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Crl.A.No.603 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

CORAM : JUSTICE N.SESHASAYEE

Crl.A.No.603 of 2017

1.Illayaraja

2.Thangammal

3.Malar

... Appellant / Accused A1, A2 & A3

Vs.

The State rep by

The Deputy Superintendent of Police

Perambalur Sub Division

Perambalur District

(Crime No.798/2014)

... Respondent / Complainant

Prayer : Civil Appeal filed under Section 374(20) of Cr.P.C. against the judgment dated 31.08.2017 made in S.C.No.15 of 2016 passed by the learned Mahila Judge, Perambalur by convicting and sentencing the appellants/A2 and A3 to undergo 5 years Simple Imprisonment and to pay a fine of Rs.3,000/- i/d 18 months S.I.; for the offences U/s.354 of IPC., the appellants/A1 to A3 convicted and sentenced to undergo Simple Imprisonment for 3 years and to pay a fine of Rs.3,000/- in default to undergo ten months Simple Imprisonment; for the offences U/s.498(A) of IPC and the appellants/A1 to A3 convicted and sentenced to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default to undergo 3 years Simple Imprisonment for the offence U/s.306 of IPC.



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For Appellants : Mr.C.D.Johnson
For Respondent : Dr.C.E.Pratap
Government Advocate [Crl. Side]

JUDGMENT

This appeal is preferred by all the three accused persons challenging the judgment convicting and sentencing them in S.C.No.15/2016 on the file of Mahila Court, Perambalur, for offences under Sec.306 IPC and sentencing all the accused persons 10 years rigorous imprisonment with penalty and default sentence if fine not paid.

2.1 A certain Nirmala was married to the first appellant. They both hailed from Perambalur. While Nirmala was working as a Revenue Inspector at Perambalur, the first appellant was working as a Resident Teacher in one of the premier schools in Namakkal. For their separate residence, the couple had taken a property for lease at Perambalur. Appellants 2 and 3 are the mother-in-law and sister-in-law (first appellant's brother's wife) of Nirmala and they were living separately in another house close-by.

2.2 It is in this setting on 24.12.2014 at about 09.00 p.m., Nirmala self-



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immolated her. Her father Raju (P.W.1) and her mother Jayalakshmi (P.W.6) was with her then. Immediately, P.W.1 removed her daughter with burn injuries to the Government Hospital, Perambalur. She was administered first-aid and was referred for better treatment to Government Hospital, Trichy. In between, the Medical Officer attached to Government Hospital, Perambalur, gave Ext.P9 request letter to the Judicial Magistrate, receiving which, the learned Magistrate has recorded Ext.P10 dying declaration of the victim. While so, she being shifted to the Government Hospital, Trichy, Nirmala breathed her last.

2.3 Shortly thereafter, P.W.1 preferred Ext.P1 complaint before Perambalur Police Station, wherein it was alleged that on 24.12.2014, P.W.1 along with his wife visited the matrimonial home of his daughter on the request of his son-in-law, that at around 9.00 p.m., there arose some disputes between the victim and the first appellant, and that her mother-in-law and co-sister joined him to pick up a quarrel with P.W.1 and his wife. In backdrop of these events, the victim emerged from her bedroom in a burnt state. Receiving Ext.P1, P.W.25, the Sub Inspector of Police has registered Ext.P13 FIR in Crime No.798/2014 for offences under Section 174(3) Cr.P.C. against all the accused. P.W.29 Deputy Superintendent of Police,



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Perambalur took over the investigation and he visited the scene of occurrence and prepared Ext.P16 observation mahazar and Ext.P15 rough sketch, and the body was sent for postmortem. P.W.19 doctor conducted autopsy on the body and came out with Ext.P6 postmortem certificate. He also sent a viscera for forensic examination, and Ext.P5 report was received which showed that there is no poison consumed or administered on the victim. The Investigation Officer also collected material objects M.O.1 to M.O.5. Of which, M.O.4 and M.O.5 are two cellphones, and that one cellphone belonged to the victim.

2.4 Upon receipt of report from police, the RDO (P.W.24) conducted enquiry and on confirmation that since the marriage between Nirmala and A1 was less than 7 years at the time when she committed suicide, the RDO conducted his inquest and he came out with Ext.P12, report. As per Ext.P12, there was no dowry demand.

3. Completing the investigation, the Investigating Officer laid his final report, based on which, the Court framed following charges against all the three accused and the details are as follows :



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<i>Accused</i>	<i>Charges</i>
A1	i. Section 498(A) IPC ii. Section 304B IPC iii. Section 306 IPC iv. Section 222 of Cr.P.C.
A2	i. Section 354 IPC ii. Section 498(A) IPC iii. Section 304B IPC iv. Section 306 IPC v. Section 222 of Cr.P.C.
A3	i. Section 354 of IPC ii. Section 498(A) IPC iii. Section 304B IPC iv. Section 306 IPC v. Section 222 of Cr.P.C.

4. When confronted, all the three accused persons denied the charges levelled against them and the charges came to be tried by the learned Sessions Judge. This Court does not intend to deal with the various evidence at length, given the finding of the trial Court. Indeed, the trial Court has acquitted all the accused of all the charges levelled against them but proceeded to convict the accused persons under Section 306 IPC, for which no charge was framed. This judgment is now under challenge.

5. Heard both sides. The learned counsel for the appellants submitted that when once the Court finds that there is no dowry demand, necessarily Section 304B fails. And the trial Court has essentially relied on Ext.P10



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dying declaration for holding that the accused persons have abetted the victim to commit suicide. If Ext.P10 dying declaration is closely read, nowhere the victim makes a statement accusing either her husband or the other two accused persons nor has abetted her to commit suicide. All it discloses was that the first appellant has been essentially in mute mode vis-a-vis his conversational habits with his wife; that on the date of the occurrence he shared certain aspects of spousal differences to P.W.1 and even slapping on the cheeks of P.W.1. The victim being upset about everything that had happened, she preferred to kill herself. This apart, the first appellant was essentially living in Namakkal and there might have been some spousal differences but to describe, the refusal of the husband to talk to his wife would constitute abetment defies the very defence of abetment under Sec.109 IPC. This apart, the ingredients of Section 306 IPC and 304B IPC are entirely different and they cannot even be superimposed.

6. This Court finds considerable merit in the submissions of the appellants, so much so, this Court straight away enters a finding that the prosecution has not been able to establish that the charges levelled against the appellants are beyond reasonable doubt. Indeed, the trial Court had come to an identical finding but suddenly took a deviated route to convict the



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appellants under Section 306 IPC. As rightly contended by the counsel for the appellants, it is not as if Sec.306 is an inferior offence of the same variety which may enable the Court to convict the accused person for a lower offence when the charges are for a higher and more serious offences. The ingredients that goes to define the offence under Sec.306 IPC hardly fits in with the ingredients that goes to constitute an offence under Sec.304B. Now what the trial Court has attempted is to fit a square pith in a round hole. This is plainly impermissible in criminal jurisprudence.

7. To conclude, the appeal is allowed and the judgment of the learned Mahila Judge, Perambalur in S.C.No.15 of 2016 by convicting and sentencing the appellants is set aside, and the fine amount is directed to be refunded to the appellants herein.

07.08.2024

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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order



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N.SESHASAYEE.J.,

ds

To:

- 1.The Mahila Judge
Perambalur.
- 2.The Deputy Superintendent of Police
Perambalur Sub Division
Perambalur District.

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