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CRL.A.(MD).No.89 of 2016



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.A.(MD).No.89 of 2016

1.C.Ranjith @ Ranjithkumar

2.P.Jeyaraj

... Appellants/Accused Nos.1 & 2

Vs.

State represented by,
The Inspector of Police,
Allinagaram Police Station,
Theni,
Theni District.
Crime No.1052 of 2010.

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 374 of Cr.P.C to set aside the Judgment dated 25.02.2016 passed in S.C.No.12 of 2014 on the file of the Fast Track Court for Mahalir, Theni, Theni District.

For Appellants

: Mr.V.R.G.Mohan
Legal Aid Counsel

For Respondent

: Mr.K.Sanjay Kumar
Government Advocate (Crl. Side)



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JUDGMENT

This appeal has been preferred as against the Judgment passed in S.C.No.12 of 2014 dated 25.02.2016 on the file of the Fast Track Court for Mahalir, Theni, Theni District, thereby convicted the appellants for the offences under Section 4A of the Dowry Prohibition Act and also under Section 306 of I.P.C.

2.The case of the prosecution is that on 16.12.2010 at about 08.00 p.m., when the deceased was alone in her house, the accused persons came to her house and sexually harassed her by saying that after death, the body is swallowed by the Earth and as such, why don't you come for relationship. Even after being warned by the uncle of the deceased and the husband of the deceased, again on 17.12.2010 at about 06.00 a.m., both the accused came to the house of the deceased and abused about her fidelity and also had given sexual torture. Immediately, at about 08.00 a.m., when her husband came to the house, the same was informed to him. Immediately, he went out to warn the accused persons. In the meanwhile, she committed suicide by jumping into the Vaigai river at about 09.00 a.m and died due to drowsy.



3. On the complaint, F.I.R has been registered against the accused for the offence under Section 306 of I.P.C. After completion of the investigation, the respondent filed a final and the same has been taken cognizance by the trial Court. The trial Court framed charges as against the accused for the offence under Section 4A of the Dowry Prohibition Act and under Section 306 of I.P.C.

4. In order to prove the charges, the prosecution had examined P.W.1 to P.W.11 and marked Exs.P.1 to P.12 and also produced material objects M.O.1 and M.O.2 and on the side of the accused, no one was examined and no documents were produced before the trial Court.

5. On perusal of the oral and documentary evidence, the trial Court found the accused guilty for the offence under Section 4A of the Dowry Prohibition Act and under Section 306 of I.P.C. Both were sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.50,000/- each, in default to undergo two years Rigorous Imprisonment each for the offence under Section 4A of the Women Harassment Act and they were sentenced to undergo 10 years Rigorous Imprisonment each and to pay a fine of Rs.



10,000/- each, in default to undergo one year Rigorous Imprisonment each for the offence under Section 306 of I.P.C. The sentences shall run concurrently. Aggrieved by the same, the present Appeal.

6.The learned counsel appearing for the appellants would submit that the prosecution failed to prove its case beyond any doubt in order to prove the charges to home. The prosecution had examined P.W.1 to P.W.7 and all are interested witnesses. P.W.1 is the mother of the deceased, P.W.2 is the uncle of the deceased, P.W.3 is the husband of the deceased, P.W.4 is the cousin of the deceased husband, P.W.5 is the neighbour of the deceased, P.W.6 is the brother-in-law of the deceased husband and P.W.7 is the sister of the deceased. In order to bring the charge under Section 306 of I.P.C to home, the prosecution failed to examine any witness and failed to produce any material to prove that the deceased committed suicide only on the instigation/abetment caused by the appellants herein.

7.On perusal of all the evidence revealed that there is no concrete evidence for sexual assault. All the evidence is deposed only by hearsay evidence. Only by hearsay evidence, the appellants cannot be convicted for these offences. There are absolutely no



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incriminating materials against the appellants so as to punish under the offence under Section 4A of the Tamil Nadu Prohibition of Harassment of Woman Harassment Act and Section 306 of I.P.C. He further submitted that there are material contradictions with regard to the prosecution and it is fatal to the case of the prosecution. As per the complaint Ex.P.1, it is stated that the earlier incident was not known to P.W.3, whereas he deposed that he already warned the accused persons about their activities. He also further pointed out that the sister of the deceased was examined as P.W.7. She categorically deposed that the deceased used to call her very often and she never disclosed about the harassment made by the accused persons. In fact, P.W.3, the husband of the deceased came to his house on the date of occurrence at about 08.00 a.m. The deceased was informed him about the harassment made by the appellants. Immediately, he went to warn the accused persons. When he returned to his house, she was missing and with the help of others, he made a search for her. Later, they found that her body was found in the Vaigam Dam. Therefore, soon before her death, there was no instigation or abetment by the appellants herein. Hence, he prayed for acquittal of the accused persons.



8.Per contra, the learned Government Advocate (Criminal Side) appearing for the respondent would submit that P.W.1 lodged a complaint alleging that the deceased was harassed by both the accused persons, due to which, she committed suicide by jumping into the Vaigai Dam. The Doctor also opined that she died due to drowning. The uncle of the deceased was examined as P.W.2. He categorically deposed that the deceased used to phone him and informed him about the harassment made by the accused persons. The husband of the deceased was examined as P.W.3. He also categorically deposed that on the date of occurrence, he visited his house and he was informed about the harassment made by the accused persons. When he went outside the house to warn the accused persons, she committed suicide by jumping into the Vaigai Dam. Therefore, the prosecution categorically proved the case and the trial Court rightly convicted the appellants and it does not warrant any interference.

9.Heard the learned counsel appearing on either side and perused the materials available on record.



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10.The deceased got married with P.W.3 and gave birth to a male child. P.W.3 is a lorry driver and he used to visit his house once in a month. On the date of occurrence namely on 17.12.2010, at about 08.00 a.m., he visited his house and he was informed by the deceased that the appellants had harassed her at about 06.00 a.m. Immediately, he went to warn the accused persons. When he came back to his house, the deceased was found missing and later found the deceased in the Vaigai Dam. P.W.1 lodged the complaint, who is the mother of the deceased. She deposed that she lodged the complaint on the information received from others in respect of harassment made by the accused persons. She was not informed by the deceased at any point of time about the harassment made by the accused persons. The uncle of the deceased was examined as P.W.2. He deposed that the deceased called him on 16.12.2010 and he was informed that the accused persons harassed the deceased and compelled her to have a relationship with them. P.W.2 also called the accused persons at about 07.00 p.m to 08.00 p.m., and warned them. On the next day, namely on 17.12.2010, also at about 08.00 a.m., he received phone call from the deceased about the sexual harassment made by the accused persons. He also informed that he would come to her house. Unfortunately, before his arrival, she committed suicide by jumping into the Vaigai Dam



and died. Her husband was examined as P.W.3. He deposed that on the date of occurrence, namely on 17.12.2010, in the morning, he visited his house and he was informed by the deceased that the accused persons tortured her and harassed her. Immediately, he went out of the house in order to warn the accused persons. When he returned to his house, she was found missing and found her body in the Vaigai Dam. Later, he came to understand that she committed suicide. Her sister was examined as P.W.7. She deposed that the deceased used to call her once in four days and she was never informed about the harassment made by the accused persons. However, she was about to suicide only because of the harassment made by the accused persons. The Doctor opined that the deceased died only due to drowning.

11.The point for consideration is whether the prosecution proved the charge under Section 4A of the Tamil Nadu Prohibition of Harassment of Woman Act and under Section 306 of I.P.C.

12.It is relevant to extract the provision under Section 306 of I.P.C, which reads as follows:-



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“306.Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

13.In the case of **Swamy Prahladdas Vs. State of Madhya Pradesh** reported in **1995 Supp (3) SCC 438** reveals that the appellant was charged for an offence under Section 306 I.P.C. on the ground that the appellant during the quarrel is said to have remarked the deceased 'to go and die' . This Court was of the view that mere words uttered by the accused to the deceased 'to go and die' were not even prima facie enough to instigate the deceased to commit suicide. The word 'instigate' denotes incitement or urging to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotional.”



14. On perusal of the records revealed that there is no evidence to prove the charge under Section 306 of I.P.C to home that soon before the death of the deceased, there was harassment by the accused persons. Though P.W.2 deposed that he received phone call through his mobile phone from the deceased, the prosecution failed to produce any material to show that P.W.2 received phone call from the deceased, such as the call details of P.W.2 and the deceased. Further, though P.W.3 deposed that after visiting his house on the date of occurrence at about 08.00 a.m., he was informed by the deceased that the accused persons harassed her, she did not even whisper about the arrival of her husband to P.W.2. According to the deceased, there was harassment made by the accused persons. However, there was no complaint lodged by the deceased, P.W.2 and P.W.3, in fact, they warned them. Therefore, the prosecution failed to prove the charge under Section 306 of I.P.C in the manner known to law.

15. Insofar as the offence under Section 4A of the Tamil Nadu Prohibition of Harassment of Woman Act is concerned, "where the death of a woman is caused by bodily injured or occurs otherwise than under normal circumstances and if it is shown that soon before death, she was subjected to harassment or that in



respect of her, an offence under Section 294, 354 or 509 of the Indian Penal Code was committed, such death shall be called harassment death.”

16. Admittedly, there is no charge for the other offence such as 294(b), 354 or 509 of I.P.C. The prosecution failed to prove that the deceased was harassed by the accused persons soon before her death. Therefore, the offence under Section 4A of the Tamil Nadu Prohibition of Harassment of Woman Act is not at all attracted as against the accused persons. Whereas, there is evidence to show that the deceased was harassed by the accused persons on so many occasions. It was duly informed to P.W.2 and also P.W.3. Both warned the accused persons. Therefore, the offence 4 of the Tamil Nadu Prohibition of Harassment of Woman Act is clearly attracted against the accused persons.

17.Hence, this Court has no hesitation to convict the appellants for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act.

18.The appellants are convicted for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act and they are sentenced to undergo three years Rigorous



Imprisonment each with a fine of Rs.50,000/- each, in default to undergo two years Rigorous Imprisonment each.

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19. Accordingly, the Criminal Appeal is partly allowed. The period of detention already undergone by the appellants shall be set off under Section 428 Cr.P.C. Fine amount, if any, already paid by the appellants shall be adjusted towards the sentence imposed by this Court and if any excess fine amount has been paid, the same shall be refunded. The respondent is directed to secure the appellants to serve the remaining period of sentence for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act.

15.06.2023

NCC : Yes/No
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To

- 1.The Fast Track Court for Mahalir,
Theni,
Theni District.
- 2.The Inspector of Police,
Allinagaram Police Station,
Theni,
Theni District.
- 3.The V.R Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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G.K.ILANTHIRAIYAN, J.

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