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Crl.A.No.579 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.04.2024

DELIVERED ON : 24.04.2024

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.579 of 2017

Pandian

... Appellant

Vs.

State Represented by
The Deputy Superintendent of Police,
Sethiyathoopu Inner Circle,
Killai Police Station,
Cuddalore District.
(Crime No.113 of 2009)

... Respondent

PRAYER: Criminal Appeal filed under Section 374(2) of Criminal Procedure Code, 1973 to set aside the judgment passed in S.C.No.327 of 2010 dated 04.04.2016 by the Sessions Judge, District Mahila Court, Cuddalore.

For Appellant : Mr.I.Syed Sibghatulla
Legal Aid Counsel

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

JUDGMENT



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This criminal appeal is filed against the Judgment and orders dated 04.04.2016, passed in S.C.No.327 of 2010 by the learned Sessions Judge, District Mahila Court, Cuddalore.

2. The appellant is the accused in S.C.No.327/2010 and is convicted and sentenced by the learned Sessions Judge, District Mahila Court, Cuddalore, as detailed hereunder:

<i>Conviction</i>	<i>Sentence</i>
498(A) IPC	Rigorous Imprisonment for one year and a fine of Rs.500/-, in default, to undergo Rigorous Imprisonment for 3 months.
304(B) IPC	Rigorous Imprisonment for 10 years.
The aforesaid sentences were ordered to run concurrently. The period already undergone has been 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. Anitha(deceased) was married to the appellant. Their marriage



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was solemnised on 30.04.2009 at Thillai Kaliyamman Temple, Chidambaram.

After the marriage, Anitha was residing with the appellant in his joint family. Subsequently, Anitha committed suicide by self immolation on 10.08.2009 at about 4 p.m by locking herself in a room in her matrimonial home.

3.2. Two months prior to the incident, the appellant had sent his wife Anitha (deceased) to her parent's home for getting a sum of Rs.10,000/- towards dowry. Subsequently, during the 18th day of Tamil month of Adi, the appellant reportedly demanded his wife Anitha to get him a gold chain and a motor cycle from her parent's house. Rajakumari (P.W.1), the mother of the deceased informed her husband Ramalingam (P.W.2) in this regard. P.W.2 was working as a coolie in an agricultural farm. He took his daughter to her matrimonial home and informed the appellant that he would get him a gold chain and a motor cycle during Deepavali Festival. However, P.W.1 and P.W.2 were informed that their daughter set herself ablaze. Both of them immediately rushed to the house of the appellant at Thillaividangan Village, where her daughter was lying dead.



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3.3. P.W.1. immediately lodged a complaint (Ex.P.1) with Sub Inspector of Police, Killai Police Station, Cuddalore District, at about 4.30 p.m. On 11.08.2009, at about 9.30 a.m., Thiru.Askar Ali (P.W.6), the Sub Inspector of Police, Killai Police Station, registered an F.I.R. (Ex.P5) in Crime No.113/09, under Section 174(3) Cr.P.C.

3.4. Since Anitha (deceased) died within 7 years of her marriage, P.W.6 sent the First Information Report to the Revenue Divisional Officer for enquiry. He then placed the entire records before Thiru.Ramachandran (P.W.10), the then Superintendent of Police, Sethiathope Division for investigation.

3.5. Dr.Saravanakumar (P.W.5) conducted autopsy on the body of the deceased on 11.08.2009 at 2.30 p.m and found the deceased with 70% burn injury on her face, neck, chest, abdomen, back, both thighs and legs. P.W.5 sent the visceral organs of the deceased for analysis to the Forensic Department, and as per the forensic report no poison was detected in any of



the organs. In the opinion of the doctor (P.W.5), the deceased 'would appear to have died of hypovolemic shock due to burn injuries'.

3.6. P.W.10 took up investigation in Crime No.113/09, went to the scene of occurrence, prepared an Observation Mahazar (Ex.P2) and a rough sketch (Ex.P7) in the presence of the witnesses Vedanta Desikan (P.W.4) and Kavimani (not examined). He recovered a green colour Plastic Can of 5 litres capacity (M.O.1) and a match box (M.O.2) from the place of occurrence under the cover of a mahazar (Ex.P3) in the presence of the same witnesses. He then altered the Sections of law to 498 A, and 304 (B) IPC and sent the alteration report (Ex.P8) to the court.

3.7. Ganesan (P.W.3) is the neighbour of the accused family. He did not support the case of the prosecution and therefore he was treated as hostile by the learned Additional Public Prosecutor with leave of the trial Court .

3.8. Ramesh (P.W.7) and Suresh (P.W.8) are relatives of the deceased



family. The evidence of P.W.7 is that Ramalingam (P.W.2), the father of the deceased informed him that his daughter was sent to his house demanding dowry of Rs.10,000/- and a two wheeler. His further evidence is that Ramalingam (P.W.2) obtained a sum of Rs.10,000/- towards loan for purchase of a two wheeler. On 11.08.2009, he heard that the appellant and his family members set Anitha ablaze on 10.08.2009. He immediately rushed to Thillaividangan Village where he found Anitha dead.

3.9. Suresh (P.W.8) had deposed that Anitha is his wife's elder sister's daughter and that the appellant and Anitha were in love with each other before their marriage. Though both the families initially opposed their marriage, subsequently their marriage was solemnised in Thillai Kaliamman Temple, Chidambaram. During Adi festival, he went to the house of the appellant and gave 'Adi Stridhana'. However, he was informed that Anitha died on 10.08.2009 by self immolation.

3.10. Thiru. Vedanta Desigan (P.W.4), Village Administrative



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Officer, corroborated the versions of the prosecution.

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3.11. Thiru. Ramalingam (P.W.9), Revenue Divisional Officer conducted enquiry with regard to the death of Anitha since she died within 7 years of her marriage. According to him she died on account of demand of dowry . His report was marked as Ex.P6.

3.12. P.W.10 examined the witnesses individually and recorded their statements under Section 161(3) Cr.PC. After concluding investigation, he laid a final report against the accused for the offences punishable under Sections 498(A) and 304(B) IPC before the Judicial Magistrate No.I, Chidambaram, in PRC No.32/2009, who in turn committed the case to the Court of Principal District Sessions Judge, Cuddalore, after furnishing copies of records to the accused under Section 207 Cr.P.C.

3.13. The learned Principal District and Sessions Judge, Cuddalore, took the case on file in S.C. No.327/2010 and made over the same to the Sessions Judge, District Mahila Court, Cuddalore, for conducting trial.



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3.14. 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. However, he did not examine any witness on his side.

3.15. The learned Sessions Judge, Mahila Court, Cuddalore, after analysing the oral and documentary evidence on record, convicted and sentenced the accused as detailed in paragraph Number 2.

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

4. Heard Mr.I.Syed Sibghatulla, learned Legal Aid Counsel appearing for the appellant and Mr.S. Raja Kumar, learned Additional Public Prosecutor appearing for the respondent.

5. This is a case of suicide by self immolation by the victim who was



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married just four months ago. She got married to the accused after falling in love with him and after initial resistance got married in a temple with the consent of both the parents. She committed suicide on 10.08.2009 at about 03.00 pm when she reportedly locked herself in a room and set herself ablaze. It was reportedly after a tiff with her husband who had chided her. The cause of death as ascertained by the Doctor who did the autopsy was that she had 70% burns and she died of hypovolemic shock due to burn injuries.

5.1. P.W.1, the victim's mother and P.W.2, the father had deposed that their daughter was forced to present one motorcycle and one gold chain for her husband and that when P.W.2 could not get the same immediately it had caused pressure on her. In fact P.W.2 had promised to get the desired articles for Deepavali instead of Adi Perukku (the 18th day of Adi month in July-August). Earlier Rs.10,000/- cash was demanded by him and they had to borrow that amount to satisfy his demand.

5.2. Revenue Divisional Officer's report categorically stated that both



the parents of the accused deposed that there was a verbal duel between the victim and their son (the accused) just before the incident. The learned counsel for the appellant even tried to extract from the Investigation Officer that there was no demand for dowry at the time of marriage and that both P.W.1 & P.W.2 when examined by the Investigation Officer had categorically told the same. It was also further suggested by the learned counsel for the appellant to both P.W.1 & P.W.2 that the victim was suffering from stomach pain and it was the cause for the victim to end her life. But the accused in his statement before the Revenue Divisional Officer never mentioned any such ailment. Neither the parents of the accused mentioned any health issues of the victim, that she was having.

5.3. Let us go into the presumption of abetment. Section 113A of the Evidence Act, 1872 lays down that :

- (a) if a married lady commits suicide within seven years of her marriage.
- (b) if her husband or his relative had subjected her to cruelty within the meaning of the term as defined in Section 498-A of IPC, 1860, then the court may raise the presumption of the fact that the husband or



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such relatives of her husband abetted the suicide.

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Thus it is clear that the presumption under Section 113A of the Evidence Act would not automatically apply and is discretionary.

5.4. Cruelty as per Section 498(A) IPC means

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

5.5. It is settled by the Apex Court that the 'essential ingredients' for an offence to qualify as an abetment to suicide are:

- (a) An allegation that either direct or indirect act of incitement to the commission of an offence of suicide.



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(b) Allegations of such actions on the part of the accused which compelled the commission of suicide.

(c) Cogent evidence to establish a positivity action by the accused which should more or less be proximate to the time of occurrence.

(d) *Mens rea* on the part of the accused should be clearly established.

Thus, 'proximity', 'action', 'instigation' and 'intent' are the important ingredients of the evidence to substantiate abetment to commit suicide.

5.6. In the instant case, there has been no clinching evidence of incessant harassment on account of which the victim was left with no option but to put an end to her life. It cannot also be said that the accused intended her to commit suicide. Therefore, it was more important to prove the cruelty part of it. Whether there was cruelty meted out to her? the Revenue Divisional Officer (P.W.9), who is an independent witness had clearly deposed that on enquiry with the five panchayatdhars, it was revealed that the accused and the victim seldom fight with each other but used to compromise soon thereafter. They were not aware of any dowry demand. However, the investigation officer (P.W.10) has also admitted that neither



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P.W.1 nor P.W.2 complained of any demand of dowry at the time of marriage. But the Revenue Divisional Officer in his report had concluded that dowry demand was the single reason for the suicide. This was based on the statement of P.W.1 & P.W.2 before him.

5.7. A careful analysis of the sequence of events keeping in mind the short period of just four months since marriage and also considering that it was a love marriage, what emerges is that the victim was hypersensitive to ordinary petulance and the difference of opinion in domestic life, which cannot be termed as inducement by the accused to drive the victim to commit suicide.

6. In view of the foregoing discussions, I hold that the judgment of the trial court is erroneous and has no legal strength.

7. In the result,

- i. The Criminal Appeal is allowed.



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- ii. Judgment and orders dated 04.04.2016, passed in S.C.No.327 of 2010 by the learned Sessions Judge, District Mahila Court, Cuddalore, is set aside.
- iii. The appellant (accused in S.C. No.327/2010) 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.
- iv. This Court places on record its appreciation to Mr.I.Syed Sibghatulla, learned Legal Aid counsel, for his valuable assistance in deciding this case. The High Court Legal Services Committee shall pay a sum of Rs.10,000/- to the said counsel towards his fee.

24.04.2024

bga
Index : yes/no
Speaking /Non speaking Order



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- To
1. The Sessions Judge, District Mahila Court, Cuddalore,
 2. State Represented by
The Deputy Superintendent of Police,
Sethiyathoopu Inner Circle,
Killai Police Station,
Cuddalore District.
 3. The Public Prosecutor,
High Court, Madras.
 4. The Section Officer, Criminal Section, High Court, Madras.



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R.HEMALATHA, J.

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Pre-Delivery Judgment in
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