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Crl.A.No.280 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

Crl.A.No.280 of 2017

Vinothkumar

... Appellant

Vs.

The State Represented by
The Deputy Superintendent of Police,
Sathyamangalam Police Station,
Erode District.
(Crime No.103 of 2011)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 to set aside the judgment passed in S.C.No.150 of 2016 dated 26.04.2017 by the Additional Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode.

For Appellant : Mr.M.Ganesh
for Mr.N.Manokaran

For Respondent : Mr.S.Rajakumar
Additional Public Prosecutor (Crl.side)



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JUDGMENT

This criminal appeal is filed against the judgment and orders dated 26.04.2017, passed in S.C.No.150/2016 by the learned Additional Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode.

2. The appellant is the accused in S.C.No.150/2016 and is convicted and sentenced as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
306 IPC	Rigorous Imprisonment for ten years and a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for two years.
The period already undergone is directed to be set off under Section 428 Cr.P.C.	

3. The brief case of the prosecution as could be discerned from the oral and documentary evidence is as follows:

3.1. The marriage between the deceased Gomathi and the appellant was solemnized during the year 2008. After the marriage the couple were



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residing in Sathyamangalam for about seven months. They were blessed with a female child. On 31.01.2011, the victim Gomathi committed suicide by hanging in her matrimonial home at about 10.30 p.m.

3.2. Shanmugam (P.W.1) and Padmavathi (P.W.2) are the parents of the deceased Gomathi and on receipt of information about the death of their daughter by hanging they rushed to Sathyamangalam the next day.

3.3. Shanmugam (P.W.1), lodged a complaint (Ex.P1) on 01.02.2011 with the All Women Police Station, Sathyamangalam. In the complaint he had stated that his son-in-law used to drink and was also jobless due to which, there was a difference of opinion between his daughter (deceased) and his son-in-law. They were separated for about one year. Subsequently, Gomathi (deceased) went to the matrimonial home at the request of elders. She was also employed in a Mill at Sathyamangalam and on 31.01.2011 she committed suicide by hanging herself in her matrimonial house.

3.4. Tmt.T.Saroja (P.W.10), the then Sub Inspector of Police received



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the complaint (Ex.P1) from P.W.1 and registered an FIR (Ex.P.13) in Crime No.103/2011 of All Women Police Station, Sathyamangalam under section 174 Cr.P.C.

3.5. Since Gomathi (deceased) died within 7 years of her marriage, P.W.10 sent the First Information Report to the Revenue Divisional Officer for enquiry. She then placed the entire records before Thiru.P.Muthusamy (P.W.12), the then Deputy Superintendent of Police for investigation.

3.6. Tmt.Meenapriya Dharshini (P.W.7), Revenue Divisional Officer, Gobichettipalayam conducted inquest on the body of the deceased in the presence of panchayatdhars and the inquest report was marked as Ex.P6. After completing enquiry she opined that the deceased Gomathi committed suicide since her husband used to consume alcohol and did not also have any permanent job. Her enquiry report was marked as Ex.P10.

3.7. Subramaniam (P.W.3) and Jayanthi (P.W.4) are the siblings of the deceased Gomathi. Their evidence is that the husband of their sister used



to come home in an inebriated condition and did not also go for any job.

According to them, the appellant used to pick up quarrel with their sister (deceased), as a result of which, she committed suicide. The other witnesses corroborated the versions of the prosecution.

3.8. Thiru.P.Muthusamy (P.W.12), Deputy Superintendent of Police took up investigation in Crime No.103/2011, went to the scene of occurrence, prepared an Observation Mahazar (Ex.P4) and a rough sketch (Ex.P14) in the presence of the witnesses Lingannan (P.W.6) and Chinnraj (not examined). He discovered a saree used by the deceased to hang herself in the place of occurrence and sent the same to the Jurisdictional Magistrate under Form 91.

3.9. P.W.12 examined the witnesses individually and recorded their statements under Section 161(3) Cr.PC. He arrested the appellant on 03.04.2012 at 09.15 a.m. at Vadakkupettai Bus stop, Sathyamangalam and recorded his confessional statement. He produced him before the Judicial Magistrate Court, Sathyamangalam for remanding him to judicial custody.



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WEB COPY 3.10. P.W.12, after completing investigation laid a final report before the Judicial Magistrate Court, Sathyamangalam in P.R.C.No.4/2014, who in turn committed the case to the Principal Sessions Court, Erode after furnishing copies of records to the appellant under Section 207 Cr.P.C.

3.11. The learned Principal Sessions Judge, Erode took the case on file in S.C. No.150/2016 and made over the same to the Additional Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode.

3.12. On the side of the prosecution fifteen witnesses, eighteen documents and one Material Object were adduced

3.13. When the appellant was questioned with regard to the circumstances appearing in evidence against him under Section 313 Cr.PC, he denied of having committed any offence. The appellant examined three witnesses on his side.

3.14. The learned Additional Sessions Judge, Magalir Neethi



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Mandram, (Fast Track Mahila Court), Erode after analysing the oral and documentary evidence on record, convicted and sentenced the accused as detailed in paragraph Number 2.

3.15. Aggrieved over the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed.

4. Heard Mr.M.Ganesh, learned counsel appearing for the appellant and Mr.S. Raja Kumar, learned Additional Public Prosecutor appearing for the respondent.

5. Mr.M.Ganesh, learned counsel appearing for the appellant would contend that in the complaint (Ex.P1), P.W.1, the father of the victim did not state that her daughter was treated cruelly by her husband. It is also his contention that both P.W.1 and P.W.2, during enquiry by Revenue Divisional Officer (P.W.7), did not state anything with regard to the alleged harassment meted out to their daughter at the hands of her husband. However, during the course of trial P.W.2 deposed that the appellant used to



come home late in the night in an inebriated condition and torture his wife demanding money from her. His specific contention is that when the Revenue Divisional Officer had concluded that Gomathi (deceased) committed suicide because her husband used to come home after consuming alcohol and did not have any permanent job, the trial court ought not to have convicted the accused since the above acts of the appellant would not amount to cruelty. According to the learned counsel both P.W.1 and P.W.2 had exaggerated the sequence of events since they lost their daughter. Therefore, he prayed for setting aside the conviction and sentence passed by the trial court judge.

6. Per contra, Mr.S.Raja Kumar, learned Additional Public Prosecutor would contend that the trial court had, after analysing the oral/documentary evidence, rightly convicted and sentenced the accused and therefore, no interference is called for by this court and prayed for dismissal of the Criminal Appeal.

7. A perusal of the records shows that Gomathi (deceased) got



married to the appellant during the year 2008 and they were blessed with a female child. It is seen from the evidence on record that the appellant used to consume alcohol and also did not also have any permanent job. The deceased Gomathi at one point of time had come down to her parents' house. However, she was pacified and was sent back to her matrimonial home at Sathyamangalam. Subsequently, on 31.01.2011 she committed suicide by hanging herself in her matrimonial house. The deposition of P.W.1 and P.W.2 was that her daughter was treated cruelly by her husband and therefore, she took the extreme step of committing suicide.

8. At this juncture, it is relevant to extract sections 306 and 107 IPC, which read as under :

"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."

"Section 107 IPC Abetment of a thing

A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or



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Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing”

9. Learned counsel for the appellant relied upon the decision in *Gurcharan Singh vs. State of Punjab* reported in (2020) 10 SCC 200 wherein it has been observed that :

“14. The definition quoted above makes it clear that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing.

15. As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Sec 107 of [IPC](#), the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous. However, what transpires in the present matter is that both the Trial Court as well as the High Court never examined whether appellant had the mens rea for the crime, he is held to have committed. The conviction of Appellant by the Trial Court as well as the High Court on the theory that the woman with two



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young kids might have committed suicide, possibly because of the harassment faced by her in the matrimonial house, is not at all borne out by the evidence in the case. Testimonies of the PWs do not show that the wife was unhappy because of the appellant and she was forced to take such a step on his account.

16. The necessary ingredients for the offence under [section 306 IPC](#) was considered in the case [SS Chheena Vs. Vijay Kumar Mahajan](#)¹ where explaining the concept of abetment, Justice Dalveer Bhandari wrote as under:-

“25. Abetment involves a mental process of instigating a person or intentionally aiding a 1 (2010) 12 SCC 190 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. The intention of the legislature and the ratio of the cases decided by this Court is 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 that act must have been intended to push the deceased into such a position that he committed suicide.”

17. While dealing with a case of abetment of suicide in [Amalendu Pal alias Jhantu vs. State of West Bengal](#)², Dr. Justice M.K. Sharma writing for the Division Bench explained the parameters of [Section 306 IPC](#) in the following terms:

“12. 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



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indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there 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.

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

18. In the case [Mangat Ram Vs. State of Haryana](#)³, which again was a case of wife's unnatural death, speaking for the Division Bench, Justice K.S.P. Radhakrishnanan rightly observed as under:-

“24. We find it difficult to comprehend the reasoning of the High Court that “no prudent man is to commit suicide unless abetted to do so”. A woman may attempt to commit suicide due to various reasons, such as, depression, financial difficulties, disappointment in love, tired of domestic worries, acute or chronic ailments and so on and need not be due to abetment. The reasoning of the High Court that no prudent man will commit suicide unless abetted to do so by someone else, is a perverse reasoning.”

10. In the instant case, there was no demand of dowry as is seen from the evidence of the parents of the victim before the Revenue Divisional Officer (P.W.7). The allegations against the appellant was that he did not go



for any job and therefore was not having any permanent income and also used to come home fully drunk. Though P.W.1 and P.W.2 deposed before the trial court that the appellant used to demand money from his wife after consuming alcohol, the same has not been stated either before the police at the time of lodging the complaint (Ex.P1) or before the Revenue Divisional Officer (P.W.7) during enquiry.

11. The appellant had examined his neighbours as D.W.1 and D.W.2, who had deposed that the couple was living their life peacefully and they had never picked up quarrel with each other. In the instant case, the deceased was aged about 30 years and she also had a female child. She was actually going for a job and her parents at Coimbatore were taking care of her daughter. On the date of occurrence or prior to that there was no quarrel between the husband and wife. Therefore, it cannot be stated that the appellant instigated his wife to commit suicide as there is no proof of direct or indirect act of incitement to the commission of suicide. Moreover a conviction under section 306 IPC cannot be sustained on the allegation of harassment without there being any positive action proximate to the time of



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occurrence on the part of the appellant. In the facts and circumstances, the conviction and sentence passed by the trial court is set aside.

12. In the result,

- i. The Criminal Appeal is allowed.
- ii. Judgment and orders dated 26.04.2017, passed in S.C.No.150 of 2016 by the learned Additional Sessions Judge, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode, is set aside.
- iii. The appellant (accused in S.C. No.150/2016) is acquitted from all the offences, of which he is charged. Bail bonds, if any, shall stand cancelled. Fine amount, if already paid, shall be refunded.

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Index : yes/no
Speaking /Non speaking Order
mtl



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To

1. The Additional Sessions Court, Magalir Neethi Mandram, (Fast Track Mahila Court), Erode.
2. The Deputy Superintendent of Police, Sathyamangalam Police Station, Erode District. (Crime No.103 of 2011)
3. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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