Chopra v. State \(Govt. of NCT of Delhi\)](#) [(2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the word "instigation" and "goad". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter.



WEB COPY



CrI.A(MD) No.321 of 2016

Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. 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.

45. The intention of the legislature and the ratio of the cases decided by this Court are 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 this act must have been intended to push the deceased into such a position that he/she committed suicide."

10. In view of the above, it is quite clear that in order to bring the case within the purview of 'Abetment' under [Section 107](#) IPC, there has to be an evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose proving the charge under [Section 306](#) IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide"

26. On a careful reading of the above judgment it is clear that in order to attract the abetment under Section 107 of IPC is concerned there has to be evidence with regard to the instigation, conspiracy or intentional aid on the part of the accused. For the purpose of proving the charge under Section 306 of IPC also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

27. Further in this case there is no evidence with regard to



Crl.A(MD) No.321 of 2016

the instigation, conspiracy or intentional aid on the part of the accused and no evidence with regard to the positive act for the purpose of proving charge under section 306 of IPC.

28. In view of the above discussion this Court is of the opinion that the prosecution failed to prove the charges levelled against the appellant for the offences under Sections 498(A) and 306 of IPC beyond reasonable doubt and the accused is entitled for acquittal and thereby the judgment and conviction passed by the trial court are not sustainable and liable to be set aside.

29. Accordingly this Criminal Appeal is allowed and the judgment and conviction passed by the learned Sessions Judge, Mahila Court, Madurai in S.CNo.155 of 2007 are set aside and the accused is acquitted from the charges under Sections 498(A) and 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 and fine amount, if any, paid by him is ordered to be refunded forthwith.

04.09.2023

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

25/27



Crl.A(MD) No.321 of 2016

aav

To

WEB COPY

1. The Sessions Judge, Mahila Court, Madurai
2. The Inspector of Police
Kottampatti Police Station,
Madurai District.
3. The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.
4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



WEB COPY



Crl.A(MD) No.321 of 2016

P.DHANABAL, J.

aav

CRL.A(MD)No.321 of 2016

04.09.2023