

DATED: 19.01.2010

CORAM:

THE HONOURABLE MRS.JUSTICE ARUNA JAGADEESAN

Crl.A.No.1685/2002

Saravananaraj Appellant

Vs

State by Inspector of Police

K7, ICF Police Station

Chennai Respondent

Prayer:- This Criminal Appeal is filed against the judgement dated 19.11.2002 passed in SC.No.376/2001 by the learned Magalir Neethimandram, Chennai, convicting and sentencing the appellant for the offence under Section 498A of IPC to undergo two years of Rigorous Imprisonment and for the offence under Section 306 of IPC to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.3000/-, in default to undergo Rigorous Imprisonment for three months. For Appellant : Mr.S.Ashok Kumar, SC for

Mr.S.V.Udayakumar

For Respondent : Mr.Hasan Mohammed Jinnah, APP

JUDGEMENT

This Criminal Appeal is filed against the judgement dated 19.11.2002 passed in SC.No.376/2001 by the learned Magalir Neethimandram, Chennai, convicting and sentencing the appellant for the offence under Section 498A of IPC to undergo two years of Rigorous Imprisonment and for the offence under Section 306 of IPC to undergo Rigorous Imprisonment for 7 years and to pay a fine of Rs.3000/-, in default to undergo Rigorous Imprisonment for three months.

2. The case of the Prosecution is as follows:-

a. The deceased persons Umamaheswari, Muralikumar and Neethishkumar are the wife and children of the Appellant. PW.1 Chandra is the mother and PW.2 Neelakandan is the grand father of the deceased Umamahewari. PW.3 Shanmugham is the father of the Appellant. PW.4 Paul Martin is the neighbour of the Appellant. The Appellant had not permitted the deceased to visit the house of PW.1 and also not permitted PW.1 to visit her daughter. The deceased told PW.1 that the Appellant was causing cruelty to her by beating. On 29.9.2000 at about 2.30 p.m., PW.3 on hearing the sound, he rushed to the kitchen and saw and deceased and her two children burning and immediately, they were taken to the Egmore Children Hospital. b. On PW.1 was informed that her daughter along with her children had been admitted in the Hospital and that the deceased Umamaheswari poured kerosene on herself and also on her two children and set fire on all of them.

c. PW.5 Dr.Umayal admitted the two children and issued accident register Ex.P3 and Ex.P4 and both the children were referred to the KMC Hospital for further treatment. PW.8 Dr.A.T.Mahajabeen on 23.9.2000 in early hours of 1.20 a.m. admitted both the two children and the deceased Umamaheswari for treatment and issued accident register Ex.P13. d. PW.9 Inspector of Police attached to the K7, ICF Police Station on receipt

of complaint Ex.P14 from the Appellant, registered a case in Cr.No.1091/2000 for the offence under Sections 309, 307 read with 306 of IPC and prepared FIR Ex.P15. On receipt of Ex.P15, PW.11, the Assistant Commissioner of Police, Sembium Range took up the case for investigation and he was informed that wife and her two children died in the Hospital and since the death took place within a period of seven years from the date of her marriage, he sent an intimation to the District Collector to conduct inquest and visited the place of occurrence and prepared observation mahazar and sketch and seized a white colour plastic cane in the presence of the witnesses. e. PW.10 Tahsildar of Perambur Division conducted inquest and examined the witnesses and filed a report Ex.P16, stating that death of the Umamahewari is not due to dowry demand, but due to cruel treatment meted out to her by the accused. After inquest, the body of the deceased persons were sent to Post mortem. PW.7 Dr.Manohar conducted post mortem over the body of the deceased persons and opined in the post mortem certificates Ex.P6, 8 and 10 that the deceased persons died due to burn injuries. f. Pw.11 in continuation of the investigation recorded the statements of the Doctors and the accused was not arrested, since he was enlarged on anticipatory bail and in the mean while, PW.11 was transferred and the Assistant Commissioner of Police who took charge at that time completed the investigation and filed a final report for the offences under Sections 498A and 306 of IPC against the accused.

3. The case was taken on file in SC.No.376/2001 by the learned Magalir Neethimandram and necessary charges were framed. In order to substantiate the charges levelled against the accused, the prosecution examined as many as 11 witnesses (PW.1 to PW.11) and also relied on Exs.P1 to P16.

4. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 Cr.PC as to the incriminating circumstances found in the evidence of prosecution witnesses and the accused denied the same as totally false.

5. The court below, after hearing the arguments advanced on either side and looking into the materials available on record, found the accused/appellant guilty and awarded punishments as referred to above, which is challenged in this Criminal Appeal.

6. This court heard the submissions of the learned counsel on either side and also perused the material records placed.

7. Mr.S.Ashok Kumar, the learned senior counsel for the Appellant has, at the very outset, pointed out that the evidence adduced by the Prosecution was unreliable and the trial court has chosen to rely on the statement allegedly given by PW.1, the mother of the deceased although she has not supported the said version before the court in her cross examination which is a substantive evidence. The learned counsel would submit that there is absolutely no corroborative evidence to support the statement of PW.1 given to the Revenue Divisional Officer, apart from the fact that she herself has given a go-by to her statement.

8. Mr.Hasan Mohammed Jinnah, the learned Additional Public Prosecutor however pointed out that in the light of the presumption raised under Section 113A of the Evidence Act, 1872, PW.1 though contradicted, her statement in her cross examination can be ignored and there was evidence to show that the deceased Umamaheswari was harassed on the date of the occurrence, which led her to commit suicide.

9. PW.1 is the mother and PW.2 is the grand father of the deceased. PW.3 is the father of the Appellant. PW.4 is the neighbour of the Appellant, where he resided with the deceased and his two children. It is most unfortunate and distressing to see that the deceased had committed suicide with her two children by setting fire to herself and two children and she was unable to bear even the normal jolts in her marital life. From the evidence of PWs.1 and 2, it transpires that on the date of the incident, the Appellant had scolded the deceased and had given her two beatings for not feeding the children and make them to go to bed in time. Though in the chief examination PW.1 stated that the Appellant used to beat his wife consuming alcohol and did not allow her to talk to her daughter whenever she visited his house, but she contradicted her own statement and deposed that she stated so in her chief examination, as she was in anger with the Appellant due to the suicide

committed by her daughter along with her children. The statement made by PW.1 to the Tahsildar PW.10 was not placed before the court and the report Ex.P16 submitted by the Tahsildar merely indicated that the marital life of the deceased with the Appellant was quarrelsome. In view of the inconsistent evidence of PW.1 which is not supported or corroborated any other witness, no reliance can be placed on her evidence to sustain the conviction.

10. Even assuming that the Appellant had beaten the deceased Umamaheswari for not feeding the children, it cannot be termed as harassment meted out to the deceased, as the conduct of the Appellant was not willful or offensively unjust driving to her to commit suicide. Indisputably, there was no dowry demand or any act of cruelty inflicting grave injury or danger to her life both mentally or physically. A conjoint reading of Section 498A of IPC and Section 113A of the Evidence Act makes it clear that when the husband or any of his relation is guilty of cruelty to the wife, he or his relation is punishable under Section 498A of IPC and in the presence of such cruelty, a presumption can be raised for abetment of suicide, if the same is committed within a period of 7 years from the date of her marriage. In a nut-shell, the first requisite for attracting the presumption under Section 113A of the Evidence Act is that it must be proved that the wife was subjected to "cruelty" as defined in Section 498A of IPC.

11. The fact of taking liquor and not allowing the parents of the deceased to frequently visit her and talk to her will not fulfill the essential ingredients of cruelty as defined in Section 498A of IPC. As spelt out from the evidence adduced by the Prosecution, the Appellant had chided the deceased for not feeding the children in time and in the course of such quarrel, he had beaten her.

12. Mens-rea is an essential ingredient of the offence under Section 498A of IPC. The explanation appended to Section 498A of IPC clinches the issue, otherwise by giving out the meaning of "cruelty" as any "willful conduct" which is of such a nature as is likely to drive the woman to commit. The objective "willful" qualifying the word "conduct" contemplates obstinate and deliberate behaviour on the part of the offender for it to amount to "cruelty" the sole constitute of the offence as such. The term "willful" is thus explicit in character and reflect the intention of the legislature that mens-rea is an essential ingredient of the offence.

13. In the present case, assuming that the Appellant had scolded the deceased and beaten her for not providing milk to the children and make them to go to bed early, at no stretch of imagination it can be said to be a willful or an intentional act or conduct of the Appellant so as to attract the definition of cruelty as defined in Section 498A of IPC.

14. To place reliance on the presumption raised in a case of abetment of suicide by a married woman, as envisaged under Section 113A of the Evidence Act, the Prosecution must first establish certain foundational facts. So, undoubtedly the aforesaid provision do raise a presumption, but the facts of this case cannot be ignored. It is the essence of the criminal order of abetment of suicide that the abettor should be proved to have substantially assisted in the commission of the offence of suicide. Instigation, incitement and provocation are some of the acts which may constitute as "abetment" for commission of suicide, but all those acts or any of such acts have to be positive and patent in the nature of such a degree that the direct result of such acts may be none other, but the commission of suicide. Stray domestic quarrel, perfunctory abuse, crude and uncultured behaviour being mundane matters of normal occurrence in the a family will not go to form and constitute "abetment" unless those acts of conduct singly or cumulatively are found to be of such formidable and compelling nature as may lead to the commission of suicide.

15. In the present case, there is no dependable evidence to the effect that the Appellant misbehaved or ill-treated his wife and because of such harassment or torture she committed suicide. In the instant case, the first information was lodged by the Appellant and he has stated that he asked his wife to give milk to the children in time so that they can go to bed early, but the deceased ignored it and told him that she knows when to feed the children. But, however as she delayed feeding the children, he got angry and beat her on her back. After he went asleep, he was woken up by his brother and heard the shrieks of his wife and children from the

Kitchen room which was locked from inside. He along with his brother and father broke open the kitchen room and took them to the Hospital. His version is corroborated from the evidence placed on record by the Prosecution more particularly by PW.1's evidence.

16. The evidence in this case does not lead any inference that the act of the Appellant was such as to lead an inference that it caused mental cruelty and compelled the deceased to put an end to her life with her children. At this juncture, the observation made by the Honourable Supreme Court in the case of Ramesh Kumar Vs. State of Chhattisgarh [2001-9-SCC-618] considering the definition of "abetment" under Section 107 of IPC and acquitting the accused for an offence under Section 306 of IPC as conviction not sustainable merely on the allegation of harassment is extracted as under:- "A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation. If it transpires to the court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the court should not be satisfied for basing a finding that the accused charged for abetting the offence of suicide should be found guilty."

17. In the back ground of facts and sketchy ocular evidence, I am unable to sustain the conviction and sentence of the Appellant under Sections 306 of IPC and 498A of IPC.

18. In the result, this Criminal Appeal is allowed. The conviction and sentence imposed on the Appellant in SC.NO.376/2000 under Sections 306 of IPC and 498A of IPC are set aside and the Appellant is acquitted of all the charges levelled against him. It is seen from the records that the Appellant had been enlarged on bail and the bail bond if any executed by the Appellant shall stand terminated and the fine amount if any paid by the Appellant shall be refunded to him. 19.01.2010

Index:Yes/No

Web:Yes/No

Srcm

To:

1.Magalir Neethimandram, Chennai

2.The Public Prosecutor, High Court, Madras

ARUNA JAGADEESAN, J.

Srcm

Pre Delivery Judgement in

CrI.A.No.1685/2002