



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date : 21.08.2025

CORAM:

THE HONOURABLE Dr.JUSTICE R.N.MANJULA

Crl.A.(MD)No.456 of 2017

Selvam @ Selvaraj

... Appellant

vs.

State rep. by
The Inspector of Police,
(Usilampatti Circle)
Uthappanaickanoor Police Station,
Madurai District.
(Crime No.91 of 2013)

...Respondent

PRAYER : This Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code against the Judgement of the learned V Additional District and Sessions Judge, Madurai, dated 24.10.2017 in S.C.No.97 of 2014.

For Appellant : Mr.K.Karnan

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl. Side)



JUDGEMENT

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This appeal has been filed challenging the Judgement of the learned V Additional District and Sessions Judge, Madurai, dated 24.10.2017 in S.C.No.97 of 2014.

2. The appellant is the sole accused, who has been charged and tried for the offence under Section 302 IPC, however found guilty by the learned trial Judge for the offence under Section 306 IPC and convicted and sentenced to undergo 5 years RI and to pay a fine of Rs.2,500/-, in default to undergo 3 months SI.

3. The case of the prosecution as per the records is that the deceased Sundari was the eldest daughter of the defacto complainant. The accused and the deceased married each other and they have been residing at Hosur. The relationship between the couple was not cordial as the accused is said to have been in relationship with another lady. The father of the accused had compromised the dispute between the accused and the deceased and thereafter, the accused ensured that he would take care of the family. On 22.06.2013, the accused demanded the deceased to sell the property settled by his father in the name of their son Sanjay and to give the sale proceeds to him. But, this was not agreed by the



deceased. So, the accused with an intention to murder the deceased, beat her, caught hold of her neck forcibly, pushed her down, poured pesticide into her mouth and sprinkled it all over her body. The deceased was taken to the Hospital where she died on the same day at about 09.00 p.m.

4. On the complaint given by the father of the deceased (PW1), a case has been registered in Crime No.91 of 2013 on the file of the Uthappanaickanoor Police Station, Madurai District. After conclusion of the investigation, charge sheet has been filed against the accused and after completing the legal mandates of furnishing copies and all other legal formalities, charges have been framed against the accused for the offence under Section 302 IPC. When the accused was questioned, he denied his involvement and claimed to be tried.

5. Before the Trial Court, on the side of the prosecution PW1 to PW16 have been examined and Exs.P1 to P14 have been marked. Material Objects M.O.1 to M.O.5 have been marked. On the side of the accused, no oral or documentary evidence has been marked.

6. After the conclusion of trial, the learned trial Judge found the accused guilty for the offence under Section 306 IPC and convicted and



sentenced him as mentioned *supra*. Aggrieved over that, the appellant / accused has preferred this appeal.

7. Mr.K.Karnan, learned counsel appearing for the appellant submitted that even though the offences under sections 302 IPC and 306 IPC are distinct, the learned trial Judge has not chosen to frame independent charge under section 306 IPC by altering the charge and thereby giving reasonable opportunity to the appellant to take his defence; and the appellant ought to have been acquitted when the Court found that there are no sufficient evidence available on record to convict him for the offence under section 302 IPC.

8. Mr.K.Gnanasekaran, learned Government Advocate (Criminal Side) appearing for the respondent submitted that the learned trial Judge had relied on the Judgement of the Apex Court held in **Dalbir Singh versus State of Uttar Pradesh reported in AIR 2004 SC 1990** and observed that the appellant had a fair trial and a knowledge for the charges for which he was tried and hence to convict the appellant for another offence, no alteration of charge needs to be framed.



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9. From Ex.P1 Complaint given by the father of the deceased (PW1), it is seen that he went to the scene of occurrence after hearing about the occurrence and he came to know from his daughter that she consumed poison as she could not put up with the appellant anymore. Probably, because of the same, at the initial stage FIR has been registered under section 306 IPC. However, the Investigation Officer has filed an Alteration Report by altering the charges from 306 IPC to 302 IPC by alleging that he has got materials to make out an offence under section 302 IPC.

10. PW1 has stated in his evidence that on 22.06.2013, when he went and saw his daughter after hearing about the occurrence, his daughter was unconscious, the appellant was holding her and informed him that she had consumed poison. His evidence does not reveal that he had knowledge about any quarrel between the deceased daughter and the appellant prior to the occurrence.

11. PW2 is the brother of the deceased. He has stated in his evidence that he went to the place of occurrence only after 10 minutes. He also witnessed the appellant holding his sister on his lap and he heard from the appellant that his sister had consumed poison.

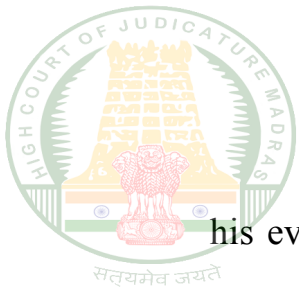


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12. PW3 who is the cousin brother of the deceased has stated that on 22.06.2013, at about 5:00 p.m., the deceased was harassed by the appellant by demanding to sell away the property. He has further stated that there was a quarrel between themselves in this regard.

13. PW4 who is an another cousin brother of the deceased has stated in his evidence that on 22.06.2013, at about 5:00 p.m. when he was in garden, he heard the deceased calling him and so he ran there and found the deceased and the appellant fighting with each other and the appellant was pressing the deceased by being up on her. As the deceased had instructed him not to stand there and go and inform to her father, he went away. Thereafter, when he informed PW1 and came back with PW1 and the PW2, he had seen the appellant holding the deceased and taking her on his bike to the hospital. PW2 also went in an another two wheeler to the Hospital.

14. PW5, who is the son of the appellant and the deceased has stated in his evidence that on one day during June 2013, when he was in the farm along with his parents, he had seen his father pressing the neck of his mother and thereafter his father left his mother. Subsequently his father went to catch rabbits and his mother went to water the crops. So



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his evidence would reveal that his mother was alright after he had seen his father pressing her neck. After he went home, he heard from PW4 that his mother was being beaten up by his father. The above evidence of PW5 is not sufficient to hold the appellant guilty for murdering the deceased. It might be true that at some occasion, PW5 would have seen his father and mother fighting with each other. So his evidence cannot be given with any other inference.

15. PW6 is the sister of the deceased and she has stated in her evidence that on the day of occurrence she heard from PW4 that the appellant was manhandling the deceased and she asked by showing signs to go and give information to others. PW6 is not an eye witness who had seen the occurrence but only a hearsay witness.

16. PW7 who is a resident of Uthappanaickanoor Village had stated in his evidence that he had seen the deceased unconscious and salival secretion from her mouth. He had also seen the appellant taking the deceased in his bike to the Hospital.

17. PW8 who is also a resident of Uthappanaickanoor Village has stated in his evidence that at about 5:30 p.m., on the day of occurrence,



the appellant came and informed him that his wife is pretending as though she had consumed poison and asked him to come for his assistance. When PW8 went to the scene of occurrence, the deceased was on the floor and there was salival secretion from her mouth.

18. None of the above witnesses had seen the appellant physically assaulting and causing injuries on the deceased and administering poison forcibly. In fact, when some of the witnesses went to the place of occurrence they had seen the appellant holding the deceased and thereafter rushing to the hospital by taking her in the bike.

19. PW11 Doctor who had conducted the postmortem on the body of the deceased has stated in his evidence that from the Viscera Report he learnt that there was poison on the body of the deceased and had concluded that the deceased died due to the effect of poison on her body. It was suggested to him that the fracture on her hyoid bone could have occurred when someone has forcibly pressed her neck to prevent the poison from passing through the food pipe, he has given an affirmative answer that there are possibilities. He has also stated that the external injuries noted on the body of the deceased could have been caused when the deceased had fallen down or rolled on the rough farm surface and that



the aberrations on the neck region and cheeks could have been caused due to the pressing effect given to her neck for preventing the poison from getting into her food pipe.

20. Ex.P1 Complaint as well as the statement of the prosecution witnesses shows that the witnesses learnt from both the appellant and the deceased that it was the deceased who consumed poison by herself. So the trial Court rightly found that the guilt against the appellant for the offence under section 302 IPC has not been proved. However, the learned trial Judge has proceeded to convict the appellant for the offence under Section 306 IPC without framing any separate charge but by citing the decision of the Apex Court in **Dalbir Singh's case** (*cited Supra*).

21. In the said case, the Apex Court has held that if the appellant could have the knowledge for what he is tried and the main facts sought to be established by him was explained to him fairly and clearly and given a full and fair chance to defend himself, the Court can convict the appellant for an offence for which no charge was framed. The factual and legal position involved in **Dalbir Singh's case** (*cited Supra*) also has a relevance of punishing the accused for the offence under section 306 IPC without framing any separate charge, but on a charge framed under



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section 302 IPC and for which he was being tried. In the instant case also, the appellant has not been subjected to trial on the charge under section 306 IPC, but he was charged and tried for the offence under section 302 IPC.

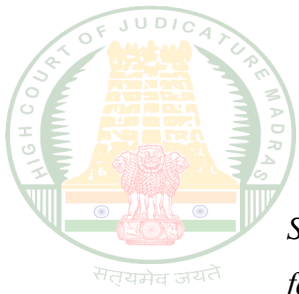
22. The events prior to the occurrence would relate to the difference of opinion between the appellant and his deceased wife about the demand he made to sell the properties settled by his father in the name of his son. Admittedly, it is not a case of demand for dowry. The father, brother, cousin brothers and sister of the deceased who have been examined as PW1 to PW4 and PW6 have stated about the misunderstanding between the appellant and the deceased with regard to the selling of land and that there was a quarrel between themselves shortly before the occurrence. But none of their evidence would show that the appellant was threatening the deceased that he would kill her or that she should die if she was not amenable to his idea to sell away the land. The cross examination done on behalf of the appellant and the questions posed to the appellant under Section 313 of Cr.P.C., does not make any reference about the ingredients for the offence punishable under section 306 IPC.



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23. In Dalbir Singh's case (cited Supra), the Apex Court after making reference to the earlier Judgement in the case of **Sangarabonia Sreenu vs. State of Andhra Pradesh** reported in **MANU/SC/0816/1997**, observed that Section 222 of Cr.P.C. entitles the Court to convict a person for an offence which is minor in comparison to the one for which he is tried. The Court has further observed that even if there is an omission to frame appropriate charge, in view of Section 464 of Cr.P.C., no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice in fact has been occasioned. It would be worthwhile to extract the relevant paragraph hereunder.

"14. Here the Court proceeded to examine the question that if the accused has been charged under Section 302 IPC and the said charge is not established by evidence, would it be possible to convict him under Section 306 IPC having regard to Section 222 Cr.P.C. Sub-section(1) of Section 222 lays down that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. Sub-section (2) of the same



WEB COPY

CrI.A.(MD)No.456 of 2017



Section lays down that when a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. Section 222 Cr.P.C. is in the nature of a general provision which empowers the Court to convict for a minor offence even though charge has been framed for a major offence. Illustrations (a) and (b) to the said Section also make the position clear. However, there is a separate chapter in the Code of Criminal Procedure, namely Chapter XXXV which deals with Irregular Proceedings and their effect. This chapter enumerates various kinds of irregularities which have the effect of either vitiating or not vitiating the proceedings. Section 464 of the Code deals with the effect of omission to frame, or absence of, or error in, charge. Sub- section (1) of this Section provides that no finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby. This clearly shows that any error, omission or irregularity in the charge including any misjoinder of charges shall not result in invalidating the conviction or order of a competent Court unless the appellate or revisional Court comes to the conclusion that a failure of justice has in fact been occasioned thereby. In *Lakhjit Singh (supra)* though Section 464 Cr.P.C. has not been specifically referred to but the Court altered the conviction from 302 to 306 IPC having regard to the principles underlying in the said Section. In *Sangaraboina Sreenu (supra)* the Court completely ignored to consider the provisions of Section 464 Cr.P.C. and keeping in view Section 222 Cr.P.C. alone, the conviction of the appellant therein under Section 306 IPC was set aside."



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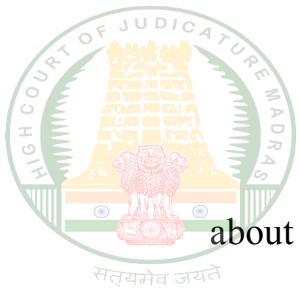
24. By applying the above provisions and observations to this case, it could be seen whether the appellant was having knowledge about the charges for which he is being tried and whether he could effectively defend himself. As stated already, his cross examination of other witnesses is to the effect of defending the charge of abetting the suicide of his wife. Even in the questions framed under Section 313 of Cr.P.C., there was no incriminating question culled out from the evidence on record, in order to make the appellant understand that charge under section 306 IPC has been made out and that he has been tried for the same also without suffering any prejudice. The protection under Section 464 Cr.P.C would be available for the instances of omission to frame charge only when there is no failure of justice and the appellant was still given a fair chance to defend himself. Though the legal principles have been rightly invoked by the learned trial Judge, he had omitted to test whether the omission to frame the charge under section 306 IPC has landed the appellant into suffering a punishment for an offence which he did not effectively defend. Had there been a charge under section 306 IPC framed in the instant case, then the appellant could have known about the charges for which he was being tried.



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25. No single witness has stated in their evidence that it was the appellant who compelled the deceased or abetted or assisted her to consume poison and commit suicide. On the contrary their evidence had only revealed that on seeing the deceased collapsed, the appellant tried to save her by holding her on his lap and then taking her to the hospital for treatment. He did not run away from the place of occurrence after the father, brother and other relatives of the deceased had arrived. Even PW11 Doctor had stated that the breaking of hyoid bone could have occurred when someone had pressed the neck of the person who consumed poison to prevent the poison from passing into the food pipe and thereby reaching viscera. So it could have been quiet possible for the appellant to have held the neck of the deceased tightly in his attempt to prevent the poison from passing into her food pipe.

26. In fact, one of the witnesses PW8 has stated that at about 05:30 p.m., on the day of occurrence, the appellant ran to him saying that his wife was pretending as though she had consumed poison and when he enquired him whether he had informed her parents, the appellant stated that he did not have the talk time in his phone. So, PW8 went to his rescue and called the brother of the deceased from his phone. PW2 has also in his evidence confirmed that he received a phone call from PW8 at



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about 5:30 p.m. stating that his sister collapsed. So this evidence along with the evidence of the Doctor would only reveal that that deceased had consumed poison by herself and the appellant did not aided the same but in fact he tried to save her.

27. Even for the sake of argument if it is presumed that the appellant has understood the charge for the offence under section 306 IPC and he had defended himself, the evidence on record does not support the above charge also. Hence, this is a case where the appellant first of all did not have any opportunity to know that he is tried for the offence under section 306 IPC and has been convicted for the same when there is no ingredient available to support for framing the above charge. The learned trial Judge has omitted to appreciate the matter in a holistic fashion by applying the principles to the facts and the materials available on record and had chosen to simply take advantage of Section 464 of Cr.P.C. and held the appellant is guilty for the offence under section 306 IPC unmindful of the prejudice caused to him due to non-availability of fair opportunity to defend himself for the said charge. The offence under section 306 IPC is not a minor offence for the offence under section 302 IPC as both the offences did not fall under the same genre. As the offence under section 302 IPC falls under the classification of murder it would be



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possible to accommodate the culpable homicide not amounting to murder and not the offence like abetment to commit suicide. So the offence under section 306 IPC cannot be considered as a minor offence of the larger offence under section 302 IPC.

28. As the the instant case does not have the ingredients to frame a charge under section 306 IPC, it is not a fit case to be remanded to the trial Court to try once again for the offence under section 306 IPC after framing the charge for the said offence. As the learned trial Judge correctly applied the legal position laid down in **Dalbir Singh's case** (*cited Supra*) and as this case does not have any scope to frame charge under section 306 IPC, the ends of justice could be met only if the Judgement of the trial Court is set aside in its entirety and the appeal is allowed. As the guilt against the appellant has not been proved by the prosecution neither for the offence under section 302 IPC nor for the offence under section 306 IPC, the appellant should be acquitted.

29. In view of the above observations, the Criminal Appeal is **allowed** and the Judgement of the learned V Additional District and Sessions Judge, Madurai, dated 24.10.2017 in S.C.No.97 of 2014 is set aside. The appellant / accused is not found guilty for the offences under



Crl.A.(MD)No.456 of 2017

Sections 302 IPC and 306 IPC and acquitted of the charges framed against him. The bail bond, if any, shall stand cancelled and sureties, if any, shall be discharged. The fine amount, if already paid, shall be refunded to the appellant / accused.

21.08.2025

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To

1.The V Additional District and Sessions Judge,
Madurai.

2.The Inspector of Police,
(Usilampatti Circle)
Uthappanaickanoor Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.A.(MD)No.456 of 2017

Dr.R.N.MANJULA, J.

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Crl.A.(MD)No.456 of 2017

21.08.2025