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CRL.A No.225/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 27.06.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. A. NO.225 OF 2021

1. Bakrudeen
2. Yusub
3. Noorlahan

.. Appellants

- Vs -

The State, rep. by
The Inspector of Police
Modakurichi Police Station
Erode District.

.. Respondent

Criminal Appeal filed u/s 374 (2) Cr.P.C. praying this Court to call for the records relating to the judgment dated 6.1.2021 made in S.C. No.62 of 2018 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode and set aside the same by allowing this criminal appeal.

For Appellant : Mr. M.Ganesh, for
Mr. N.Manoharan



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For Respondent : Mrs. G.V.KasthuriAPP

JUDGMENT

Assailing the conviction and sentence imposed on the appellants by the learned Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, vide judgment dated 6.1.2021 in S.C. No.62/2018, the present appeal has been filed by the aggrieved appellants.

The appellants stood charged for the offences u/s 306 and 498-A IPC and after trial, the court below, while found the appellants guilty of the offence u/s 498-A IPC and sentenced each of them to undergo rigorous imprisonment for a period of two years along with fine of Rs.10,000/- (Rupees Ten Thousand only) each, in default to undergo simple imprisonment of two months, however, found the appellants not guilty of the offence u/s 306 IPC and acquitted them of the said offence. The fine amount of Rs.30,000/- was directed to be paid to the father and mother of the deceased u/s 357 (1) Cr.P.C. The period of detention already undergone by the appellants were directed to be set off u/s 428 Cr.P.C.



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Aggrieved by the said conviction and sentence imposed on the appellants, the present appeal has been filed by the appellants.

Shorn of unnecessary details, the brief facts necessary for the disposal of this appeal are as under :-

P.W.s 1 and 2 are the parents of the deceased. A-1 is the husband and A-2 and A-3 are the in-laws of the deceased. The marriage between the deceased and A-1 was performed as per Mohammedan rites and customs on 11.5.2012. As the family of P.W.s 1 and 2 were economically backward, the Jamat had catered to the marriage by providing 3 ¼ sovereigns of gold. On the side of P.W.s 1 and 2, they gave ½ sovereign gold ring to A-1 and also gave Rs.40,000/-, in two instalments of Rs.20,000/- to the family of A-1 to A-3.

A-1 was a chronic drunkard and he used to consume liquor and come home and beat the deceased and also insisted on the deceased to consume liquor. The deceased was always in a disturbed state of mind after marriage. In the month of June, 2012, A-2 and A-3 kept A-1 and the deceased in a separate house opposite to their house so as to enable them to lead a separate family.



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During the 2nd week of July, 2012, P.W.s 1 and 2 went to the house of A-2 and A-3 along with flowers and fruits for the purpose of inviting A-1 and the deceased for the function. They also went to the house of A-1 and the deceased. At that time, A-3 came and asked about the balance Rs.10,000/- that is to be paid to A-1 towards the marriage, which P.W.s 1 and 2 assured that they will make ready in a week's time.

On 3.7.2012, at about 12.00 noon, one Babu, who was residing near the house of the accused came to the house of P.W.1 and informed her that the deceased had suffered burn injuries and that she has been taken to Erode Government Hospital and, therefore, took her to Erode Government Hospital. P.W.1 went to the hospital where she found the deceased with serious burn injuries and was being treated and when enquired, the deceased informed her that the money which was given by P.W.s 1 and 2 was taken by A-1 for consumption of liquor and when the deceased enquired him, A-2 and A-3 told that A-1 will only act in the said fashion and that after the marriage with the deceased, there is no happiness in the family and unable to bear the persistent torture, the deceased poured kerosene over her body and ignited herself.



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Upon intimation being given, P.W.13, the Sub Inspector of Police, attached to Modakurichi Police Station came to the hospital and in the presence of P.W.4, upon being certified that the deceased is in a fit state of mind to give the statement, examined the deceased and recorded her statement. After reading over the statement to the deceased, as the fingers of the deceased were burnt, the left leg thumb impression of the deceased was obtained in the statement. P.W.13 also examined P.W.s 1 and 2 and recorded their statements. Returning back to the police station, P.W.13 registered the case in Crime No.310/2012 for the offences u/s 498 (A) and 306 r//w 511 IPC by preparing printed FIR, Ex.P-19. Ex.P-1 is the statement obtained by P.W.13 from the deceased.

Upon admission of the deceased in the hospital with burn injuries, P.W.4 the doctor on duty, gave information, Ex.P-3 to the Court of Judicial Magistrate for recording the dying declaration of the deceased. P.W.4 also prepared Ex.P-6, Admission intimation and Ex.P-7, accident register with regard to the deceased.



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P.W.10, the then Judicial Magistrate No.III, Erode, on receipt of the information to record the dying declaration of the deceased, went to the hospital and upon being certified by P.W.4 through Ex.P-4 with regard to the ability of the deceased to give a dying declaration, P.W.10 proceeded to record the dying declaration of the deceased, Ex.P-12 and the same was certified by P.W.4 by giving Ex.P-5 with regard to the capacity of the deceased to give a dying declaration.

P.W.15, the Inspector of Police, on receipt of the printed FIR in Crime No.310/2012, took up investigation and went to the scene of occurrence and in the presence of witnesses prepared observation mahazar, Ex.P-8 and drew rough sketch, Ex.P-22. P.W.15 also seized a 5 Ltr., kerosene can, M.O.1. P.W.15 also examined the deceased who was admitted in the hospital with burn injuries and recorded her statements. P.W.15 seized one nighty, M.O.2, in the presence of witnesses under Ex.P-24, mahazar. Thereafter, P.W.15 arrested A-1 on 11.7.2012 and sent him to court for judicial remand. The seized objects were sent to Court under Form-95 under Exs.P-25 and P-26. On receipt of intimation regarding the



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death of the deceased under Ex.P-27, P.W.15, gave a requisition to the Revenue Divisional Officer to conduct inquest over the dead body of the deceased, as the deceased had died within 7 years of marriage.

Inspite of the treatment given to the deceased, the deceased succumbed to the burn injuries on 12.7.2012 and since the death of the deceased had taken place within seven years of marriage, intimation was given to P.W.14, the Revenue Divisional Officer to conduct inquest over the dead body of the deceased. Accordingly, P.W.14, the Revenue Divisional Officer conducted inquest over the dead body of the deceased during which time, he examined P.W.s 1 and 2, A-1 to A-3, P.W.8 and other panchayatadars and witnesses and prepared Ex.P-20, the inquest report holding that the death of the deceased was not on account of dowry demand. P.W.14 also gave requisition, Ex.P-11 to the Coimbatore Medical College Hospital for conducting autopsy on the body of the deceased and sent the body through Constable No.247.

Upon receipt of the requisition from the Magistrate, P.W.11, the Assistant Surgeon attached to the Erode Government Hospital, conducted post-



mortem on the body of the deceased and during autopsy, the doctor noted the following :-

“Extract”

After post mortem, P.W.11 issued Ex.P-13, post-mortem report and final opinion, Ex.P-14 opining that the deceased would appear to have died of septic shock produced by burns.

Continuing with the investigation, P.W.15 altered the section of offence to one u/s 498-A and 306 IPC and prepared alteration report, Ex.P-29, which was forwarded to the court. Since A-2 and A-3 had obtained anticipatory bail, they were not arrested. On 14.5.2013, upon transfer, P.W.15 handed over further investigation to P.W.16.

P.W.16, the successor of P.W.15, the in-charge Inspector of Police, continued the investigation left over by P.W.15. Upon perusing the investigation file and after examining further witnesses and recording their further statements, P.W.16 submitted the file to P.W.17 with recommendation to file the final report against the appellants for the offence u/s 498 (A) and 306 IPC.



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P.W.17, on receiving the case records from P.W.16 perused the statements recorded from the various witnesses, however, as he was transferred, P.W.17 submitted the file to P.W.18, his successor.

P.W.18, on taking up further investigation in the case and after perusing the statements recorded of the various witnesses and satisfying himself with regard to the investigation conducted, filed the final report against the A-1 to A-3 before Judicial Magistrate No.III, Erode, for the offences u/s 498-A and 306 IPC.

To establish the charges levelled against the accused, the prosecution examined P.W.s 1 to 18 and marked Exs.P-1 to P-30 and marked M.O.s 1 & 2.

On completion of the evidence on the side of the prosecution, the accused were questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against them in the evidence tendered by the prosecution witnesses. They denied all the incriminating circumstances. On the side of the defence, neither any oral evidence was adduced nor any documents were marked.



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The trial court, on consideration of oral and documentary evidence and other materials, convicted and sentenced A-1 to A-3 as aforesaid and aggrieved by the said conviction and sentence, the present appeal has been filed by the appellants.

Learned counsel appearing for the appellants submitted that it is the specific evidence of P.W.14 as also his report, Ex.P-20 reveals that there was no dowry demand by the appellants. It is the further submission of the learned counsel that even the deceased had specifically stated that she had self-immolated herself and when there is no iota of dowry demand, the case u/s 498A IPC against the appellants cannot be made out and as a consequence thereof, the offence u/s 306 IPC with regard to driving the deceased to commit suicide cannot also be made out.

It is the further submission of the learned counsel that the court below has not properly appreciated Exs.P-20 and P-21 in proper perspective. Further, it is the submission of the learned counsel that the version projected in Ex.P-1, which



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is the earliest document to come into existence ought to be believed as in Ex.P-12, the deceased had given a statement, which has been tutored by the prosecution. Further, it is the specific case of the prosecution that the burn injuries sustained by the deceased is to the extent of 95% which clearly shows that the deceased would not have been in a condition to give the dying declaration and, therefore, no reliance can be placed on the said dying declaration to boost the prosecution version.

It is the further submission of the learned counsel that the evidence of P.W.s 1, 2 8 and 9 are improved testimonies, as could be ascertained from the statements given by them during examination and cross-examination and, therefore, placing reliance on the same to render a finding against the appellants would be wholly unreasonable. Further, there are no materials against A-2 and A-3 either with regard to dowry demand or with regard to driving the deceased to commit suicide and, therefore, the conviction and sentence recorded against A-2 and A-3 cannot be allowed to survive.



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In fine, it is the submission of the learned counsel that there are very many inconsistencies and infirmities in the case projected by the prosecution and the evidence tendered by the witnesses do not inspire confidence to place reliance upon the same to find the appellants guilty of the offence and, therefore, the appellants are entitled to acquittal.

In support of the aforesaid submissions, learned counsel placed reliance upon the following decisions :-

- i) *Rajesh Sharma & Ors. – Vs – State of UP & Ors. (2018 (10) SCC 472);*
- ii) *Wasim – Vs – State (NCT of Delhi) (2019 (7) SCC 435); and*
- iii) *Kumar – Vs – State (MANU/TN/9541/2021)*

Per contra, learned Addl. Public Prosecutor appearing for the respondent submitted that Ex.P-1 read in conjunction with Ex.P-12 clearly establish that the cause of death of the deceased by suicide was on account of the act of the appellants, who had driven the deceased to self-immolate herself. It is the further submission of the learned Addl. Public Prosecutor that the act of A-1 with regard to his drunkard nature stood established through the testimony of the



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witnesses and coupled with the act of A-1 in harassing the deceased by forcing her to consume liquor and also with his verbal assaults against her, the deceased was forced to take the extreme step. Therefore, the act of A-1 squarely attracts the Explanation (a) to Section 498 (A) IPC and the act of A-1 committing cruelty had directly aided and abetted the deceased to commit suicide and, therefore, his conviction and sentence awarded to A-1 deserves to be sustained.

It is the further submission of the learned Addl. Public Prosecutor that A-2 and A-3 as the parents of A-1 had not taken A-1 to task, but rather had prevailed upon the deceased and, in fact, had castigated the deceased and the said act of A-2 and A-3 had driven the deceased to commit suicide and their act in abetting the deceased clearly attracts the offence u/s 498 (A) and 306 IPC and, therefore, the conviction and the consequent sentence imposed on A-2 and A-3 deserves to be sustained.

This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available



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on record as also the decisions relied on by the learned counsel for the appellants.

The death of the deceased on account of burn injuries stood clearly established through the evidence of the doctor, P.W.11 coupled with Exs.P-13 and P-14, the post-mortem certificate and final opinion of P.W.11, wherein, it has been categorically opined that the deceased died due to septic shock produced by burns.

The appellants have been convicted and sentenced for the offence u/s 498 (A) and 306 IPC. Section 498 (A) IPC relates to subjecting a woman to cruelty either by the husband or his relatives. Whereas Section 306 IPC relates to abetment of suicide.

It is to be pointed out that Section 498 (A) and 306 IPC are independent and constitute different offences, however, on the facts and circumstances of an individual case, subjecting a woman to cruelty, though may amount to an offence u/s 498 (A) IPC, however, the conduct amounting to cruelty, as established,



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should leave no other option for the woman except to commit suicide, which alone would amount to abetment. However, merely because an accused is held liable to be punished u/s 498 (A) IPC, it would not suffice to hold the accused guilty of having abetted the commission of suicide by the woman.

Keeping the aforesaid provisions of law in mind, a dissection of the case on hand reveals that the marriage between A-1 and the deceased was an arranged marriage in which there was no demand for dowry, as could be seen from the evidence of P.W.s 1 and 2. In fact, for the said marriage, the Jamat had given the necessary gold and only $\frac{1}{2}$ sovereign of gold in the form of a ring was given to A-1 by P.W.s 1 and 2. In fact, in the inquest, P.W.14, the Revenue Divisional Officer, has clearly held that there was no dowry demand and that the death was no account of dowry. Therefore Explanation (b) to Section 498-A IPC would not stand attracted.

In this backdrop, it is to be seen whether Explanation (b) to Section 498-A IPC would stand attracted. Exs.P-1 and P-12 are the statement given by the deceased to the police and the dying declaration given to P.W.10. While there



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are certain inconsistencies in both the statements, however, one aspect is clear in the said statements that A-1 was a chronic drunkard and that even the amount of Rs.101/-, which was given by the parents of the deceased, viz., P.W.s 1 and 2 were taken by A-1 and utilised for consuming alcohol. In fact, the deceased had specifically spoken about the act of A-1 in trying to make the deceased consume alcohol and had been castigating her based on her looks. The said statement of the deceased, which reflects in both Exs.P-1 and P-12 clearly implicates A-1 in causing cruelty as defined under Explanation (b) to Section 498-A IPC and, therefore, the conviction of A-1 for the offence u/s 498-A IPC stands established beyond a pale of doubt.

When there is a clear statement by the deceased herself in the form of Exs.P-1 and P-12, where she has clearly implicated A-1 for causing mental cruelty to the deceased, thereby driving her to end her life, which evidence has not been shaken by the defence in any manner through any plausible material, there arises no necessity for this Court to scan through the evidence of the other prosecution witnesses so long as the evidence of the deceased is cogent, convincing and it inspires confidence in this Court.



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A careful perusal of the statement, Ex.P-1 and the dying declaration, Ex.P-12, clearly leave no stone unturned in fastening the guilt on A-1 with regard to the commission of offence u/s 498-A IPC. The act of A-1 in consuming alcohol chronically and under its influence, forcing the deceased to consume alcohol, are acts, which would definitely cause mental cruelty to a person and drive them to commit suicide. Therefore, the act of A-1 would clearly fall within the ambit of Explanation (a) to Section 498-A IPC and his conviction under the same stands established.

However, insofar as the conviction of A-2 and A-3 for the offence u/s 498-A IPC, except for the fact that they had not taken any steps to mend the activities of A-1, their act cannot be brought within the contours of Section 498-A IPC. As parents of A-1, the act of A-2 and A-3 in not taking proper steps to correct A-1 is deprecable, but that would in no way be a ground to hold that A-2 and A-3 have also committed the offence u/s 498 (A) IPC. There are no materials, other than the act of A-2 and A-3 in not taking any steps to correct A-1, to hold them



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guilty of the offence u/s 498-A IPC. Therefore, their conviction and consequent sentence recorded u/s 498-A IPC deserves to be set aside.

Insofar as the conviction and sentence recorded against A-1 to A-3 for the offence u/s 306 IPC is concerned, the said provision of law is independent of Section 498-A IPC. To attract the ingredients of abetment, the intention of the accused to aid or instigate or abet the deceased to commit suicide is necessary. Any wilful conduct which is likely to drive the woman to commit suicide is sufficient for conviction u/s 498-A IPC.

It is clear from Exs.P-1 and P-12 that A-1, under the influence of alcohol, had been harassing the deceased, but that cannot be taken to mean that A-1 abetted the deceased to commit suicide. True it is that the act of A-1 had driven the deceased to take the extreme step of committing suicide, but the act of A-1 cannot be taken to mean that he had driven the deceased to commit suicide. Mental cruelty should be established and should have been the aid for instigating the deceased to commit suicide. The act of A-1 should be of such a nature that he had abetted the deceased to commit the offence. However, as aforesaid, the



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act of A-1 was under the influence of alcohol, which was an imprudent act, done by A-1 who was not in his proper senses and, therefore, the said act cannot be brought within the ambit of Section 306 IPC to hold that A-1 had driven the deceased to commit suicide.

Barring the act of A-1 while being under the influence of alcohol, there is no other material connecting A-2 and A-3 with the commission of the offence u/s 306 IPC. There is no evidence to connect A-2 and A-3 for abetting the deceased to commit suicide. May be, as parents of A-1, they had not taken steps to correct A-1, but that cannot be stretched to the extent of holding that A-2 and A-3 had abetted the deceased to commit suicide. When there is clear evidence on record, which negates dowry demand, there could be said to be no abetment driving the deceased to commit suicide and, therefore, Section 306 IPC would not stand attracted. Therefore, the conviction and sentence recorded against A-2 and A-3 for the offence u/s 306 IPC does not merit sustainment and, accordingly, the same deserves to be set aside.



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Though decisions have been relied on by the learned counsel for the appellant, however, it is to be pointed out that in criminal cases, barring the question of law, the case is to be decided on the facts and circumstances of each case. The decisions which have been relied on by the appellants are on the specific facts and circumstances of the case and they do not lay down any legal proposition warranting looking into the same. Therefore, this Court is not going into the individual case laws relied on by the appellants.

Though inconsistencies and infirmities have been pointed out in the evidence of the witnesses, yet it is to be pointed out that the case is premised on the statement, Ex.P-1 and Ex.P-12 dying declaration given to P.W.10. So long as Ex.P-12 stood established, which is not doctored and there is no beneficial deposition for the appellants in the evidence of P.W.10 and coupled with Exs.P4 and P-5 about the mental fitness of the deceased while recording the dying declaration as given by P.W.4, the inconsistencies and infirmities will not come in the way of this Court in analysing the case and rendering a specific finding.

For the reasons aforesaid,



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