



CrI.R.C.No.859 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 28.06.2022

Pronounced on : 06.07.2022

Coram::

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CrI.R.C No.859 of 2014

Dhananchezhiyan, M/38 years,
S/o.Krishnan,
Pillaiyar Koil Street,
Venmani Nagar,
Gandhi Nagar Post,
Vellore – 6.

... Petitioner

/versus/

The State Rep., by
The Inspector of Police,
Bagayam Police Station,
Vellore District.
(Crime No.645 of 2001).

... Respondent

Prayer: Criminal Revision Petition is filed under Section 397 read with 401 of Cr.P.C., to set aside the judgment dated 11.03.2014 made in C.A.No.91/2008 on the file of the Court of II Additional District and Sessions Judge, Vellore at Ranipet, Vellore District confirming the judgment dated 30.04.2008 made in S.C.No.128 of 2007 on the file of Court of Assistant Sessions Judge cum Chief Judicial Magistrate, Vellore and acquit the petitioner from the offence under Section 498A and 306 of I.P.C and pass orders.

For Petitioner

: Mr.T.P.Prabakaran

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For Respondent

: Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

ORDER

This revision petition is against the concurrent finding of the Courts below convicting the petitioner herein for offence under Sections 498-A and 306 of I.P.C (4 counts).

2. For sake of connivance, the petitioner herein is referred as accused.

3. The case of the prosecution is that the accused married one Prabavathi about 8 years prior to the incident. They had three female children. The accused developed intimacy with one Selvi (A2) and started causing cruelty to his wife Prabavathi. A1 eloped with A2 deserting Prabavathi (wife) and three children. They lived together in Bangalore for few years. Four months prior to the occurrence, they both returned to the Village. They forced Prabavathi to bring money from her parents to meet out their expenses. On 29.11.2001, she was beaten up and driven out from the matrimonial home by A1 & A2. Prabavathi left the house at Virudhampet along with three children came to Bagayam and pushed



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all her three children in the irrigating well and she also fallen into the well and committed suicide. Two days later, 4 dead bodies were found floating, by the well owner and same was informed to the police, leading to registration of the F.I.R.

4. On completion of investigation, final report was filed. The copies were furnished to the accused and case committed to the Court of Sessions. Charges under Section 498-A and 306 r/w 34 of I.P.C as against A1 and charge under Section 306 r/w 34 I.P.C as against A2 were framed and the accused were tried.

5. To prove the charges, the prosecution has examined 24 witnesses, marked 20 Exhibits and produced 22 material object.

6. The Trial Court found A1 guilty of offence under Section 498-A and 306 r/w 34 I.P.C (4 counts). Acquitted A2 from charge under Section 306 r/w 34 I.P.C. A1 was sentenced to undergo 3 years R.I and to pay fine of Rs.1000/- in default, to undergo further period of two months R.I for offence under Section 498-A of I.P.C and sentenced to undergo 6 years R.I and to pay fine of Rs.500/- for



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each count (4 counts), in default, one month R.I for offence under Section 306 of

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7. Aggrieved by the conviction and sentence, the 1st accused preferred appeal before the II Additional District and Sessions Judge, Vellore at Ranipet, in C.A.No.91 of 2008. The Appellate Court confirmed the conviction and sentence passed by the trial Court, hence the present revision petition.

8. The Learned Counsel appearing for the petitioner submitted that the reasoning of the Courts below for convicting the accused for offence under Section 498-A and 306 of I.P.C is not supported by evidence. On presumption that the Prabavathi committed suicide due to cruelty caused by A1 by having concubine is purely based on surmises. Neither for demand of dowry nor for having A2 as his concubine, the prosecution was able to produce reliable evidence.

9. To satisfy the ingredient of Section 306 of I.P.C., there must be an intentional aiding to commit suicide. Whereas, no witness for prosecution had



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spoken about aiding or abetting Prabavathi to commit suicide. Similarly, there is

no evidence to prove that the deceased Prabavathi was subjected to cruelty either mentally or physically in connection with demand of dowry or otherwise or any other reason.

10. The Learned Counsel appearing for the accused submitted that there is no evidence to prove causing cruelty upon the deceased by the accused. Even if A1 had developed intimacy with A2 and eloped with her and returned after two years and forced the deceased to jointly live with him along with his concubine is assumed to be proved, even then, the ingredient of Section 306 of I.P.C will not get attracted for the act of suicide committed by Prabavathi, after killing her three children by throwing them into the well.

11. Relying upon the judgement of the Hon'ble Supreme Court in *Kishori Lal -vs- State of M.P* reported in (2007) 10 SCC 797 and *Jitender Kumar -vs- State of Haryana* reported in (2012) 6 SCC 204 submitted that, unless the ingredient for abetment are satisfied, conviction under Section 306 of I.P.C is not sustainable. It is the duty of the Court to find proof by direct evidence,



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in case of death alleging due to cruelty and harassment by her husband or his relatives.

12. Per contra, the Learned Government Advocate (Crl.Side) for the respondent submitted that, it is a case of suicidal death. A women who is mother of three minor children due to unbearable cruelty, left the matrimonial home along with three children and jumped into the well after pushing her three children into the well. Four life were taken away due to torture and mental cruelty caused by the accused who earlier deserted them and eloped with a married woman to Bangalore and lived with her for two years, returned back to the village along with her and continued his affairs. He forced the deceased his 1st wife, to share his concubine in the matrimonial home and also to provide money for their comfort living. The illicit extra matrimonial relationship of the accused with A2 is spoken by none other than the husband of the 2nd accused. The demand of dowry is spoken by father of the deceased P.W.4 (Munusami), mother of the deceased P.W.5 (Vasantha) and sister of the deceased P.W.6 (Rubi).



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13. The Learned Government Advocate (CrI.Side) for the respondent submitted that, the elopement with his concubine, deserting the deceased and her children. Thereafter, return back to cause torture and to force her to accommodate his concubine in the matrimonial fold are adequate and sufficient cause for cruelty and abetment to commit suicide. Ingredient of offence under Section 498-A as well as 306 of I.P.C are fully satisfied and hence, conviction by the Trial Court has to be upheld.

14. The Learned Counsel appearing for the accused argued the point of lack of corroboration in the prosecution case. Highlighted the contradiction inconsistency in the evidence of prosecution witnesses. The embellishment by improvising the case, particularly, P.W.4 who had deposed that he gave Rs.15,000/- to his daughter as dowry and thereafter, he was continuously satisfying the demand of A1. Once he borrowed Rs.3,000/- from his daughter Rubi and given to his daughter. But Rubi (P.W.6) has not corroborated his evidence. P.W.1 has deposed, since A1 was having affair with A2, he was frequently torturing his daughter demanding money, he used to go and mediate. However, the Investigating Officer, in the cross examination, admitted that, this witness during



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the investigation had not stated specifically about the money given to the accused

on any particular date and no evidence collected about the alleged Panchayat conveyed in the Village in connection with A1 elopement with A2. Therefore, there is no corroborative evidence to P.W.4 version.

15. In this connection, it is pertinent to note that P.W.4, is the father of the deceased. He has stated about the dowry demand by A1 and his payment of money to A1 through his daughter on various occasion. No doubt, it is admitted by P.W.4 that there is no police complaint about the alleged A1 & A2 elopement. However, the prosecution has proved this event through an independent witness (P.W.9) who has assertively deposed that he know the elopement of A1 & A2. When Parbavathi and their children were alive A1 & A2 returned back to the village, A1 joined the deceased Prabavathi and his children and living together. On the date of the incident Prabavathi and his three children were with A1. This fact also been corroborated by P.W.11 who is none other than the husband of A2. So, there can be no doubt about the fact of elopement of A1 with A2 three years prior to the incident deserting his wife and children.



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16. Dhanalakshmi who is the mother of A1 admits that, the deceased was with her on the date she committed suicide. She has left the house informing her that his father is not well. It is a case of mother committing suicide after killing her three minor daughter. Before committing suicide, she has left the matrimonial home which has been spoken by mother-in-law.

17. A1 who is the husband of the deceased deserted her few years ago and had returned back along with his paramour, 4 months prior to the incident. This also been spoken by the family members PW.4, PW.5 and P.W.6 and the independent witness P.W.9 (Imanuvel) and the husband of A1's paramour Raghu [P.W.11].

18. Whether causing cruelty by Act of extra marital affair and driving the wife to commit suicide will amount to abetment to punish under Section 304B of I.P.C has been dealt in detailed by the Hon'ble Supreme Court in *Amalendu Pal @ Jhantu -vs- State of West Bengal* reported in (2010) 1 SCC 707, which is relied by the petitioner's Counsel. The relevant paragraphs are extracted below:-



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“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 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.

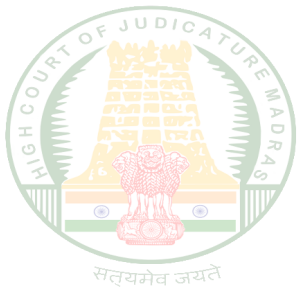
13. In order to bring a case within the purview of Section 306 IPC there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate 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.”



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19. The judgment of the Hon'ble Supreme Court in ***Girdhar Shankar Tawade -vs- State of Maharashtra*** reported in (2002) 5 SCC 177 narrates the object and ingredient of Section 498-A of I.P.C., as below:-

“17. As regards the core issue as to whether charges under Sections 306 and 498-A of the Penal Code, 1860 are independent of each other and acquittal of one does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither are we inclined to do so, but in order to justify a conviction under the later provision there must be available on record some material and cogent evidence. Presently, we have on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon — the documentary evidence (namely, those three letters), in our view, falls short of the requirement of the statute: even on an assumption of the fact that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in-laws' place and requests the husband to treat her well — at best some torture and a request to treat her well. This by itself would not bring home



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the charge under Section 498-A. Demand for dowry has not seen the light of day.”

20. Considering the definitions and the explanation given by the Hon'ble Supreme Court in respect of Section 306 and 498-A of I.P.C, and applying it to the instant case, I find though, the prosecution has proved that the deceased Prabavathi and three children died by drowning, one death is suicide and another three died are homicide. The depression caused by her husband's extra marital affair was caused for her to take the extreme decision to commit suicide. But, the very act of having extra marital affair is not sufficient to hold the accused is guilt of abetment. The prosecution has not laid any evidence that A1 aided or instigated the deceased to commit suicide. The evidence for prosecution has only proved that the mental cruelty caused on deceased pressurising her to get money from her parents to meet his expenses and his extra martial affairs satisfies the ingredient of Section 498-A I.P.C., alone which reads as below:-

“498 A of Indian Penal Code:-

Husband or relative of husband of a woman
subjecting her to cruelty.—



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Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation. —For the purpose of this section, “cruelty” 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 or any person related to 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.”

21. The cruelty explained in the statute, includes both mental and physical. The wilful conduct of A1 having extra martial affair with another married lady and forcing the deceased to accept his conduct and also to feed him money for his affair, can be termed as mental cruelty and harassment. Hence, this Court finds that the conviction of the accused under Section 498-A of I.P.C by the Courts below is perfectly legal and hence confirmed.



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22. In so far as the conviction and sentence for offence under Section 306 of I.P.C., this Court holds that the prosecution evidence is not sufficient to arrive at a conclusion that the accused has intentionally abetted his wife Prabavathi to commit suicide or in any manner aided her to commit suicide.

23. For the said reason, this Criminal Revision Petition is partly allowed. The conviction and sentence for offence under Section 498-A I.P.C is confirmed. The conviction and sentence for offence Section 306 of I.P.C is set aside.

24. Time for surrender 15 days. Failing which, the trial Court shall secure the accused and commit him to prison to undergo the remaining period of sentence. Fine amount paid for offence under Section 306 of I.P.C shall be refunded. Period of detention already undergone shall be set off under Section 428 of Cr.P.C.



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Internet :Yes/No.
Speaking order/Non-speaking order
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To,

1. The II Additional District and Sessions Judge, Vellore District, Ranipet.
2. The Asistant Sessions Judge cum Chief Judicial Magistrate, Vellore
3. The Inspector of Police, Bagayam Police Station, Vellore District.
4. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

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Pre-delivery order made in
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