



CRL.A(MD).No.148 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	14.12.2023
Pronounced On	:	19.03.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.A(MD).No.148 of 2017

Ganesh @ Gurusankar

.... Appellant

Vs.

The Inspector of Police,
All Women Police Station,
Trichirappalli,
in Crime No.3 of 2015

...Respondent

Prayer : This Criminal Appeal has been filed under Section 378 of Cr.P.C. to admit this appeal on file and call for the records of the Judgment passed by the Hon'ble Sessions Judge, Mahila Court, Tiruchirappalli in S.C.No.50 of 2016 dated 28.04.2017 and to acquit the appellant by setting aside the conviction and sentence by allowing this appeal.

For Appellant : Mr.V.Sasikumar for
Mr.K.Muthukumar

For Respondent : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor



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JUDGMENT

The appellant the accused No.1 in S.C.No.50 of 2016, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli, filed this appeal, challenging the conviction and sentence imposed against him for the offence punishable under Sections 306 and 498 (A) IPC.

2.The marriage was solemnized between the deceased and the appellant on 12.11.2014. The deceased lived in joint family with the appellant and his mother A2. After the marriage, the appellant's mother insisted the deceased to bring the jewels of her, in order to, purchase the land. She also caused cruelty to the deceased. Therefore, the deceased was mentally depressed and committed suicide on 26.02.2015 by hanging. Thereafter, P.W.1, who is the mother of the deceased gave the complaint before the respondent police. Pursuant against which, the respondent police registered the case in crime No.3 of 2015, for the alleged offence under Section 174 of Cr.P.C. After obtaining the RDO report and the investigation, the offence was altered into Sections 498(A) and 368 of IPC. After the alteration of FIR, the the appellant and the other accused were arrested on 27.02.2015 at 10.00 p.m. Thereafter the investigation was



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completed and the final report was filed before the learned Judicial Magistrate No-I, Tiruchirappalli.

3.The learned Judicial Magistrate has taken the case on file in P.R.C.No.2 of 2015. On appearance of the appellant and other accused, copies of documents relied by the prosecution were furnished to the accused under section 207 of Cr.P.C. The learned Judicial Magistrate No.1, found that the offence under Section 498(A) and 306 of IPC are triable only by the Sessions Court and committed the case under Section 209 Cr.P.C., to the learned Principal District and Session Judge, Tiruchirappalli. Thereafter, the case was taken on file in S.C.No.50 of 2016 and made over to the Mahila Court for disposal.

4.The learned trial Judge, framed the necessary charges and questioned the appellant and the other accused and they pleaded not guilty and they stood for trial.

5.The prosecution, to prove the case, examined the witnesses P.W.1 to P.W.19 and exhibited Ex.P1 to Ex.P18 and also marked M.O.1.



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6. On the basis of the evidence of the above prosecution witnesses, the learned trial judge questioned the accused by putting the incriminating material available against them in the prosecution case. The accused denied the same as false and they filed the written submissions under section 313 of Cr.P.C. On the side of the defence, D.W.1 was examined and Ex.D1 and Ex.D2 were marked.

7. DW1 was examined and she deposed that P.W.1 and P.W.6 had illicit intimacy and hence, the same was questioned by P.W.1's husband namely the father of the deceased. In the said occurrence, P.W.1, P.W.6 and other accused conspired together and murdered the father of the deceased.

8. In the said case, the deceased was the witness and hence, P.W.1 threatened the deceased that she should not depose against her in the said case. Therefore, she committed suicide. The deceased informed the same to D.W.1 and other witnesses.

9. The learned trial Judge, after full fledged trial, acquitted the second accused namely the mother of the appellant and convicted the appellant for the alleged offences punishable under Sections 306 and



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498(A) of IPC. Challenging the same, the appellant filed this Criminal Appeal.

10.The learned counsel for the appellant made the following submissions:

To prove the allegation that the appellant demanded jewels of the deceased to purchase the land, the prosecution examined P.W.1 to P.W.11 and P.W.16. P.W.1 to P.W.5 are the family members of the deceased. All have deposed that the deceased made a call to them and informed that the deceased requested to bring the jewels from the mother of the deceased, namely, from PW1 and he also assaulted the deceased, and hence she suffered depression and hence, she committed suicide by hanging. P.W.6 to P.W.11 and P.W.16 have deposed a different story in the Court below. They deposed before the court that the deceased was a witness in the murder case registered against P.W.1 and P.W.6 and the case was registered under Ex.D2. The same was taken on file in S.C.No.159 of 2015. In the said case, P.W.1 was arrested and he was confined in the prison for 50 days. In the said murder case, the deceased was one of the material witnesses. In the said case, it is the specific allegation that the deceased was forced insisted by P.W.1 and P.W.6 to depose in favour of them. Due to the said



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depression, she committed suicide. Therefore, in view of two contrary evidence, the benefit of doubt is to be given to the accused namely the appellant. As per the evidence of P.W.6 to P.W.11 and P.W.16, the deceased was pressurised by P.W.1 and P.W.6 not to depose against them in the murder case pending against them S.C.No.50 of 2016, wherein, her father was murdered by P.W.1 and P.W.6. Therefore, in view of the said pressure, she committed suicide. The said defence was pleaded by the appellant and same was substantiated by D.W.1. The said version also corroborated with the final report filed in the said case and the same was marked as Ex.D1 and Ex.D2. Therefore, the defence was proved not only by preponderance of probability but also beyond reasonable doubt. Therefore, the learned trial Judge committed error in convicting the appellant under Section 306 and 498(A) of IPC. The allegation is concerned, the appellant and his mother insisted the deceased to bring the jewels of the deceased from her mother for purchasing of the land. The initial version is highly improbable on the ground that it is the categorical evidence of P.W.1 and other evidence that the appellant himself had seven sovereigns of jewels given to him at the time of the marriage to P.W.1. In the said circumstances, the case of the prosecution that he demanded jewels is highly improbable one. Further, P.W.16/the Revenue Divisional Officer in the enquiry clearly



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stated that there was no dowry demand. Hence, offences under Sections 498 (A) and 306 of IPC are not made out against the appellant. The learned counsel further submitted that the ingredients of Section 306 of IPC is not made out in this case. There is no evidence on the side of the prosecution to prove the proximity of instigation with that of the death of the deceased. On the other hand, there is an evidence, on the side of the prosecution that the occurrence was proximate to the allegation that the mother of the deceased namely P.W.1 insisted the deceased to give evidence in favour of her in the said murder case. The learned counsel further submitted that according to P.W.18, he received the information on 27.02.2015 at 12:15 p.m. and the accused was arrested on 27.02.2015 at 10.00 p.m. But the evidence of the witnesses is that before arrest he was found inside the police station. Therefore, earlier information was suppressed by the prosecution. Therefore, he seeks for acquittal.

11.Per contra the learned Additional Public Prosecutor made the following submission:

It is true that there were two versions in the prosecution witnesses, but, the same was not a ground to disbelieve the evidence of P.W.1 to P.W. 5. P.W.1 to P.W.5 cogently made the allegation against the appellant that he



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insisted the deceased to bring the jewels. Therefore, the same was properly considered by the learned trial Judge and because of the said pressure, she committed suicide by hanging. He also supported the other reasons stated in the judgment passed by the learned trial Judge.

12.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on records and the impugned judgment and also the precedents relied upon by them.

13. Now,the question arising for consideration in this case is whether the conviction and sentence imposed by the learned trial Judge against the appellants is sustainable?

14.From the records, it is clear that one Kumar was P.W.1's husband. P.W.1 allegedly had illicit relationship with P.W.6. The same was questioned by the said Kumar and also caused the disturbance to P.W.1. Therefore, P.W.1 and P.W.6 conspired together and with the remaining accused in S.C.No.50 of 2015 murdered him. Therefore, the case was registered under Ex.D2 and after completion of the investigation, proper



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final report under Section 302 r/w 120(b) of IPC filed against P.W.1, P.W.6 and other accused and the same was taken on file in S.C.No.50 of 2015. In the said case, P.W.1 was confined in prison for more than 50 days. The deceased was one of the key witness in the said case. Pending the trial, according to P.W.6, P.W.7, P.W.8, P.W.9, P.W.10 and P.W.16, P.W.1 insisted the deceased not to give evidence against her in the said sessions case. She also threatened the deceased to hand over all the jewels if she would not depose in favour of her. Therefore, she received the entire jewels. The said version was disclosed by the deceased to all the witnesses. More particularly, some of the witnesses clearly spoke about that the deceased was met by P.W.1 in the house of the appellant and specifically demanded not to depose against her. It is the further case of the deceased, she recorded the conversation took place between P.W.1 and herself relating to the above aspect ie., she insisted not to depose against her and also the brother of the deceased/P.W.5 also made the same request to the deceased. The said video also disclosed to some of the witnesses. The said video was also furnished to the investigating officer in the present case, but the same was not produced by the investigating officer. In the said version of the witnesses, even though they were treated as hostile, there was no cross examination in this aspect.



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15. But the prosecution has come forward with the case that the appellant demanded the jewels from the deceased to purchase the land and hence, the deceased committed suicide. But there was no evidence to prove the same. P.W.1 and other witnesses deposed that P.W.1 gave 7 sovereigns of jewels to the appellant at the time of marriage and he met P.W.1 and flung the said jewels given to him before her. In view of the said special circumstances of this case, the evidence of P.W.1 that the appellant demanded jewels from the deceased and caused cruelty deserves to be rejected. It is well settled principle to sustain the conviction under Section 306 of IPC, with the aid of Section 113 A of the Indian Evidence Act, there should be a proximate nexus between the commission of suicide and the illegal demand made by the appellant. The Hon'ble Supreme Court in the case of ***Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 at page 626***

12. This provision was introduced by the Criminal Law (Second) Amendment Act, 1983 with effect from 26-12-1983 to meet a social demand to resolve difficulty of proof where helpless married women were eliminated by being forced to commit suicide by the husband or in-laws and incriminating evidence was usually available within the four corners of the



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matrimonial home and hence was not available to anyone outside the occupants of the house. However, still it cannot be lost sight of that the presumption is intended to operate against the accused in the field of criminal law. Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the abovesaid circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression “may presume” suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have



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to have regard to “all the other circumstances of the case”. A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression — “the other circumstances of the case” used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase “may presume” used in Section 113-A is defined in Section 4 of the Evidence Act, which says — “Whenever it is provided by this Act that the court may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it.”

***20.** Instigation is to goad, urge forward, provoke, incite or encourage to do “an act”. To satisfy the requirement of instigation though it is not necessary that actual words must be used to*



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that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

16. Therefore, in this case, this Court does not find any circumstance to presume the continuous course of conduct of the appellant driving the deceased to commit suicide. On the other hand, D.W.1 who is the relative of both deceased and P.W.1 deposed about the motive behind the false implication of the appellant in this case, at the instance of P.W.1 by marking Ex.D1 and Ex.D2. It is the duty of the Court below to give equal treatment to the defence witness as held by the Hon'ble Supreme Court in the case of **Anil Sharma v. State of Jharkhand, (2004) 5 SCC 679 at page 686**



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15. So far as the question as to whether equal treatment was being given to the evidence of prosecution and defence witnesses, is concerned, there can be no quarrel with the proposition in law..

17. Further, the mother of the appellant who has been arrayed as A2 in this case, filed a detailed explanation and the same was not properly considered by the learned trial Judge. In the said explanation she clearly stated that they never demanded the jewels to purchase the land from the deceased and P.W.1, P.W.6 frequently insisted the deceased not to depose against them in the murder case, pending against them, which impelled the deceased to commit suicide. The Hon'ble Supreme Court repeatedly held that the explanation under Section 313 of Cr.P.C., is to be considered which is the one of the component of the fair justice. In this aspect, it is relevant to note the judgment of the Hon'ble Supreme Court in the case of ***Parminder Kaur v. State of Punjab, (2020) 8 SCC 811 at page 820***

IV. Failure to refute Section 313 CrPC statement

22. Under the Code of Criminal Procedure, 1973, after the prosecution closes its evidence and examines all its witnesses, the accused is given an opportunity of explanation through Section 313(1) (b). Any alternate version of events or interpretation proffered by the accused must be carefully analysed



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and considered by the trial court in compliance with the mandate of Section 313(4). Such opportunity is a valuable right of the accused to seek justice and defend oneself. Failure of the trial court to fairly apply its mind and consider the defence, could endanger the conviction itself [Reena Hazarika v. State of Assam, (2019) 13 SCC 289, para 19 : (2019) 4 SCC (Cri) 546] . Unlike the prosecution which needs to prove its case beyond reasonable doubt, the accused merely needs to create reasonable doubt or prove their alternate version by mere preponderance of probabilities [M. Abbas v. State of Kerala, (2001) 10 SCC 103, para 10 : 2002 SCC (Cri) 1270] . Thus, once a plausible version has been put forth in defence at the Section 313 CrPC examination stage, then it is for the prosecution to negate such defence plea.

23. In the case at hand, the alternate version given by the appellant could not be lightly brushed aside. Her two-part defence, put succinctly, was that first there was no male tenant at all and no one except for her child and mother lived with her, and second, that she was being falsely implicated as vengeance for filing a rape complaint against one Bhola Singh with whom the prosecutrix's father used to work.



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18. In this case, not only an explanation was given and the explanation was substantiated by the evidence of the prosecution witness themselves. Apart from that D.W.1's evidence and Ex.D1 and Ex.D2 clearly proved the same. Therefore, this court finds that the reasoning of P.W.6, P.W.10 and P.W.16 and the documents Ex.D1 and Ex.D2 and D.W.1 evidence along with the questioning/explanation under Section 313Cr.P.C., given by A2 about the defence, there is a concrete version, relating to the existence of the circumstances, driving the deceased to commit suicide, without owing to the pressure given by P.W.1 and P.W.6 to depose in favour of them, in the murder case.

19. Looking from another angle, there are two versions available on the side of prosecution relating to the allegation of instigation behind the suicide committed by the deceased. Hence, this Court accepts the argument of the learned counsel for appellant that there are two sets of evidence available in the prosecution case and the benefit of doubt is to be given to the accused.

20. In this case, P.W.1 insisted the deceased during the proximate time to depose in favour of her in the sessions case, pending against her,



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for which, the deceased was the material witness and therefore abetment under Section 306 of IPC also is not available in the evidence of prosecution witness to convict the appellant under Section 306 of IPC, as already the appellant himself flung the jewels of 7 sovereigns given to him, at the time of the marriage and there is no proof for the allegation that the appellant demanded the jewels of the deceased to convict the appellant under Section 498 (A) of IPC and the same is not made out. Hence, in all aspects, the prosecution failed to prove the case.

21. Accordingly, this Criminal Appeal stands allowed and the judgment passed by the learned Sessions Judge, Mahila Court, Tiruchirapalli in S.C.No.50 of 2016 , dtd 28.04.2017 is hereby set aside. The appellant is acquitted from all the charges. The fine amount already paid, is directed to be refunded to the appellant. The bail bond executed by the appellant is hereby cancelled.

19.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Learned Sessions Judge,
Mahila Court, Tiruchirappalli.
2. The Inspector of Police,
All Women Police Station,
Trichirappalli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN,J.

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Pre-delivery judgment made in
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